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# TIME TO TERMINATE (a SNT)

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Shirley B. Whitenack, Esq.

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### Reasons to terminate a trust

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1. Revocable trust can be revoked
2. Trust may expire in accordance with the terms of the trust
3. No good reason for the trust to continue
4. Uneconomical to administer
5. Decant funds into a new trust

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### Reasons to terminate SNT

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1. Death of the beneficiary
2. Beneficiary does not or no longer meets disability criteria
3. Beneficiary no longer wants means-tested public benefits
4. Uneconomical to administer

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| Self-Settled SNT   |  |  |
| <p><b>Termination Upon Death of Beneficiary</b></p> <hr/> <p><b>Medicaid payback</b></p> <ul style="list-style-type: none"> <li>• The states must have priority over the payment of debts and administrative expenses other than those set forth in POM</li> </ul> |   |  |
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| Self-Settled SNT   |  |  |
| <p><b>Extent of Medicaid payback</b></p> <hr/> <ul style="list-style-type: none"> <li>• Procurement costs</li> <li>• Ark. HHS v. Ahlborn reductions</li> <li>• All Medicaid payments from birth</li> </ul> |   |  |
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| Self-Settled SNT  |  |  |
| <p><b>Extent of Medicaid payback</b></p> <hr/> <p><b>"Medicaid payback ... cannot be limited to any particular period of time; for example, payback cannot be limited to the period after establishment of the trust."</b></p> <p><b>POMS SI 00120.203B</b></p> |   |  |
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| Self-Settled SNT   |  |  |
| <p><b>Extent of Medicaid payback</b></p> <hr/> <ul style="list-style-type: none"> <li>• <b>Cannot be limited any one state</b></li> <li>• <b>If insufficient funds, payback to each state is on a pro rata basis.</b></li> </ul> |   |  |
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| Self-Settled SNT  |  |  |
| <p><b>Practice Tip:</b></p> <hr/> <ul style="list-style-type: none"> <li>• <b>Trustees should obtain and scrutinize statements from each state that provided Medicaid to the beneficiary.</b></li> </ul> <div style="text-align: center;">  </div> |   |  |
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| Self-Settled SNT  |  |  |
| <p><b>Allowable Expenses Before Payback</b></p> <hr/> <ul style="list-style-type: none"> <li>• <b>Federal and state taxes due because of beneficiary's death</b></li> <li>• <b>Reasonable fees for trust administration, including:</b> <ul style="list-style-type: none"> <li>• Accountings</li> <li>• Tax return preparation</li> <li>• Attorneys fees for wrapping up trust</li> </ul> </li> </ul> |   |  |
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| Self-Settled SNT  |  |  |
| <p><b>Prohibited expenses before payback</b></p> <hr/> <ul style="list-style-type: none"> <li>• <b>Funeral expenses</b> <ul style="list-style-type: none"> <li>• Practice tip: purchase prepaid burial or irrevocable burial trust before the beneficiary dies </li> </ul> </li> </ul> |   |  |
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| Self-Settled SNT  |  |  |
| <p><b>More prohibited expenses</b></p> <hr/> <ul style="list-style-type: none"> <li>• Estate taxes other than those stemming from inclusion of SNT funds, i.e., inheritance taxes</li> <li>• Payment of debts to third parties</li> <li>• Payment to remainder beneficiaries</li> </ul> |   |  |
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| Self-Settled SNT  |  |  |
| <p><b>Practice Tip:</b></p> <hr/> <ul style="list-style-type: none"> <li>• <b>Trustees may be held personally liable for improper distributions.</b> <ul style="list-style-type: none"> <li>• Proceed with caution </li> </ul> </li> </ul> |   |  |
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| Self-Settled SNT   | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |  |
| <p><b>Early Termination</b></p> <hr/> <ul style="list-style-type: none"> <li>• State must be paid back</li> <li>• Other than payment of allowable expenses, all remaining funds must be paid to beneficiary</li> <li>• Beneficiary cannot have power to terminate trust</li> <li>• SI 01120.199</li> </ul> |  |  |
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| Self-Settled SNT   | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |  |
| <p><b>Defective early termination provisions</b></p> <hr/> <ul style="list-style-type: none"> <li>• Previously approved trusts can be amended within 90 days from date beneficiary is informed of need to amend</li> </ul> |  |  |
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| 3rd-Party SNT  | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |  |
| <p><b>Termination Upon Death of Beneficiary</b></p> <hr/> <ul style="list-style-type: none"> <li>• Pay funeral (if trust provisions permit)</li> <li>• Pay debts and liens</li> <li>• File tax returns</li> <li>• Pay taxes</li> <li>• Pay administration fees</li> <li>• Distribute remaining assets in accordance with terms of the trust</li> </ul> |  |  |
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| 3rd-Party SNT  | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |
| <b>Payment of beneficiary's debts</b>  |  |
| <ul style="list-style-type: none"> <li>• Such trusts often contain spendthrift provisions but can pay beneficiary's personal debts if trust terms allow</li> </ul> |  |
| <b>Practice tip:</b>   |  |
| <ul style="list-style-type: none"> <li>• Pay trust debts before beneficiary's personal debts</li> </ul>  |  |
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| 3rd-Party SNT  | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |
| <b>Early termination</b>   |  |
| <ul style="list-style-type: none"> <li>• Trust may contain procedures for early termination</li> <li>• <b>Practice tip:</b> <ul style="list-style-type: none"> <li>• Read the trust document!</li> </ul> </li> </ul> |  |
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| 3rd-Party SNT  | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |
| <b>Early termination – UTC</b>                                     |  |
| <b>Uniform Trust Code adopted by state or other state statutes</b> |  |
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| <b>3rd-Party SNT</b>   | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |  |
| <b>Consent</b>   |  |  |
| <ul style="list-style-type: none"> <li>• Noncharitable irrevocable trusts can be terminated upon consent of the grantor and all beneficiaries, even if the termination is inconsistent with a material purpose of the trust. UTC § 4.11.</li> <li>• Some states do not permit termination by consent if inconsistent with trust's material purpose – check your state's statute</li> </ul> |  |  |
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| <b>Consent</b>  |  |  |
| <ul style="list-style-type: none"> <li>• <b>Attorney-in-fact can consent for grantor if such authorization is expressed in POA or trust document</b></li> <li>• <b>Guardian or conservator with court approval</b></li> </ul> |  |  |
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| <b>3rd-Party SNT</b>  | <b>Schenck Price</b><br><small>SCHENCK PRICE SMITH &amp; KING, LLP</small> |  |
| <b>Court approval</b>   |  |  |
| <ul style="list-style-type: none"> <li>• <b>Upon consent of beneficiaries</b></li> <li>• Upon consent of some of the beneficiaries</li> <li>• Trustee has standing to object</li> </ul> |  |  |
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| 3rd-Party SNT   |  |  |
| <p><b>Court approval for specific reasons</b></p> <hr/> <ul style="list-style-type: none"> <li>• Unanticipated circumstances</li> <li>• Uneconomic trust</li> </ul> |   |  |
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| 3rd-Party SNT   |  |  |
| <p><b>Proposal for distribution</b></p> <hr/> <p><b>“The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for the objection.”</b></p> <p>UTC § 817</p> |   |  |
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| 3rd-Party SNT   |  |  |
| <p><b>Final accounting</b></p> <hr/> <p><b>Final accounting or waiver of accounting</b></p> <p><b>Practice tip: Trustee should obtain a written consent or waiver before distributing assets to remainder beneficiaries</b></p> |   |  |
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**Thank you**

Schenck Price  
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