COMPLIANCE IS FOUNDATIONAL, NOT ASPIRATIONAL

Stetson National SNT Conference 2026

Gentry Barnett Byrnes, JD
President & Co-Founder
Adelphi Trust Company

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Go to **vevox.app**

Enter the session ID:
463-621-231

Or scan the QR code

2

##/## Join at: **vevox.app** ID: **XXX-XXX-XXX** Question slide

1. What is your role in SNT administration?

Attorney representing trustees ##.##%

Pooled Trust Administrator ##.##%

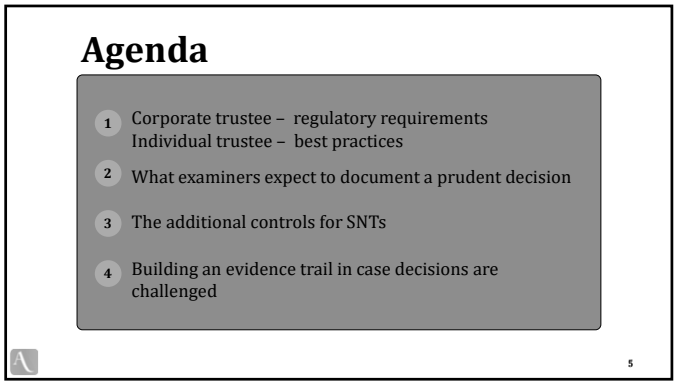
Serve as a professional fiduciary administering SNT trusts ##.##%

Employed by a Corporate Trustee administering SNT trusts ##.##%

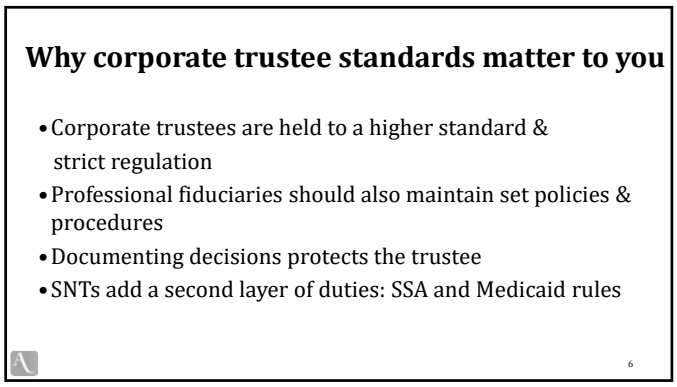
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RESULTS SLIDE

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Agenda
1 Corporate trustee – regulatory requirements
Individual trustee – best practices
2 What examiners expect to document a prudent decision
3 The additional controls for SNTs
4 Building an evidence trail in case decisions are challenged
5

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Why corporate trustee standards matter to you
• Corporate trustees are held to a higher standard & strict regulation
• Professional fiduciaries should also maintain set policies & procedures
• Documenting decisions protects the trustee
• SNTs add a second layer of duties: SSA and Medicaid rules
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##/## Join at: **vevox.app** ID: **XXX-XXX-XXX** Question slide

2. What is a Reg 9?

Regulation requiring Trustee Fees to be reasonable and appropriate to the work required ##.##%

Federal regulation requiring review of assets annually to ensure they are proper, individually and collectively, for the account ##.##%

Regulation requiring corporate trustees to follow specific policies - does not apply to Individual Trustees ##.##%

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Regulatory framework

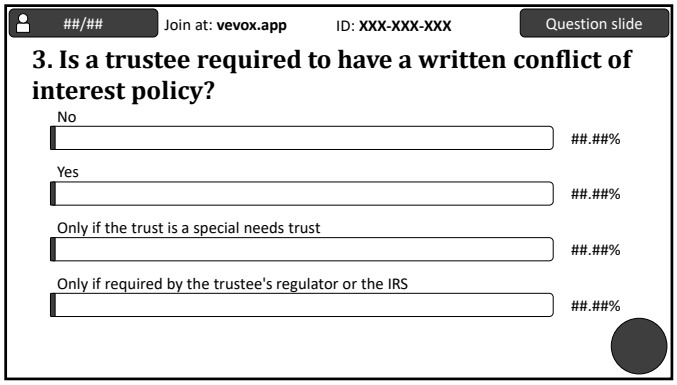
A national bank's fiduciary program is governed mainly by 12 C.F.R. Part 9.

