STETSON LAW

2026 National Conference on Special Needs Planning and Special Needs Trusts

Pooled Trust Intensive Preconference

2026 Social Security and Supplemental Security Income (SSI) Program Update

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October 21, 2026

STETSON UNIVERSITY
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Access and Justice For All
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Outline of Today's Presentation

- Trump Accounts
- SSA and Artificial Intelligence
- Accessory Dwelling Units (ADUs)
- Pooled Trust Management Provisions

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Trump Accounts

A Trump Account (TA) is a tax-advantaged investment account established for children by P.L. 119-21. A type of traditional Individual Retirement Account (IRA), TAs have special rules that change depending on the TA beneficiary's age. TAs have two primary periods:

- Growth period, which begins with the establishment of the initial TA and ends on December 31 of the calendar year in which the TA beneficiary attains age 17; and
- Post-growth period, which is effective January 1 of the calendar year in which a TA beneficiary attains age 18 and continues thereafter.

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Annual Contribution Limits and Who Can Contribute

- Starting July 4, 2026, $5,000 per year total per child (indexed for inflation after 2027).
- Anyone can contribute: parents, guardians, family, friends and even the child when older.
- Employers can contribute up to $2,500 per year for an employee's dependent child, excluded from the employee's taxable income.
- Charities and government entities may also contribute to groups of eligible children, sometimes without counting toward the $5,000 annual limit.
- Every US citizen born between January 1, 2025 and December 31, 2028 is eligible for a one-time $1,000 government seed contribution if the account is established before the year they turn 18. This contribution does not count toward the annual $5,000 contribution limit.

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How are These Accounts Invested?

The accounts during the "growth period" (period prior to the beneficiary turning 18) are limited to investing in:

- mutual funds/ETFs that track to a qualified index with at least 90 percent US company weighting (e.g., S&P 500),
- do not use leverage, and
- have annual fees/expenses below 0.1 percent.

Cash and money market funds are not permitted.

Trump Accounts will initially be created and held with Treasury's designated financial agent. Eventually, parents or guardians should be able to transfer the full balance to a preferred brokerage firm through a trustee-to-trustee rollover.

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Growth Period

Prior to January 1 of the year the TA beneficiary attains age 18 (growth period):

- The entire value of a TA is not considered a resource for SSI purposes.
- Distributions from the TA generally are not permitted. The following do not count as distributions:
  - a rollover to another TA during the growth period;
  - a rollover to an ABLE account when permitted during the calendar year of age 17 attainment (referred to in this section as the "Age 17 TA-ABLE rollover");
  - removal of excess contributions over the annual limit; and
  - distributions upon the death of the TA beneficiary.

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Growth Period

Contributions made directly to the account are generally not considered income; however, a TA beneficiary cannot avoid income counting by direct depositing funds into a TA.

For example, a TA beneficiary could not have their Social Security benefits direct deposited into a TA to prevent them from counting as unearned Social Security income for SSI purposes.

NOTE: A beneficiary or recipient with a representative payee cannot have their Social Security or SSI payments paid via direct deposit into a TA during the growth period when distributions generally are not permitted. Due to TA distribution restrictions, the representative payee generally would not be able to use the benefits to provide for the beneficiary's current needs.

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Post-Growth Period

Beginning January 1 of the calendar year the TA beneficiary attains age 18 (post-growth period):

- The TA is a countable resource. The value of the TA is the amount of money that the TA beneficiary can withdraw from the TA after any penalty for early withdrawal (i.e., early distribution tax).
- Distributions of TA funds are not income, but a conversion of a resource.

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Post-Growth Period

Contributions to a TA are income or a conversion of a resource, depending on the source of the contribution.

- For instance: If a TA beneficiary transfers money from their savings account into their TA, the contribution is a conversion of a resource, changing form from a financial institution account resource to a TA resource.
- If a TA beneficiary's parent deposits a $1,000 "graduation gift" into the TA, the $1,000 is unearned income in the month of deposit.
- If a TA beneficiary direct deposits $200 of their paychecks into their TA, each $200 deposit is earned income in the month of deposit.

Contributions are a countable TA resource beginning the following month.

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Age 17 TA - ABLE Rollovers

- During the calendar year a TA beneficiary attains age 17, TAs are eligible for the age 17 ABLE rollover. Through a trustee-to-trustee transfer, the entire balance of the TA may be rolled over to an ABLE account for the TA beneficiary. The rollover is an exception to TA distribution rules and ABLE contribution limits.
- Up to $100,000 in an ABLE account may be excluded from resource counting.
- Important: All TA funds that are not rolled over to ABLE accounts during this period will become countable TA resources effective January 1 of the following year (i.e., the year in which the TA beneficiary attains age 18).

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SSA and Artificial Intelligence (AI) A Balancing Act

SSA aspires to "amplify the potential of AI while protecting sensitive data and mitigating the associated risks and limitations ."

Enterprise Artificial Strategy Report

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SSA and AI - A Balancing Act

The National Association of Social Insurance (NASI) AI Task Force warns that there are significant risks for SSA to use AI in a rights-impacting context, and gave SSA guidance and guardrails for how to carefully evaluate AI risks and opportunities in this context.

NASI, AI Taskforce Phase One Report

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Where is SSA Now?

