


STETSON LAW
 2026 Special Needs Trust
 Conference

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Crossing Borders

When Special Needs Planning Goes International

Presented by:
Benjamin Rubin JD LLM

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1st,
a “little”
about the
speaker

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Benji Rubin (JD/LLM)

Having Mitchell as a brother profoundly shaped who Benji is today, & thus the area of law he chose to practice. His personal experiences as a sibling offer a unique perspective into the responsibilities that come with caring for a sibling with special needs, a concern that he shares with all brothers & sisters of individuals with special needs.

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- Former Director and Treasurer, The Arc of Illinois
- Past President & Director, of S.I.B.S., the Illinois Chapter of Sibling Leadership Network (National Sibling Association)
- Past Chair of the American Bar Association Elder Law and Special Needs Planning Group
- Past Chair of the American Bar Association Special Needs Planning Committee
- Director, Clearbrook Board of Directors
- Director, NSSRA (North Suburban Special Recreation Association) Foundation
- Director, DayOne Pact, trustee of special needs trusts & serves as guardian
- Director, SEDOL (Special Education District of Lake County) Foundation
- Director, Special Needs Alliance, the national, non-profit, membership by invitation, organization of special needs planning attorneys
- Continuing Legal Education Faculty Member (teaching other attorneys) of the Illinois Institute for Continuing Legal Education, as well as for the Illinois State Bar Association, & for the American Bar Association, on the topic of special needs trusts, and special needs legal & future planning

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The advertisement is for Rubin Law, A Professional Corporation. It features a central graphic with the text "LEGAL NEEDS" in large, bold, black letters, with "LEGAL" on the top line and "NEEDS" on the bottom line. To the right of "NEEDS" is the word "AND" in a smaller font. Below "LEGAL NEEDS" is the word "SPECIAL NEEDS" in a smaller, all-caps font. The entire graphic is set against a light blue background with a subtle grid pattern. Above the graphic, the text "MEMBER" is written in a small font, followed by the "SNA" logo and the text "SPECIAL NEEDS ALLIANCE" and "dedicated to special needs families". Below the graphic, the text "LEGAL NEEDS" is repeated in a smaller font, followed by "AND" and "SPECIAL NEEDS". The text "RUBIN LAW" is written in large, bold, black letters, with "RUBIN" on the top line and "LAW" on the bottom line. To the right of "LAW" is the text "A Professional Corporation". Below "RUBIN LAW" is the text "Special Needs Legal & Future Planning" in a bold, italicized font. Below this is the text "WWW.RUBINLAW.COM" and "EMAIL@RUBINLAW.COM". At the bottom is the text "866.TO.RUBIN". The entire advertisement is set against a light blue background with a subtle grid pattern.

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Growing up as a “Sibling”...

- **Helps put things in perspective in life**
 - **Different than parents...**
 - **Vacations...**
 - **Trips to the Store...**
- **Understanding our future responsibilities**



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Benji Rubin

President
S.I.B.S.

Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network



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ROADMAP

What we are going to work through

- | | | |
|---|--------------------------------|---|
| 1 | The U.S. benefits triage | Which benefits travel, which stop at the border, and which are gone for good once the person leaves. |
| 2 | The receiving country's answer | Whether a U.S. special needs trust is even recognized — and whether it is a countable resource there. |
| 3 | Canada · U.K. · Mexico | Three legal traditions, three very different answers. Plus a Chicago-to-Toronto case study. |
| 4 | Guardianship across borders | Why there is no such thing as 'transferring' a guardianship internationally. |
| 5 | Foreign situs property | What happens when the SNT owns — or inherits — real property abroad. India as the working example. |
| 6 | Drafting ideas | Thoughts of how to draft for internationally mobile beneficiaries. |

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THE PROBLEM

Why this lands on your desk more than it used to

Parents retire abroad

A parent takes a package, retires to Mexico or returns to family in the U.K., and assumes the adult child comes along.

Job relocation

A sibling or parent takes a transfer to Toronto, London or Bangalore. The support network moves with them.

Return migration

First-generation clients go home to family caregiving. The person with a disability is a U.S. citizen who has never lived there.

Cost of care arbitrage

Families discover that residential support abroad costs a fraction of U.S. private pay — and that the trust corpus stretches further.

Inherited foreign property

Nobody planned a move at all. A grandparent in India or Mexico dies and the SNT beneficiary is now a co-owner of real estate.

Dual citizenship

The beneficiary already holds a second passport. The family assumes benefits and trusts travel with the passport. They do not.

The common thread: the family makes the decision first and calls counsel second. Assume you are being asked to fix, not to plan.

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Four Questions:

Q1

What happens to the U.S. public benefits?

Federal entitlement vs. federal means-tested vs. state-administered. Only one of them is portable.

