

Using A Trust To Preserve Social Security And Medicaid Benefits For Disabled Persons

Receipt of even a small sum of money from an inheritance or a lawsuit settlement can result in the disqualification of Social Security ("SS") and Medicaid benefits for at least five years. To preserve SS and Medicaid benefits of a disabled individual under age 65, a trust must be established to hold the proceeds of the inheritance or settlement. When properly drafted, the trust will permit the enjoyment of both the SS and Medicaid benefits AND the proceeds of the inheritance or settlement.

1. Trust. A trust is a legal fiction whereby a person (called a "grantor") gives assets to another person (called a "trustee") that is entrusted to handle such assets for another person (called a "beneficiary"). There are two types of trusts established to preserve SS and Medicaid benefits:

Supplemental Benefits Trust ("SBT") and Special Needs Trust ("SNT").

2. SBT. It's a trust established by a grantor who is **not** the same as the disabled beneficiary. For example, an SBT is trust established by a parent for the benefit of the child to preserve SS benefits. The SBT can be established as a revocable or irrevocable trust during the parent's life or as a trust in the parent's will or in another trust.

3. SNT. It's a self-settled trust established by a grantor who is also the disabled beneficiary. If the beneficiary received a settlement in a lawsuit and establishes the trust for himself or herself, then that trust is an SNT. The only other difference

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between the SBT and SNT is that the SNT **must contain a Medicaid payback provision**, which is strict language requiring that upon the death of the beneficiary, any state that has provided medical payments under its Medicaid program for the beneficiary is entitled to be reimbursed from the remaining assets of the trust prior to any other distributions.

4. Trustee. The trustee can be either an individual, a legal entity (i.e., law firm or trust company), or a combination of one or more of either individuals or entities. The beneficiary of the trust should not be the trustee and, in an SNT, cannot be the trustee because he or she is also the grantor. The trustee would manage and distribute those assets to the beneficiary under the constraints of the trust agreement.

5. Assets. Trust assets commonly include cash, investments in stocks and mutual funds, CDs, real property, and life insurance policies. Assets may be contributed to the trust on an ongoing basis during the life of the beneficiary.

6. Restricted Uses. The trust agreement must contain very strict language about the use and distribution of the assets during the life and after the death of the beneficiary. It must designate that the money cannot be used to pay for the beneficiary's basic needs, such as housing, medical treatments covered by Medicaid, food or clothing.

7. Permitted Uses. The trust assets can be used for, among



other things: (a) buying a home or car (which can then be rented to the beneficiary); (b) medical and health costs not covered by Medicaid, such as experimental and alternative medical treatments, massage therapy, vitamins, certain durable medical equipment, and special aids; (c) vacations, summer camp, trips, travel companions, or other recreation or entertainment; (d) sporting equipment or fund hobbies of any kind; (e) computers; (f) trips to the zoo; (g) a camera; (h) bowling shoes (but not regular shoes, because that is "clothing" and is paid for by SS); (i) legal costs; and (j) beneficiary's funeral and burial expenses.

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