

# THE PRACTICAL REALITIES OF LIVING WITH A SNT

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# Agenda

- ▶ Drafting the SNT
  - Describing the beneficiary and his needs
  - Discretionary language and providing for flexibility
  - Providing for Eventualities: The Home
  - The Players
- ▶ The SNT and Other Docs
  - Letter of Intent
  - Life Care Plan
  - Guardianship Orders
- ▶ Coordination of Resources
  - Public Benefits
  - Private Resources

## Drafting the SNT: Describing the Beneficiary and His Needs

- ▶ What level of detail is too little, e.g., “the beneficiary is disabled”?
- ▶ What level of detail is too much, raising concerns with confidentiality and potentially constraining the Trustee?
  - Substantial detail may be better suited for Letter of Intent. See discussion below.
- ▶ Who may ultimately serve as Trustee and what do they know about the beneficiary?
  - Default is typically Trustee appointed by the court.



## Drafting the SNT: Discretionary Language and Providing for Flexibility

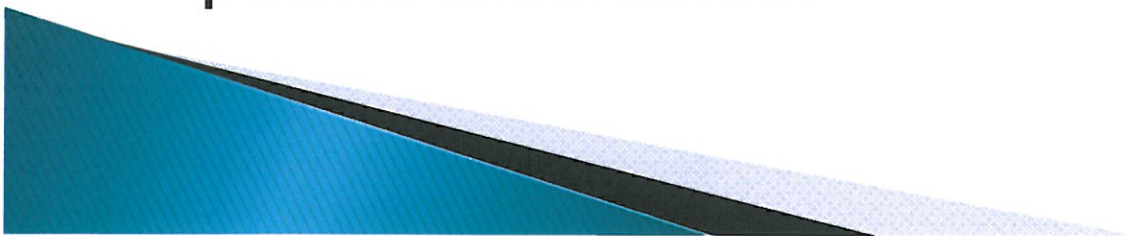
- ▶ Do not restrict specific distributions for fear that SNT will be considered available to beneficiary.
  - “The trust cannot pay for food or shelter.”
- ▶ Do restrict ability of beneficiary to:
  - Name himself as Trustee, and
  - Make trust available for his support.

## Drafting the SNT: Discretionary Language and Providing for Flexibility

- ▶ Provide for checks and balances, i.e., make Trustee accountable to 3<sup>rd</sup> party such as Trust Protector
- ▶ Include limited ability of someone independent of Trustee to amend or revoke to keep pace with changes in the law
- ▶ Last resort, decant to new SNT or seek court modification or reformation of existing SNT

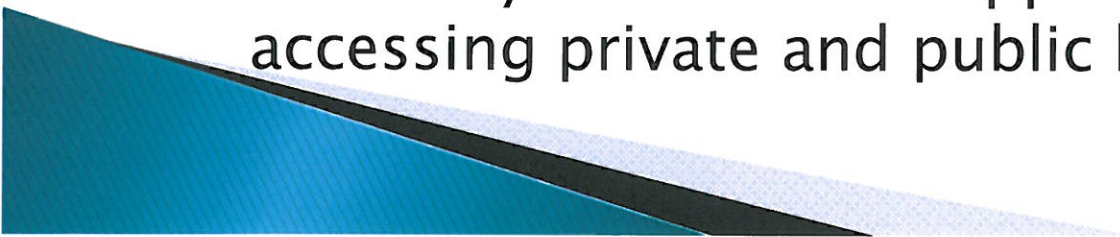
## Providing for Eventualities: The Home

- ▶ Retain title to home in trust to provide for its protection and ultimate distribution.
- ▶ Consider whether realistic for beneficiary to live independently.
- ▶ Take into account cost to maintain home and provide caregiver support.
- ▶ Is the plan contingent on the availability of a particular caregiver?
- ▶ What level of support will be provided by public assistance?





# The Players: Trust Protector

- ▶ Serves as eyes and ears of beneficiary and keeps Trustee accountable.
  - ▶ Powers and duties may include:
    - Authority to amend trust;
    - Authority to remove/replace Trustee with other than TP;
    - Requirement that Trustee consult with TP annually to determine general investment policy and annual budget;
    - Authority to resolve conflicts; and
    - Authority to determine appropriateness of accessing private and public benefits.
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# The Players: Other Fiduciaries and Professionals

- ▶ Consider role of Guardian in relation to trust and make sure EP docs are consistent/compatible.
- ▶ If no fiduciary other than Trustee or beneficiary mentally capable, case manager can assist Trustee who is non-family member.