Q2

Does the destination recognize the trust at all?

Common law jurisdictions generally ask whether the beneficiary can compel a distribution. Civil law jurisdictions may not recognize the trust as a separate thing.

Q3

Who taxes the trust now — and at what rate?

Trust-level residence, beneficiary-level attribution, and distribution-level charges. Plus the U.S. question of whether the trust just became foreign.

Q4

Who has legal authority over the person?

Guardianship, conservatorship, powers of attorney and supported decision-making do not cross borders on their own.

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What happens to the U.S. benefits?

Some travel. Some suspend. Some are simply gone.

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THE TRIAGE TABLE

Portability at a glance

Benefit	Travels abroad?	The rule that controls	What to warn the client about
SSI	No	Ineligible after 30 consecutive days / a full calendar month outside the U.S.	Terminated outright after 12 months — a brand new application on return
SSDI	Generally yes	Payable to U.S. citizens in most countries; alien nonpayment rules for non-citizens	Cuba and North Korea are barred; payments withheld, not forfeited
DAC / CDB	Generally yes	Childhood disability benefits follow the SSDI rules, not the SSI rules	Continuing-disability reviews are still conducted from abroad
Medicare	Enrolled — yes Covered — no	Essentially no coverage for care received outside the U.S.	Dropping Part B creates a permanent 10% per-year late enrollment penalty
Medicaid	No	State residency is a condition of eligibility	Loss of the HCBS waiver is usually the single largest financial hit
ABLE account	Account survives	No residency test to keep the account open	Qualified disability expenses abroad, and the potential Medicaid penalty continue as before.
SNAP / Section 8 (HHS)	No	Benefit Card doesn't work outside US, and must be resident of State you are enrolled (under Medicaid)	Nothing to preserve; plan around the gap

50 figures for 2026: Federal benefit rate \$984 individual / \$1,491 couple; resource limits remain \$2,000 and \$3,000.

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SUPPLEMENTAL SECURITY INCOME

SSI: the thirty-day cliff

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consecutive days outside the United States and SSI eligibility ends

20 C.F.R. § 416.1227 - POMS SI 02301.225

- "United States" means the 50 states, D.C. and the Northern Mariana Islands — Puerto Rico, Guam and the USVI count as outside.
 - Northern Mariana Islands are tough negotiators!
- The clock starts the day after departure and ends the day before return.
- Reinstatement requires 30 consecutive days of physical presence back in the U.S.; payment resumes the month after that.
- After 12 continuous months abroad, the record is terminated — a new application, new medical development, new five-year bar analysis for non-citizens.

The narrow exceptions

Children (under 18 or sometimes 22) of a parent on active military duty stationed abroad, and certain students under 22 studying abroad, may keep SSI. Neither exception fits the typical family relocation.

The trap nobody sees coming

A "long visit" to test the move is the same thing as a move. Six weeks with grandparents in Toronto costs the client a full SSI suspension and a 30-day re-presence period.

Downstream effect

In most states SSI is the gateway to Medicaid. Losing SSI is rarely just a 209K problem — it is the loss of categorical Medicaid eligibility and, with it, the waiver. Of course, losing residency in that state will cause loss of Medicaid eligibility anyway even in 209(b) states.

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TITLE II

SSDI and disabled adult child benefits do travel

- Title II disability benefits — including disabled adult child (DAC) benefits on a parent's record — are generally payable to U.S. citizens anywhere in the world.
- For non-citizens, the alien nonpayment provisions suspend benefits after six consecutive calendar months abroad unless an exception applies.
- Totalization agreements are one route to an exception. The U.S. has agreements with Canada and the U.K.; it does not have one with Mexico or India.
- Payments cannot be sent to Cuba or North Korea. For U.S. citizens the money is withheld and recoverable on leaving; for others it can be forfeited.

Marriage still matters

A DAC benefit generally terminates on marriage to someone who is not also receiving certain Social Security benefits. Local marriage customs abroad could therefore end DAC benefits

The administrative reality

SSA administers overseas cases through Federal Benefits Units at U.S. embassies. Expect slower service, periodic questionnaires, and continuing-disability reviews conducted by mail.

Planning consequence

For a beneficiary who has a Title II record — or a parent's record to draw on — an international move is survivable. For an SSI-only beneficiary it is a cliff. One of the first things to check is whether the beneficiary can convert to, or is already dually entitled to, DAC benefits.

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HEALTH COVERAGE, PART 2

Medicaid and the waiver: the biggest loss is state specific.

- Medicaid eligibility requires residency in the administering state. Leaving the country ends it; there is no portability and no reciprocity.
- The cash value of the medical card is not the point. The key is the home and community-based services waiver: day programs, supported employment, behavioral supports.
- Those services are frequently worth \$40,000 to \$300,000+ per year — far more than the SSI or even CDB check the family is often focused on.
- The waiver slot does not wait. Give it up and the beneficiary rejoins the queue on return.