Source	What it governs	Why it matters
12 C.F.R. Pt. 9	Fiduciary activities of national banks	Sets the required policies, reviews, records, custody and audit
Comptroller's Handbook: Asset Management	Risk management across fiduciary business	Examination procedures and internal control questionnaires
Comptroller's Handbook: Personal Fiduciary Activities	Personal trusts, estates, guardianships	How examiners sample and test personal trust accounts, including SNTs
Comptroller's Handbook: Conflicts of Interest	Self-dealing and conflicts in asset management	Standards for disclosure and authorization

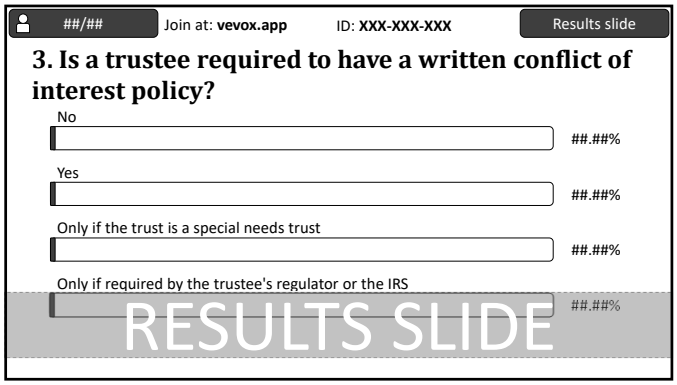
Process and substance: Part 9 sets process; the duties themselves come from state law and the trust instrument.

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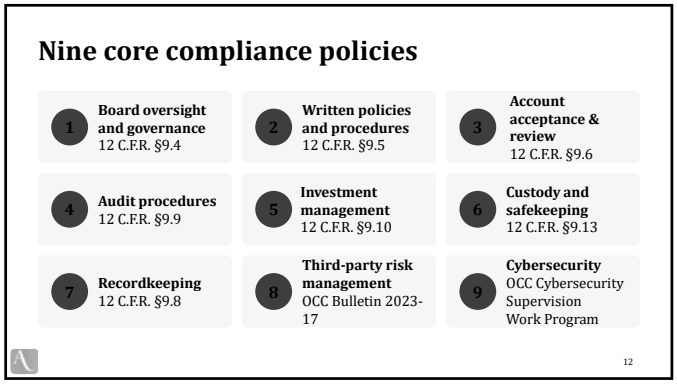
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##/##
Join at: vevox.app
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Question slide
3. Is a trustee required to have a written conflict of interest policy?
No
##.##%
Yes
##.##%
Only if the trust is a special needs trust
##.##%
Only if required by the trustee's regulator or the IRS
##.##%

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RESULTS SLIDE

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Nine core compliance policies
1 Board oversight and governance 12 C.F.R. §9.4
2 Written policies and procedures 12 C.F.R. §9.5
3 Account acceptance & review 12 C.F.R. §9.6
4 Audit procedures 12 C.F.R. §9.9
5 Investment management 12 C.F.R. §9.10
6 Custody and safekeeping 12 C.F.R. §9.13
7 Recordkeeping 12 C.F.R. §9.8
8 Third-party risk management OCC Bulletin 2023-17
9 Cybersecurity OCC Cybersecurity Supervision Work Program
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1 Board oversight and governance

12 C.F.R. §9.4

OCC STANDARD · CORPORATE TRUSTEES

- The board manages fiduciary activities; may delegate to directors, officers, employees or committees
- Board-approved fiduciary charter delegating to a trust committees
- Minutes that show real deliberation: discretionary actions, exceptions, complaints, audit findings
- Periodic risk assessments tied to a board approved risk statement

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Hire counsel that specializes in representing SNT trustees
- Consider an advisory counsel to assist
- Establish a practice of peer discussions to review process and difficult decisions
- For a non-profit, keep a strong board that questions and reviews management