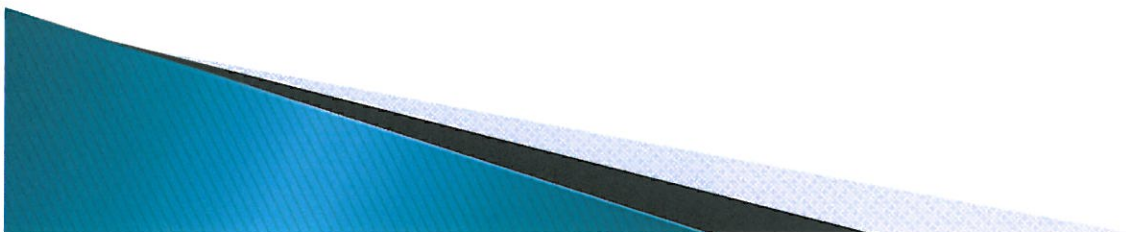


# Interplay Between SNT and Other Documents: Letter of Intent

- ▶ Not a legal document but can provide additional evidence of settlor's intent, info re: beneficiary's condition and needs
  - ▶ Info that can be included:
    - Personal info of beneficiary and family;
    - Individuals and organizations involved in care of beneficiary;
    - Current and future living and care arrangements;
    - Medical coverage info, both private and public;
    - Medical and emergency info, as well as medical hx;
    - School and employment info; and
- Anything and everything else that is helpful!

## Interplay Between SNT and Other Documents: Life Care Plan

- ▶ Typically completed in context of personal injury matter.
- ▶ General overview of medical hx and anticipated cost of care.
- ▶ May need to revamp to make useful to Trustee, such as id services and products that other sources may cover.



## Interplay Between SNT and Other Documents: Court Orders

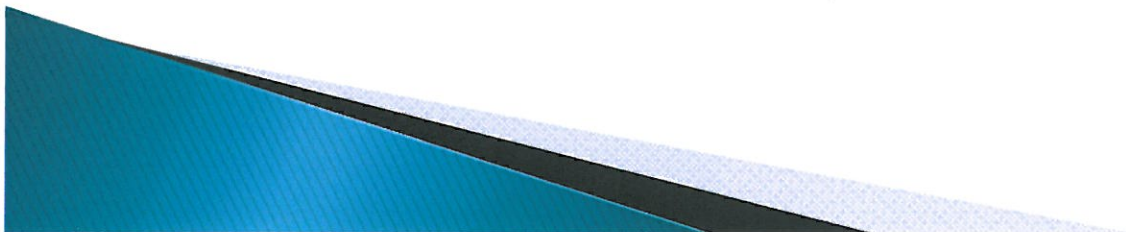
- ▶ Be mindful of whether Guardian appointed for beneficiary.
- ▶ If not 3<sup>rd</sup> party named in SNT such as Trust Protector, Trustee may need to collaborate with or be accountable to Guardian.
- ▶ Court orders may address:
  - Beneficiary's ownership of assets outright;
  - Living and care arrangements; and
  - Role of various fiduciaries and legal representatives.
- ▶ If court order and SNT inconsistent, may need court intervention.






## Coordination of Resources: Public Benefits (PBs)


- ▶ Know the PBs for which beneficiary is or may be eligible, and whether needs-based!
- ▶ If PBs *not* needs-based, then can administer SNT more flexibly.
- ▶ If PBs needs-based, typically will have *income* limit but not always *resource* limit.
  - Distributions of cash are “income” but payments to vendors/providers may not be if for other than food/shelter.