Three questions to run before anyone books a flight

1

How long may the beneficiary be out of state before the agency treats residency as abandoned? This is a state-by-state and sometimes county-by-county answer.

2

Does the state have any reserved-capacity, re-entry or priority-restoration policy for people who leave and come back? Get it in writing from the agency, not from a phone call.

3

What does the destination country's system actually offer, and what is its own waiting list? Many are less generous than the US.

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How will the new country treat the SNT?

Recognition, means-testing, and three layers of tax.

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QUESTION A

Recognition: Civil Vs. Common Law

	Canada (common law provinces)	United Kingdom	Mexico
Trust recognized?	Yes — a mature domestic trust law of its own	Yes — the source of the doctrine	Not as a domestic institution; the closest analogue is the fideicomiso, a bank-administered trust
Hague Trusts Convention	Ratified; in force for most common law provinces	Ratified and in force	Not a party
Domestic analogue	The Henson trust — absolute discretionary trust	Discretionary trust; the statutory "disabled person's trust" ("DPT"). Tax relief and benefit protection.	There really is none.
Practical result	A well-drafted U.S. SNT usually functions, but is not automatically a Henson trust. Special language important.	Probably only use DPT for UK Situs Property. Taxes are a mess with Trusts, be careful.	Recognition is uncertain; plan for tax attribution rather than trust protection

Practice point: recognition and protection are different questions. Every one of these jurisdictions will recognize that the trustee holds legal title. Not one of them will automatically give a U.S. SNT the benefit-preserving treatment it was drafted to achieve at home.

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THE U.S.-SIDE MALPRACTICE TRAP

Do not let the trust become a foreign trust by accident

IRC § 7701(a)(30)(E) — both prongs required

COURT TEST — a court within the United States must be able to exercise primary supervision over administration.

CONTROL TEST — one or more United States persons must have authority to control all substantial decisions.

Fail either one and the trust is foreign from the day it failed, subject to a 12-month cure window.

What it costs

Treasury regulations treat a domestic trust that becomes foreign as transferring its assets to a foreign trust — a deemed sale with gain recognition. Then come Forms 9520 and 9520-A, throwback tax on accumulated income distributed later, withholding exposure, and penalties that start at \$10,000.

How SNTs fail these tests

- The successor trustee named in the instrument is the sibling who now lives in Toronto or London. If Trustee is US Citizen still should be okay as they are a US Person.
- A non-US person — often a parent abroad — holds a removal-and-replacement power or a veto over distributions.
- An automatic migration or 'flight' clause inherited from an asset protection form.
- A foreign court asserts supervisory jurisdiction after the beneficiary relocates.

The reassuring part

A U.S. citizen trustee who happens to live abroad is still a United States person for the control test. Citizenship, not residence, is what the statute measures. So the fix is usually simple: name U.S.-person fiduciaries, and say so expressly in the instrument.

Trusts: Reg. §§ 801.7701-7 and 1.684-4. The 12-month cure period for inadvertent changes is in the regulations — but only if somebody notices.

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Spotlight: Canada

The most common move, and the most instructive one.

SPOTLIGHT 1 OF 3

Canada at a glance

Benefits are provincial

There is no national disability income program on the U.S. model. Ontario runs ODSP; Alberta runs AGDI; B.C. runs PWD. The rules differ materially.

Federal layer is new

The Canada Disability Benefit launched in 2025 as a federal top-up, gated on the Disability Tax Credit. Up to \$204.20 per month for the July 2025 to June 2027 year.

The trust tool is the Henson trust

A fully discretionary trust that the beneficiary cannot compel. It is a creature of case law, not statute, and its ODSP treatment is governed by policy directive.

Health care is provincial too

Ontario eliminated the three-month OHIP waiting period. Coverage begins with residency — but coverage is not the same as service capacity.

Immigration is the gating item

Medical inadmissibility on excessive demand grounds can defeat the move entirely for economic-class applicants. This is often the first issue, not the last.

Tax follows residence, quickly

Canada taxes on residence, not citizenship, and the residence tests for individuals and trusts are separate and both aggressive.