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2 Written policies and procedures

12 C.F.R. §9.5

OCC STANDARD · CORPORATE TRUSTEES

- §9.5(c): Preventing self-dealing and conflicts of interest
- §9.5(d): Selecting and retaining legal counsel
- §9.5(e): Investing fiduciary funds, including funds awaiting investment or distribution

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Written self-dealing and conflict-of-interest policy covering you and anyone who works with you
- Hire counsel that specializes in representing SNT trustees
- Written policies on selecting and retaining investment managers & for uninvested cash

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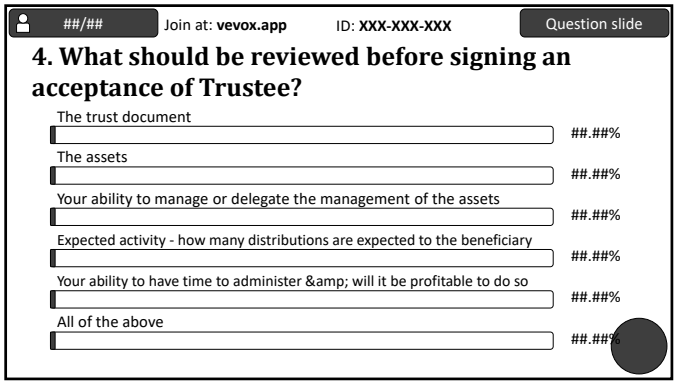
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3 Account acceptance and review

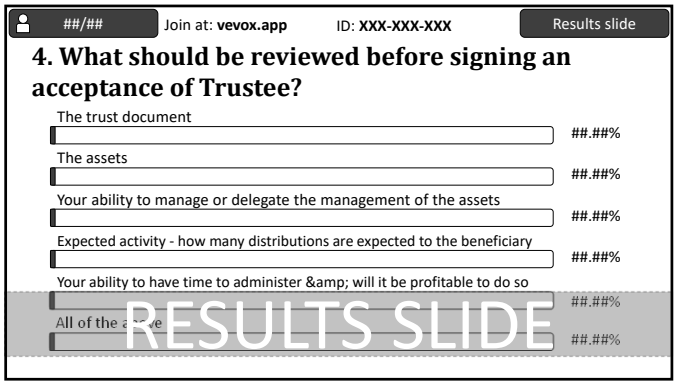
12 C.F.R. §9.6 (A) (B) (C)

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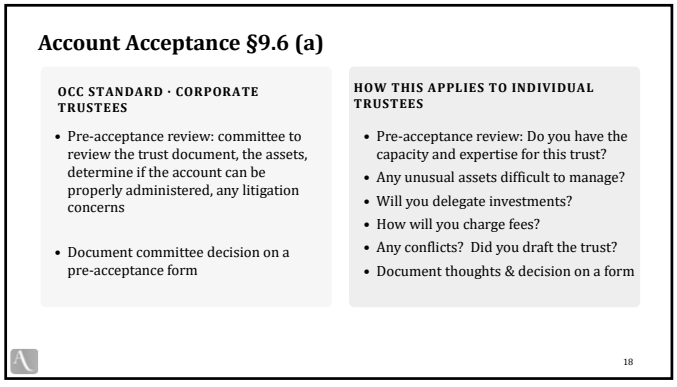
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##/##
Join at: vevox.app
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Question slide
4. What should be reviewed before signing an acceptance of Trustee?
The trust document
##.##%
The assets
##.##%
Your ability to manage or delegate the management of the assets
##.##%
Expected activity - how many distributions are expected to the beneficiary
##.##%
Your ability to have time to administer & will it be profitable to do so
##.##%
All of the above
##.##%

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RESULTS SLIDE

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Account Acceptance §9.6 (a)
OCC STANDARD · CORPORATE TRUSTEES
Pre-acceptance review: committee to review the trust document, the assets, determine if the account can be properly administered, any litigation concerns
Document committee decision on a pre-acceptance form
HOW THIS APPLIES TO INDIVIDUAL TRUSTEES
Pre-acceptance review: Do you have the capacity and expertise for this trust?
Any unusual assets difficult to manage?
Will you delegate investments?
How will you charge fees?
Any conflicts? Did you draft the trust?
Document thoughts & decision on a form
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SAMPLE Pre-Acceptance Form