## Coordination of Resources: Private Insurance – Health Care Reform

- ▶ In 2014, no exclusion from insurance coverage due to pre-existing condition
  - ▶ Temporary insurance coverage until then if uninsured for 6 months and denied coverage or premiums unaffordable ([www.healthcare.gov](http://www.healthcare.gov))
  - ▶ Children under the age of 19 can no longer be excluded due to pre-existing condition as of this fall
  - ▶ Dependent coverage extends to age 26 if adult child ineligible for other insurance
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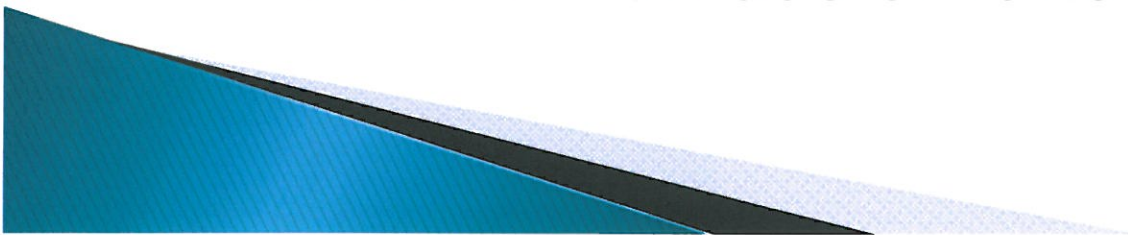
## Coordination of Resources: Beneficiary's Own Resources

- ▶ Beneficiary may own “excluded” resources such as home and car and SNT can help to maintain these resources.
  - ▶ If beneficiary eligible for PBs that are income-sensitive only, he may have liquidity of his own, which raises the question who pays what.
    - If beneficiary's condition progressive and he may later qualify for other PBs, “spend down” may be in order.
    - Consider interests of ultimate beneficiaries but remember they are not primary.
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## Coordination of Resources: Self-Settled SNT

- ▶ Remember the payback! This bodes in favor of tapping into self-settled SNT first.
  - If pooled SNT and provides for retention, then the incentive to preserve funds may be greater.
- ▶ Consider what distributions are “allowable” under state law or regulations and, if not “allowable,” then look to 3<sup>rd</sup> party SNT.
- ▶ Self-settled SNTs established by the court or court order may be subject to court restrictions on use of funds.



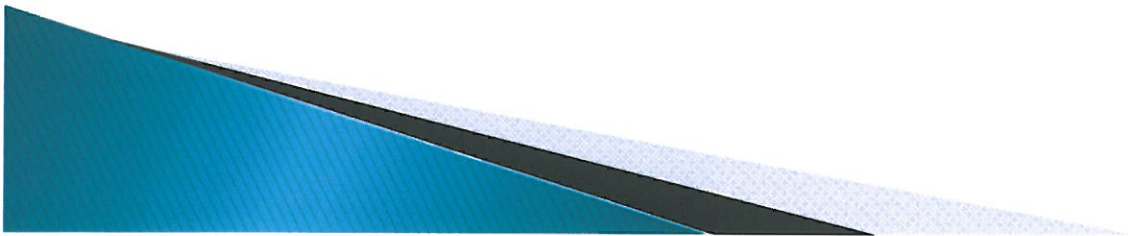
## Coordination of Resources: More Than One Third Party SNT

- ▶ If trustee and ultimate beneficiaries vary, keep SNTs separate.
- ▶ May want to merge SNTs for ease of administration if same trustee and, even if ultimate beneficiaries vary, set up separate trust or sub-accounts.
- ▶ Coordinating distributions:
  - Look to language of SNT;
  - Consider relative size;
  - Be mindful of ultimate beneficiaries; and
  - Id 3<sup>rd</sup> party such as TP or Guardian to assist.




## Coordination of Resources: The “Sole Benefit” SNT

- ▶ “Hybrid” SNT used when both Settlor and Beneficiary want to protect eligibility for needs-based PBs.
- ▶ No transfer penalty for Settlor if SNT includes “payback” provision or is “actuarially sound.”
- ▶ Tap into “sole benefit” trust before any other third party SNT.
- ▶ Do not rely on “sole benefit” SNT to receive distributions from Settlor fbo beneficiary on Settlor’s death.





# CONCLUSION

- ▶ Nature of beneficiary's disability, care and treatment needs, and support system all factors in drafting SNT and peripheral docs.
  - ▶ Nothing is static and, thus, update those docs you can and draft those you can't to provide for flexibility in distributions and allow for amendments or revocation when necessary.
  - ▶ Craft a system of checks and balances, using a Trust Protector or looking to the Guardian to assist the Trustee and keep him accountable.
  - ▶ Be mindful of the totality of resources available, both private and public, to ensure the beneficiary's needs are met and ensure no single resource is under or over utilized.
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# Finding a Special Needs Attorney

- ▶ Special Needs Alliance

- National non-profit organization of disability and public benefits attorneys
- [www.specialneedsalliance.com](http://www.specialneedsalliance.com)
- 1.877.572.8472

# QUESTIONS AND DISCUSSION



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