ONTARIO DISABILITY SUPPORT PROGRAM

ODSP: the numbers that drive the plan

Item	2026 figure
Maximum monthly income support, single recipient	\$1,436 (rose 1.9% on July 1, 2026)
Asset limit, single / couple	\$40,000 / \$50,000
Inheritance or life insurance held in trust — exempt up to	\$100,000 (combined with cash surrender value)
Henson trust — capital exemption	No limit
Discretionary trust payments to beneficiary, any purpose	\$10,000 per 12-month period
Disability-related items and services	Exempt without dollar limit, if properly characterized (Per the expert on Henson Trusts: Ken Pope this sounds like the ABLE account "Disability Related Expenses" so really no restriction)
RDSP balance	Fully exempt as an asset

The \$10,000 is a nice exception allowing direct distribution to beneficiary (think spending money for the beneficiary). But also could apply to payments that are not "properly categorized"

The comparison that matters

ODSP \$1,436 / month
SSI \$994 / month

ODSP asset limit \$40,000
SSI resource limit \$2,000

Canada is, on these two numbers alone, considerably more generous. Families notice. Do not let that headline comparison carry the whole decision — the service side is where the issues live.

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DRAFTING COMPARISON

The Henson trust — and whether your SNT is one

Three structural requirements

1 Absolute discretion

The trustee's power to pay or withhold must be unfettered and not reviewable on a support standard.

2 No enforceable entitlement

The beneficiary must have no right to compel income or capital — and no power to terminate or vest.

3 Third-party settled

Created for the person by someone else, typically by a parent's will. A self-settled trust will not work, though there is an exemption for a certain amount of law suit settlement funds.

Where a U.S. SNT falls short

Mostly it will probably be okay but suggest add ability to change Trust as necessary in the even the beneficiary's residence changes to another state "or province of Canada"

A first-party d4A trust: self settled, and the payback runs to U.S. states that will never provide services again.

Summary: A carefully drafted third-party SNT with genuine sole discretion will usually satisfy Ontario's requirements. A first-party payback trust will almost certainly not.

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DTC · RDSP · CDB

The Canadian toolkit the family gains

Disability Tax Credit

The gateway. Form T2201, certified by a medical practitioner, assessed on functional limitation rather than diagnosis. Nothing else in the Canadian system opens without it — and it can take months. Start the application before the move, not after.

Registered Disability Savings Plan

Lifetime contribution limit of \$200,000, matched by federal grants and, for low-income beneficiaries, bonds. Fully exempt as an ODSP asset. This is the single best planning vehicle Canada offers — and it requires DTC eligibility, a SIN and Canadian residency.

Canada Disability Benefit

Federal, income-tested, launched 2025. Up to \$206.20 per month for July 2026 through June 2027. Requires DTC approval, Canadian tax residency and filed returns. Ontario has exempted it from counting as income against ODSP.

The RDSP can be complicated for a U.S. person

If the beneficiary is a U.S. citizen — and in these families they usually are — the RDSP's Canadian tax deferral means nothing automatically to the IRS. Internal growth, grants and bonds are generally taxable income in the United States, with no treaty election available; the U.S.-Canada treaty's retirement-plan election reaches RRSPs and RRRPs, not RDSPs. Revenue Procedure 2020-17 relieves the Form 3520 and 3520-A filing burden for RDSPs and RESPs that meet its conditions. Nor does it touch FBAR or Form 8938. And the plan's investment menu is largely Canadian mutual funds — which are generally passive foreign investment companies to a U.S. holder.

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CANADIAN TRUST RESIDENCE

Will Canada tax the U.S. trust? Section 94

The deemed-residence machinery

A non-resident trust is deemed resident in Canada — and taxed on worldwide income — if at the relevant time it has either:

- a RESIDENT CONTRIBUTOR, meaning a contributor resident in Canada; or
- a RESIDENT BENEFICIARY, which requires both a Canadian-resident beneficiary AND a CONNECTED CONTRIBUTOR.

Resident contributors and resident beneficiaries can be jointly and severally liable for the trust's Canadian tax.

The 21-year rule

A trust resident in Canada faces a deemed disposition of its capital property every 21 years, at fair market value, with tax on the accrued gain. A U.S. SNT designed to run for a beneficiary's 60-year lifetime has no answer to this built in.

What this means in practice

- GOOD NEWS: a Canadian-resident beneficiary alone does not deem the trust resident. If the U.S. parents settled the trust and never lived in Canada, there is generally no connected contributor.
- BAD NEWS: if the parents later join the child in Canada, they become contributors resident in Canada and the trust is swept in.
- WORSE NEWS: a self-settled first-party SNT has the beneficiary as its contributor. Move the beneficiary and you have a resident contributor on day one.
- The rules can apply retroactively to the year of the contribution in some fact patterns.

The qualified disability trust

A testamentary trust that jointly elects QDT status with a DTC-eligible beneficiary is taxed at graduated rates rather than the top marginal rate. It is a real benefit! — and it requires a Canadian testamentary trust, which a U.S. inter-vivos SNT is not.

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BEFORE ANYTHING ELSE

Immigration: the excessive demand problem

\$144,390

The 2026 excessive demand cost threshold — \$28,878 per year over five years. If a medical officer projects that publicly funded health and social services for the applicant will exceed it, the applicant can be found medically inadmissible.