Prepared by: _____ Date: _____

Name of person contacting me: _____ Contact phone #: ____

- Estimated Market Value: _____ Estimated Fees: _____
- **Capacity**: *Personal Representative *Attorney-in-fact *Trustee *Health Care Surrogate *Co-Trustee *Agent
- **Information:** Potential Client Name: _____ Age: ____ or DOD: ____
- Co-Trustee (if any): _____ Other Powerholders (if any): ____ Capacity: _____
- Beneficiary : Name: _____ DOB: _____ Foreign Y or N
- **Assets:**
- Brokerage Accounts: _____
- Bank Accounts: _____
- Real Estate/Address: _____ Commercial Real Estate: _____
- Insurance on any Real Estate/Any Environmental Concerns: ____
- Special Assets: *Oil & Gas *Annuities *Life Insurance *Notes/Mortgages *Raw Land/Timber/Farm
- *Limited Partnerships *Closely Held Business

Debts and Liabilities:

Mortgage(s) amount, name of lender & accounts #:

Credit cards (list accounts and amounts):

Other debits/liabilities:

Other Information:

Expected Financial Transactions per Month: _____

Additional Information:

Professional Advisors (name & contact information):

CPA: _____ Financial Advisor: _____

Potential Client referred by: _____

Trust Document Review:

Resignation/Removal and Appointment:

Trustee Fees and Compensation:

Release of Liability from Prior Trustee:

Governing Law: _____ Situs: _____

Validly Executed: Dispositive Provisions: Small Trust Termination:

Notes:

*Disclaimer: This is not any particular trust company's form, nor is it recommended for use. Sole intent is for educational purposes.

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Initial Review §9.6 (b)

OCC STANDARD · CORPORATE TRUSTEES

- Initial review of all assets soon after acceptance (often 60, 90 or 120 days)
- Corporate trustees review admin matters to determine account is set-up properly: statements established, needs of beneficiary assessed, asset allocation & investment policy statement, ticklers set-up for specific tasks, taxes documented

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Establish a policy to review the assets at 60, 90 or 120 days after acceptance and document specific administrative matters: beneficiary needs, asset allocation & investment policy statement (IPS), tax requirements and who will prepare return & qualified legal counsel retained

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Annual Review §9.6 (c)

OCC STANDARD · CORPORATE TRUSTEES

- Annual review of investments, asset allocation appropriate, distributions, beneficiary's needs, tax filings
- Required to maintain a tickler system for late reviews & outstanding issues – frequently an issue with the regulator

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Annual review: investments performance, delegation still appropriate, asset allocation appropriate, any concentrations, distributions, beneficiary's needs, tax filings
- Establish a procedure to track any changes or set ticklers for important deadlines

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4 Audit procedures

12 C.F.R. §9.9

OCC STANDARD · CORPORATE TRUSTEES

- Annual audit of all significant fiduciary activities, internal or external
- Or a continuous audit system matched to each activity's nature and risk
- Fiduciary audit committee of bank directors or an affiliate's audit committee

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- No audit is required, but the exercise is very beneficial
- Have legal counsel review your policies and procedures
- Have counsel, a CPA firm or a seasoned fiduciary review a sample of files
- Larger practices: retain an outside fiduciary audit and share results

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5 Investment management

12 C.F.R. §9.10

OCC STANDARD · CORPORATE TRUSTEES

- Keep an approved investment list; record the reasoning for each exception
- Valuation procedures for hard-to-value assets: real estate, closely held businesses, mineral interests
- Don't leave cash uninvested longer than reasonable; collateralize uninsured self-deposits

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Keep an approved list of screened investment managers
- Review each manager relationship on a set schedule (consider annually)
- Have IPS on every account and document the asset allocation every year
- Have a written procedure for investing cash

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6 Custody and safekeeping

12 C.F.R. §9.13

OCC STANDARD · CORPORATE TRUSTEES

- Assets held under joint custody or control of at least two designated officers or employees
- Fiduciary assets kept separate from the bank's own assets
- Regular reconciliation with sub-custodians and depositories

