

Modern Drafting for Third Party Supplemental Needs Trusts

Autonomy, Oversight and Structural Flexibility

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A trust that preserves eligibility but creates no durable system for decision-making is not a complete plan.

Draft the third-party SNT as a long-term governance instrument.



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Four ideas older forms collapse

Keep	And add
No right to compel distributions	A voice in decisions
Trustee discretion	Structure and review
Attention to public benefits	Welfare ahead of preservation
A remainder for the family	Lifetime interests first



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The federal baseline is legal availability

The beneficiary must not be able to

Revoke or terminate the trust

Direct principal for support and maintenance

Sell a right to receive payments

Trustee discretion is generally not attributed to the beneficiary.
POMS SI 01120.200(D)



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Purpose before prohibition

1. The beneficiary's welfare	The primary purpose
2. Means-tested benefits	Preserved when consistent with that purpose
3. Remainder beneficiaries	Subordinate during the beneficiary's lifetime



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The purpose clause

"...preservation of any particular benefit is not the sole or overriding purpose of this trust."

Guide discretion without creating an enforceable support standard.



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Permission to exhaust the trust

“The Trustee may expend all trust property during the the Beneficiary’s lifetime...”

Conservation is a means, not the mission.



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Telling the trustee how to use discretion

Preferences and goals

Value of benefits affected

Independence

Housing stability

Reliability of public services

Size and duration of the trust

Realistic family support

Tax consequences

Dignity costs of saying no

Absolute discretion is only the beginning of the analysis.



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The harder failure

A trustee cannot exercise informed discretion without an information system.

Not from a file, an investment statement, or an annual distribution request alone.



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Three questions before affecting a benefit

Eligibility Is the beneficiary legally eligible?	Value What is the benefit actually worth?	Outcome Would spending work better?
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Not a direction to ignore benefits. A direction to value them accurately.



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The benefits-impact clause

"...its expected benefit to the Beneficiary outweighs the value of the benefit that may be reduced or lost."

Good faith and consistency with purpose protect the trustee.



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Autonomy without ownership or control

A beneficiary can have a voice without possessing a property right.

Excluding the beneficiary from the process is neither legally required nor good administration.



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What autonomy can look like

Managing a spending account

Naming a support person

Choosing between two activities

Joining a planning meeting

Selecting a service provider

Stating a housing preference

Different for each beneficiary, and it may change over time.



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“ Shall consider” and “ shall follow”

Shall consider

Creates a process

Shall follow

May create an entitlement or delegate fiduciary judgment

The trust can require the trustee to listen without requiring the trustee to agree.



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Plans, letters and preferences

Annual plan

Advisory, revisable and tied to the trust's purposes purposes

Letter of intent

Supplies context and can go out of date

Current preferences

Ordinarily carry substantial weight

None of them creates a right to distributions.



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An information channel for the trustee

“...an adviser shall not have authority to compel or direct a distribution...”

Express authority to hire

An expense of administration

No cut to trustee compensation

Receiving is not disclosing



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ABLE accounts as a bridge to autonomy

Age 46

Onset before this age now qualifies

\$20,000

Ordinary annual contribution limit, 2026

\$100,000

Excluded from SSI countable resources

A transfer from the trust to the beneficiary's ABLE account is not income to the beneficiary.



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Remainder interests come second

“During the Beneficiary's lifetime, the Settlor's paramount concern is the Beneficiary.”

Keep the savings sentence for nonwaivable rights.
Consider a limited testamentary power of appointment.



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One trustee should not have to do everything

Investment management

Tax reporting

Public-benefits analysis

Discretionary judgment

Disability knowledge

Care coordination

Family diplomacy

Communication with the beneficiary

The title matters less than the authority attached to it.



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Questions before choosing names

Who knows the beneficiary?

Who understands benefits?

Who can say no without destroying a family relationship?

Who can manage investments and reporting?

Who will still be available in twenty years?



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Resignation and transition

"...not released except except by a judicial settlement or a binding binding nonjudicial settlement..."

A cascading appointment mechanism

An emergency backstop for a vacancy

Records and assets delivered first

No gap in rent, caregivers or insurance



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Powers that preserve and powers that rewrite

Preserve the plan

Remove and appoint trustees
Change situs or governing law
Amend administrative terms
Correct drafting errors

Rewrite the plan

Add a beneficiary
Redirect the remainder
Alter the lifetime interest

Define boundaries before granting any dispositive power.



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Whether the protector is a fiduciary

UTC § 808 Presumptively fiduciary unless the terms provide otherwise

UDTA Duties and liability of a similarly situated trustee

New York No comprehensive statute, so the instrument matters

Repeat the analysis whenever situs changes.



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Drafting for change

A trust that may last fifty years should not depend entirely on the law at signing.

Amendment

For defined purposes only

Decanting, merger, division

Express, not left to default law

Situs and governing law

Related but not interchangeable



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Accounting, privacy and oversight

Who receives information during the beneficiary's lifetime?

What must be supplied, and in what form?

Who acts for a beneficiary who cannot review it?

How is privacy protected while oversight stays enforceable?

A complete waiver of accountings is not a reliable substitute for oversight.



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Liability protection without immunity

Protect

Reasonable reliance on advisers

Good-faith benefit reductions

Clear roles in a directed trust

Never excuse

Bad faith

Willful misconduct

Reckless indifference

Tie the protection to process.



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Administration designed at the drafting table

Hold a governance conference before execution. execution.

Good clauses do not administer themselves.

A modest trust

A professional trustee plus a family adviser may be enough

A large, complex trust

May need separate roles and independent oversight



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A stress test for the plan

Would the plan still function if...

the beneficiary moves

benefits rules change

family caregivers disappear
disappear

the original trustee is
unavailable



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The trust must support a person, not merely protect a status.

Good people around the beneficiary and a safe place to live, even when the systems expected to deliver the deliver them fail.



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