Why this reorders the whole engagement

One family member's medical inadmissibility can sink the entire application. If the parents are immigrating in an economic class, the adult child with a disability is assessed — and an intellectual disability with residential and day-program needs can blow past the threshold easily.

The answer is often to restructure: a parent immigrates first, then sponsors the adult child as a dependent child, where the excessive demand test does not apply. Get immigration counsel involved before you touch the trust.

Who is exempt

- Sponsored spouses and common-law partners.
- Sponsored dependent children — including an adult child who cannot be financially self-supporting because of a physical or mental condition.
- Refugees, protected persons and their dependants.

Who is NOT exempt

- Economic class and provincial nominee applicants, and their accompanying family members.
- Sponsored parents and grandparents.

A procedural fairness letter gives 90 days to respond with a control mitigation plan. A funded SNT is real evidence for that response.

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Case study: Chicago to Toronto

Everything above, on one family's facts.

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CASE STUDY - FACTS

The Kaplan family

The people

DANIEL, 29. Autism and a moderate intellectual disability. U.S. citizen, born in Skokie. Lives in a supported apartment in Evanston, attends a day program four days a week, works eight hours a week at a grocery store.

SAMANTHA and JOEL, his parents, 61 and 63. Joel has been offered a five-year posting in Toronto. Samantha's sister lives there. They want Daniel with them.

REBECCA, Daniel's sister, 33, lives in Denver and is named successor trustee.

The money and the paper

- \$32,5994/month; Illinois Medicaid; a funded HCBS waiver slot obtained after long wait on PLANS (Illinois HCBS Waiver list).
- Third-party SNT funded by parent's revocable trust, unfunded, projected at \$1.5 million.
- First-party (d)(4)(A) SNT holding \$210,000 from a 2016 auto accident settlement.
- ABLE account, \$31,000.
- Plenary guardianship of the person and estate, Cook County, with Samantha and Joel as co-guardians.

What they asked for

"We're moving in eight months. Can you update Daniel's trust so it works in Canada?"

What they actually need

- An immigration answer before anything else.
- A benefits reconciliation showing what is lost, what is gained, etc.
- A decision about which trust crosses the border and which one does not.
- A Canadian will and a Canadian trust, drafted by Ontario counsel.
- A fresh guardianship application in Ontario.

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CASE STUDY - THE NUMBERS

Benefits reconciliation: before and after

	Evanston, today	Toronto, month 13	Net effect
Cash income	\$32,5994/mo	ODSP up to \$1,436/mo + CDB up to \$204.20/mo	Improves — once eligibility is established
Health coverage	Illinois Medicaid	OHIP from residency; no three-month wait	Roughly neutral on coverage; not on access
Day / residential services	Funded HCBS waiver slot	Ontario developmental services; applied for on arrival, with its own queue	The real loss. Assume a multi-year gap.
Asset limit	\$2,000	\$40,000	Improves materially
Trust corpus treatment	Both SNTs non-countable	Third-party SNT likely exempt if truly discretionary; first-party trust is a problem	Requires restructuring
Medicare	Not yet eligible	Not yet eligible	Revisit at DAC entitlement
ABLE account	\$31,000, excluded	Remains open	Keep

Daniel's income goes up and his asset ceiling goes up twentyfold. His services go away for an unknown number of years, and the trust will have to buy privately what Illinois was providing for free.

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CASE STUDY - RESTRUCTURING

The two trusts treated very differently

The third-party SNT

Unfunded, so this is a drafting problem rather than a restructuring problem. The Parents' revocable trusts should be amended to:

- broaden the purpose clause to reference public benefits "of any jurisdiction in which the beneficiary may reside";
- restrict trusteeship and any removal power to United States persons;
- give a trust protector power to divide the trust and decant a share to a new trust in the beneficiary's jurisdiction of residence. Contact local counsel in Ontario <https://kpopelaw.com/>

The first-party (d)(4)(A) SNT

This one does not travel well, and probably should not try.

- Daniel is the contributor. Once he is resident in Canada the trust is deemed Canadian resident and taxed as such.
- Self-settled, so it is not a Henson trust and Ontario will likely treat it as available.
- The Illinois payback survives — and pays a state that will provide nothing further.
- Options: spend down on permitted purposes before departure, move value to the ABLE account within limits, or leave it in the U.S. and accept the friction.

And a third trust that does not exist yet

Once Samantha and Joel are Canadian residents, the cleanest structure is usually a Canadian will containing a testamentary Henson trust, drafted by Ontario counsel, capable of a qualified disability trust election. It might possibly sit alongside — not instead of — the U.S. plan. Two wills, two trusts, one coordinated instruction letter, and an express statement in each about how the other is meant to operate. Coordinate the residuary clauses carefully.