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Family trustees: dual control isn't practical, so keep detailed records of every penny spent
- Professional practices: no one person can disburse funds without a second sign-off
- Involve a second person when handling the beneficiary's personal property

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7 Recordkeeping

12 C.F.R. §9.8

OCC STANDARD · CORPORATE TRUSTEES

- Document the establishment & termination of fiduciary account & maintain records
- Keep fiduciary account records for three years from the later of account termination or end of any litigation
- Keep records separate from other records of the bank

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Document & maintain records of all fiduciary accounts & decisions for a set period after the account closes
- Decide with legal and tax counsel which records to keep, and for how long
- When that period ends, destroy electronic copies too, so they can't be stolen

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8 Third-party risk management

OCC Bulletin 2023-17

OCC STANDARD · CORPORATE TRUSTEES

- Due diligence before engaging any vendor with confidential information: operating systems, technology vendors, marketing firms
- Ongoing monitoring after engagement
- Standard: June 2023 interagency guidance on third-party relationships

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Client confidentiality is paramount: confirm every vendor's systems are as secure as yours
- Review third-party relationships, technology firms, marketing or social media firms, investment advisors & accountants on a set schedule (consider annually)

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9 Cybersecurity

OCC Cybersecurity Supervision Work Program

OCC STANDARD · CORPORATE TRUSTEES

- The OCC builds cyber governance into its supervision
- Trustees hold financial and medical records, SSNs, tax returns and transfer instructions
- Cybersecurity is part of the duty to safeguard trust assets and confidentiality

HOW THIS APPLIES TO INDIVIDUAL TRUSTEES

- Written cybersecurity policy, with a qualified IT firm to implement it
- Encrypted devices, secure cloud storage, MFA and strong passwords
- Independently verify payment instructions; never rely on email alone; unusual phone calls requests should be questioned

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Special needs trusts: three types

OCC rules aren't SNT-specific; personal trusts under 12 C.F.R. Part 9

First-party SNT

42 U.S.C. §1396p(d)(4)(A); POMS SI 01120.203

Beneficiary's own assets; disabled and under 65 when funded; sole benefit. May be set up by the individual, parent, grandparent, guardian or court

Payback: yes, at death, up to total Medicaid paid

Pooled trust

42 U.S.C. §1396p(d)(4)(C); POMS SI 01120.203

Nonprofit manages pooled sub-accounts; sole benefit. No age limit to set up, though funding after 65 may trigger a transfer penalty in some states

Payback: yes, unless the nonprofit keeps the funds

Third-party SNT

State trust law; POMS SI 01120.200

Funded by others; the beneficiary has no power to revoke or direct distributions

Payback: none

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SNT controls: acceptance and distributions

1 Acceptance review

- Check the trust against POMS and state Medicaid rules. Record trust type, establishment date and age at funding.
- Confirm you have the capacity to administer
- Review assets

2 Distribution standards

Write a policy covering:

- Pay vendors directly instead of giving the beneficiary cash
- Shelter payments (rent, mortgage, utilities) count as ISM and lower SSI
- First-party and pooled trusts: a written sole-benefit finding for each distribution
- A list of approved or prohibited categories

3 The 2024 food rule

- Since Sept. 30, 2024, SSA counts only shelter as ISM, not food (89 FR 21199). Update distribution matrices and training written under the old rule.

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SNT controls: benefits and reporting

4 Benefits tracking

- Record current SSI, Medicaid, SNAP and housing benefits in the account file.
- Confirm all benefits at each annual review set tickler for the reporting deadlines.

5 Required reporting

- Comply with reporting required by SSA, the courts or the governing instrument.
- Keep records that can answer eligibility reviews and agency inquiries.

6 ABLE account coordination

- ABLE disability onset age is 46 since Jan. 1, 2026, up from 26 (SECURE 2.0 §124)
- Qualified housing paid from ABLE avoids the ISM reduction.
- Document if an ABLE account is prudent.