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Spotlight: the United Kingdom

Familiar trust law. Unfamiliar, and unforgiving, trust tax.

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SPOTLIGHT 2 OF 3

The United Kingdom at a glance

Two kinds of benefit

Means-tested benefits with hard capital limits, and non-means-tested disability benefits with residence and presence tests instead.

Capital limits are low

£6,000 lower limit, £16,000 upper limit for Universal Credit and income-related ESA. Above £16,000 there is no entitlement at all.

Trusts are recognized natively

This is the home jurisdiction of the discretionary trust. Recognition is not the issue. Tax is.

A statutory disabled person's trust exists

Trusts for disabled persons under section 89 of the Inheritance Tax Act sit outside the relevant property regime, and a vulnerable beneficiary election is available for income tax and CGT (Capital Gains Tax).

Taxes are a big deal with trusts in UK

From 6 April 2025 domicile was replaced by 'long-term residence' for inheritance tax, and the protected-settlement regime for offshore trusts was abolished outright.

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ELIGIBILITY

U.K. benefits: two regimes, two different tests

Means-tested — capital matters

Universal Credit · Income-related ESA · Housing Benefit · Pension Credit

- Capital at or below £6,000 is ignored. Between £6,000 and £16,000, tariff income is assumed. Above £16,000, entitlement stops.
- A beneficiary's interest in a properly drafted discretionary trust is generally not their capital, because they cannot compel payment.
- Personal injury payments held in trust receive their own statutory disregard — the closest U.K. analogue to a first-party SNT.
- Watch the notional capital rules: deprivation of capital to secure benefit can be treated as still held.
- Distributions of cash may be treated as income even where the corpus is disregarded. Pay providers directly whenever possible.
- Habitual residence and right to reside tests apply to the means-tested benefits on arrival.

Non-means-tested — presence matters

Personal Independence Payment · Attendance Allowance · DLA (children)

- No capital or income test at all. A trust is irrelevant to PIP entitlement.
- But the PAST PRESENCE TEST requires presence in Great Britain for 104 of the previous 156 weeks — two of the last three years.
- A U.S. beneficiary arriving from Illinois fails that test on day one and must wait roughly two years.
- Habitual residence, ordinary residence, presence in Great Britain, and not being subject to immigration control are all separate requirements.
- Temporary absence of up to 13 weeks is tolerated, or 26 weeks for medical treatment abroad.
- Terminal illness under the special rules is the principal exception to the past presence test.

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TRUSTS

U.K. trust treatment: the good news and the bill

Discretionary trusts work

A fully discretionary trust under which the beneficiary has no right to income or capital is not the beneficiary's capital for means-tested benefits purposes. The doctrinal test is the same one you already apply in US. A U.S. third-party SNT with genuine discretion will generally hold up.

The statutory disabled person's trust

Section 89 of the Inheritance Tax Act 1984 gives favorable treatment to trusts where a disabled person is entitled to substantially all distributions. A vulnerable beneficiary election under the Finance Act 2005 can then reduce income tax and capital gains tax to what the beneficiary would have paid personally. It is powerful — and it requires U.K.-specific drafting that a U.S. SNT will not have.

Then the tax code arrives

TRANSFER OF ASSETS ABROAD. A U.K.-resident beneficiary who receives a benefit from a non-resident trust can be charged to income tax by reference to the trust's relevant income, whenever it arose.
CAPITAL PAYMENTS MATCHING. Capital payments are matched against the trust's stockpiled gains, and a supplemental charge can add up to 60% to the tax on gains realized in earlier years.
PROTECTED SETTLEMENTS ARE GONE. From 6 April 2025 the regime that let foreign income and gains roll up untaxed in an offshore trust was abolished, with no grandfathering for income tax or CGT.
THE FOUR-YEAR FIG REGIME. A newly arriving resident may claim relief on foreign income and gains for four years. It is a window, not a solution — plan distributions inside it.

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Spotlight: Mexico

A civil law system, and a different set of problems entirely.

SPOTLIGHT 3 OF 3

Mexico at a glance

No asset-tested disability system

Mexico has no analogue to SSI or CDSP. There is no resource limit for the SNT to protect against, because there is no resource test.

A non-contributory pension instead

The Pensión para el Bienestar de las Personas con Discapacidad Permanente pays \$3,300 pesos bimonthly in 2026 — roughly US\$90 per month.

Coverage is uneven by state

Universal 0 to 64 coverage exists only in states that signed a co-funding agreement with the federation. Elsewhere it is narrower.

Health care is contributory or public

IMSS and ISSSTE cover formal-sector workers and dependents. IMSS-Bienestar serves the uninsured. Private care is common and, by U.S. standards, inexpensive.

Trusts are not a domestic institution

Mexican law knows the fideicomiso, a bank-administered trust. It does not know the Anglo-American trust, and Mexico is not a party to the Hague Trusts Convention.

The problem is tax, not benefits

The question is not whether the SNT protects eligibility. It is whether Mexico attributes the trust's income to your client.

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"Transferring" guardianship abroad

The short version: you cannot. Here is what you do instead.

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ONE SLIDE, HONESTLY

Guardianship and conservatorship across borders

There is no mechanism to transfer a U.S. guardianship to another country. The interstate transfer machinery attorneys are used to — the UAGPPA — is a state-to-state uniform act. It has no international counterpart the United States has joined.

Why there is no treaty route

The Hague Convention of 13 January 2000 on the International Protection of Adults does exactly this job — jurisdiction, applicable law, and recognition of protective measures across borders. The United States has not joined it. Neither has Canada or Mexico. The United Kingdom ratified for Scotland only, though England and Wales gave broadly similar effect through Schedule 3 of the Mental Capacity Act 2005.

Mexico is a special case

The Supreme Court held the state of interdiction unconstitutional, and the Código Nacional de Procedimientos Civiles y Familiares replaces it with a system of supports and safeguards — in force nationwide no later than 1 April 2027. There may simply be no Mexican equivalent of the plenary guardianship your client holds.

What the UAGPPA does offer

Most states, Illinois included, have adopted the uniform act. It contains a provision allowing a court to treat a foreign country as if it were a state for jurisdiction and recognition purposes. That is permissive and discretionary, it runs inbound rather than outbound, and it does nothing to bind the foreign court.

So what actually happens

A fresh application in the destination, under its own law, with its own evidence and its own standard. In Ontario that is an application under the Substitute Decisions Act. In England and Wales it is a deputyship application to the Court of Protection. The U.S. order is evidence, not authority.

The practical checklist

Retain the U.S. guardianship for U.S. assets - Apply fresh in the destination - Get copies and certified translations - Expect a gap, and plan for it

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SNTs and foreign situs property

The issue that arrives without anyone planning it — India as the working example.

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FRAMING

How the SNT ends up owning land abroad

Four common paths

- The residuary clause. A parent's pour-over will funds the SNT with "all my property, wherever situated" — including a flat in Pune.
- Direct inheritance. A grandparent dies intestate abroad and the beneficiary takes a share by operation of foreign law.
- Ancestral or family property. The beneficiary holds an undivided interest nobody has ever partitioned.
- Deliberate purchase. The family buys a home abroad in the trust's name because the beneficiary will live there.

Why India specifically

This comes up far more often than you might think. Large Indian-American communities, high rates of property retention in India, family land held across generations without formal partition, and a strong cultural norm against selling ancestral property all combine to put Indian real estate into American estate plans — including special needs trusts — with some regularity.

India is also a useful teaching example because it stacks every category of problem: exchange control, succession, title, tax and repatriation.

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EXCHANGE CONTROL - FEMA

India: can the trust hold the property at all?

Who may acquire Indian immovable property

- NRIs and OCI cardholders may buy residential and commercial property freely, without RBI approval.
- None of them may buy agricultural land, plantation property or a farmhouse — though they may inherit it.
- A person resident outside India may acquire immovable property by inheritance from a person resident in India, or from a person outside India who acquired it lawfully.
- Foreign nationals of non-Indian origin cannot acquire property at all except by inheritance, and cannot transfer inherited property without RBI permission.

Notice what is missing from that list

A U.S. trust is not an NRI. It is not an OCI cardholder. It is not a natural person at all.

The general permissions under the Non-Debt Instruments Rules are framed around individuals of Indian origin. A foreign trust holding Indian immovable property sits outside them and, as a practical matter, requires specific RBI approval — which is not routinely granted.

This is the single most important slide in this section. Before you draft a residuary clause that sweeps Indian real estate into an SNT, confirm that the SNT can lawfully receive it.

Structuring around it

The usual answer is that the property is inherited by the beneficiary as an individual — who, if of Indian origin, may hold it as an NRI or OCI — and is then sold, with the net proceeds remitted to the United States and contributed to the trust. That means the beneficiary owns real estate outright, however briefly, which is exactly the thing the SNT exists to prevent. Sequence it against the benefits calendar, consider whether a sale can close before the estate distributes, and if the beneficiary is on SS, understand that you may be trading a resource problem for a transfer-penalty problem.

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GETTING IT INTO THE RIGHT HANDS

India: succession, title, and the paper trail

Succession is personal-law based

Whose law applies depends on the decedent's religion, not just their residence. The Hindu Succession Act governs Hindus, Buddhists, Jains and Sikhs; the Indian Succession Act governs Christians and Parsis; Muslim personal law governs Muslims. Each has different intestate shares and different limits on testamentary freedom.