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SNT controls: investing, payback, tax, fees

7 Investment policy statement
- Every trust has an IPS allocation should balance a long horizon with cash for regular distributions.
- Avoid illiquid assets.
- Sweep cash to a money market at competitive rates.

8 Termination and payback
- When a first-party beneficiary dies, notify Medicaid and pay its claim before other expenses.
- Review state law requirement.
- Medicaid often outranks funeral costs.
- Note state rules in the file.

9 Tax treatment
- First-party SNTs are usually grantor trusts (IRC §§671–679).
- A third-party SNT may qualify as a Qualified Disability Trust (§642(b)(2)(C)).
- Consult a CPA
- Record the tax treatment and why.

10 Fees and expertise
- Fees must be reasonable and disclosed
- Some states require court or agency approval.
- Review fees yearly and document it in the file.
- Consult counsel as needed.

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Matter of J.P. Morgan Chase Bank, N.A. (Marie H.), 38 Misc. 3d 363, (Surr. Ct. 2012)

- Marie H. established a trust for her disabled, non-verbal son, Mark, who resided in a residential facility
- Trustees did not visit him or ask about his needs; he stayed institutionalized though funds could pay for different care
- Only $3,525 spent on the beneficiary over five years from an appx $4 million trust while the co-trustees kept collecting fees
- Court found: Asset management alone isn't enough; Trustees must understand the beneficiary's needs
- Amended accountings ordered; fees reduced or denied

The control that could have changed the outcome:
A required annual meeting with the beneficiary, determination of needs documented in the file.

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Liranzo v. LI Jewish Education/Research, N.Y. Sup. Ct., Kings County (June 25, 2013)

- Liranzo was injured as child and received a settlement into 1st party SNT.
- Trustee approved every request from the beneficiary's mother without evaluating it, including home health care Medicaid might cover
- The court said it was "easier to accede" to the request than to evaluate and make a prudent decision.
- The trust terms required the Trustee to considering public benefits first
- $179,000+ surcharged against BNY Mellon as trustee for improper distributions and not investigating public benefit options

The control that could have changed the outcome:
A documented evaluation of each discretionary distribution and its effect on benefits.

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Documenting decisions - the evidence trail

At minimum, the file should contain the following:

- Annual reviews of the file - reasonable trustee & investment fees
- Discretionary distribution decisions
- At least annual meetings with the beneficiary and decision makers
- Annual budgets – document beneficiary's needs are met
- Investment reviews, note concentrations or unusual assets
- A proper Investment Policy Statement (IPS)
- Due diligence on the investment manager

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Potential grounds for liability

Ground for liability	What it looks like	Control that prevents it
Failing to use trust for the beneficiary	No contact, no spending plan, fees paid while the beneficiary goes without (Marie H.)	Care plan for each beneficiary; regular contact recorded at each annual review
Approving requests without review	Every request granted; trust drained without regard to how long it must last (Liranzo)	Written analysis of each request; second-level approval above set limits
Distributions that cost SSI or Medicaid	Cash to the beneficiary, shelter costs paid without weighing the reduction, paying for care Medicaid covers	Distribution matrix; check for public benefits first; benefits information on file
Breaking the sole-benefit rule	First-party trust funds spent mainly on family	Written detail for each distribution and whether it was for the sole benefit

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Potential grounds for liability, continued

Ground for liability	What it looks like	Control that prevents it
Self-dealing and fees	Unreasonable fees, undisclosed proprietary products, commingling	Follow §9.12 with a written conflict-of-interest policy; disclose all fees and review them periodically
Imprudent investment	No diversification; assets that can't be sold when cash is needed	An investment policy for each account; document the beneficiary's cash needs
Failure to account and report	Missed accountings; changes not reported to SSA, leading to overpayment debts	Accountings that follow the state statute; documented reports to SSA and Medicaid
Mishandling payback at termination	Funeral costs or other creditors paid ahead of the Medicaid claim	A termination checklist that is followed and documented

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Alan Stegeman, CAMS, ATFA, NCVMP
Chief Compliance Officer
alan@adelphitrust.com

Gentry Barnett Byrnes, JD
President & Co-Founder
gentry@adelphitrust.com

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