A U.S. will is not self-executing

There is no recognition of American probate. Depending on where the property sits, the personal representative may need probate or letters of administration from an Indian court, or a succession certificate. In the former presidency towns of Mumbai, Kolkata and Chennai probate is mandatory for certain wills. Expect years, not months.

Coparcenary and undivided interests

Property held as ancestral coparcenary property under Mitakshara law is not freely disposable in the same way self-acquired property is. Since the 2005 amendment daughters are coparceners by birth. Establish which category the property falls into before assuming anyone can leave it to a trust.

Title diligence you should insist on before the trust touches anything

- Mutation of revenue records — often not done for a generation.
- Encumbrance certificate and the chain of title.
- Whether the land is classified as agricultural in the revenue records, regardless of how it is used.
- Stamp duty and registration, which vary by state and can be substantial.
- Whether anyone is in adverse possession or holds a tenancy.
- Whether the property was ever held benami — the prohibition statute has real teeth.

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Answer in most jurisdictions including India: Probably just get Indian Will to leaves it the other kids.

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The U.S.-side consequences of foreign situs property

Reporting obligations multiply

Foreign bank accounts opened to receive rent or sale proceeds trigger FBAR at the \$10,000 aggregate threshold, and Form 8938 at its own threshold. The trustee is the filer: if the trust holds an interest in a foreign entity used to hold the property, Forms 5471, 8865 or 8858 may follow. Penalties in this area are severe and are assessed on a per-form, per-year basis.

Watch the trust's own status

Appointing a local co-trustee abroad to manage the property is the intuitive move and the wrong one — it can fail the control test and make the trust foreign. If administration must happen locally, use an agent or a power of attorney rather than a fiduciary appointment, and document that substantial decisions remain with the U.S. trustee.

A practical playbook for foreign real property in an SNT

- 1 Ask the question at intake
- 2 Prefer cash to dirt
- 3 Carve it out expressly
- 4 Retain local counsel early

"Does anyone in this family own property outside the United States?" belongs on your intake form. It is not currently on most of them.

Wherever the family can be persuaded, have the foreign property sold and the proceeds remitted before it reaches the trust. A trust is a poor owner of foreign land.

If the property must pass, give the trustee explicit authority to decline it, to disclaim, to hold it through a permitted vehicle, and to sell it without beneficiary consent.

Not at closing. At drafting. The exchange control and succession answers change the estate plan, not just the closing checklist.

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Drafting Considerations

What to put in every SNT you write, starting Monday.

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CLAUSES

The cross-border drafting checklist

Absolute discretion, stated twice
No support standard, no HEMS residue, no mandatory income. Say expressly that the beneficiary cannot compel any distribution and has no enforceable interest.

Trustee eligibility limited to U.S. persons
Define "United States person" by reference to the Code, apply it to trustees, co-trustees, protectors and anyone holding a removal power, and prohibit automatic migration.

Division and decanting authority
Power to divide the trust into separate shares and to decant to a new trust -- including one governed by the law of the beneficiary's country of residence -- without court approval.

Express authority over foreign property
Power to disclaim, decline, hold, or sell foreign situs assets, to engage foreign counsel and agents, and to pay foreign taxes and compliance costs from the trust.

A jurisdiction-neutral purpose clause
Reference public benefits to "under the laws of the United States, any state, or any other jurisdiction in which the beneficiary may reside" -- not just SD and Medicaid by name.

A situs and governing law clause with a change mechanism
Fix state law and a U.S. court's primary supervision; give a named party power to change situs. Only among U.S. jurisdictions?

A trust protector with real powers
To amend for changes in benefit law in any jurisdiction, to remove and replace fiduciaries, to terminate a share, and to direct that no distribution be made that would impair eligibility anywhere.

A relocation notice covenant
Require the beneficiary, guardian or representative to notify the trustee before any change of country of residence, and authorize the trustee to suspend distributions pending advice.

Nine things to take back to the office

1
SD stops after thirty days abroad and terminates at twelve months. SDI and DAC benefits generally travel.

2
The waiver list, not the SDI check, is the expensive thing your client is giving up.

3
Absolute discretion is the common currency. It is what makes a trust invisible in Illinois, in Ontario and in England alike.

4
A first-party payback trust usually should not cross the border. A third-party trust might be able to, sometimes with amendments.

5
Naming a foreign successor trustee can make the trust foreign, with a deemed sale and a reporting regime attached.

6
In Canada, watch Taxes, the twenty-one year rule, and medical inadmissibility.

7
In the U.K., the trust is recognized and then taxed hard. Track the settlor's residence, not just the beneficiary's.

8
In Mexico there is nothing to protect eligibility from. The question is attribution of income, not availability of corpus.

9
Guardianship does not transfer. You file again, under local law, and you plan for the gap in between.