- SSA reports its AI maturity to be a 2 out of 5.
- A level 2 is defined as "Established - Some processes are planned and executed in accordance with policy but are in early stages of development. Processes are not used across all organizational areas."
- SSA is targeting an AI maturity of 3 by the end of 2026 and 4 by the end of 2030.

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How is AI Used Now?

- AI & Phones: SSA is using AI tools in the interactive voice response chatbox
- HeaRT (Hearing Recording and Transcription), rolled out in March 2025
- IMAGEN (Intelligent Medical Language Analysis Generation)
- QDD (Quick Disability Determination)
- VAAT (Vocational Assessment Assistance Tool)

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Accessory Dwelling Units (ADUs)

An "Accessory Dwelling Unit" or "ADU" is defined by the American Planning Association as "a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home."

Generally, as an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. However, an attached ADU may share kitchen or bathroom facilities with the main dwelling unit (depending on local zoning requirements).

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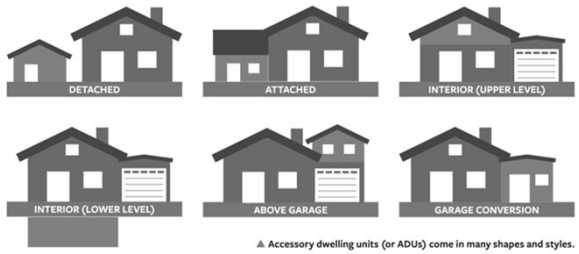
ADU, aka…

- accessory apartment
- backyard bungalow
- basement apartment
- casita
- carriage house
- coach house
- English basement
- garage apartment
- granny flat
- guest cottage
- guest house
- in-law suite
- multi-generational house
- ohana unit
- secondary dwelling unit

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Types of ADUs



▲ Accessory dwelling units (or ADUs) come in many shapes and styles.

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Ownership Issues Related to ADUs

Ownership issues related to ADUs often arise because the ADU is located on the same parcel as the primary home, creating questions about property rights, control, financing, and inheritance.

Common issues include:

- Single Property Ownership
- Co-Ownership and Family Arrangements
- Title and Financing Concerns
- Inheritance and Estate Planning
- Zoning, Land Use and Property Rights Disputes

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Co-Ownership and Family Arrangements

When parents, adult children, other relatives, or a trust help finance or occupy an ADU, disputes can arise over:

- Who owns the ADU structure.
- Rights to occupy the unit.
- Responsibility for maintenance and repairs.
- What happens if the property is sold.

Without a written agreement, these arrangements can become contentious.

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Title and Financing Concerns

Because the ADU is usually part of the same real estate parcel:

- It generally cannot have a separate deed.
- Mortgages and liens typically affect both the main house and the ADU.
- Lenders may require all owners of the property to sign financing documents.

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Inheritance and Estate Planning

If an ADU is intended for a child or elderly parent, problems may arise after the property owner's death:

- The ADU may pass with the entire property under a will or state inheritance laws.
- Occupants of the ADU may not automatically gain ownership rights.
- Heirs may disagree about whether to keep, occupy, rent, or sell the property.

Estate planning can help clarify these issues.

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Zoning, Land Use and Property Rights Disputes

Ownership conflicts can arise when:

- Neighbors challenge ADU construction.
- Property boundaries are unclear.
- Easements or access rights affect the ADU.
- Owners disagree about use restrictions or rental rights.
- Zoning restrictions on and requirements of rental units or owner-occupancy requirements.

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Why Ownership Matters for SSI Benefits

Home Exclusion

- Regardless of its physical form, legally an ADU is part of the same property as the main home. It cannot be bought or sold separately. The owner of the ADU is the owner of the main home.
- To qualify for the home exclusion, an individual must have an ownership interest, legal or equitable, in the home.

You should note however, that without an ownership interest, a home would not count as a resource to the individual, but there are other consequences that flow from not having an ownership interest.

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Why Ownership Matters for SSI Benefits

ISM

- Without an ownership interest, the individual would be required to pay rent or else be charged with in-kind support and maintenance (ISM) in the form of rent-free shelter. Or they could be subject to the value of the one-third reduction (VTR) in their benefits because they are residing in the household of another.

- Paying rent or shelter costs is not a bad thing in and of itself, but if the goal is to maximize benefits, paying rent and expenses or incurring a reduction for ISM is a step in the wrong direction.

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Trust Management

If a trust is paying for the construction of an ADU for the use of the trust beneficiary, the trustee may feel it is necessary, in its fiduciary duty, for the trust to obtain an interest in the ADU.

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Possible Solutions for the Ownership Issue

Equitable Ownership

An "equitable" ownership interest in property can result from personal considerations or from:

- making mortgage payments;
- making or paying for additions to a shelter; or
- making improvements to a shelter.

If an individual alleges an unwritten equitable ownership interest, SSA will gather all the necessary information and forward it to the Regional Chief Counsel for an opinion based on State law.

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Possible Solutions for the Ownership Issue

Condominium or Separate Ownership Structures

- In most jurisdictions, there's a preferred way to create separate ownership of homes: the subdivision process. But what if there's a desire to separate ownership and subdivision isn't an option?
- Some states and local governments allow legal mechanisms, such as condominiumization or lot splits, that can create separate ownership interests for an ADU. However, such situations are currently rare and availability varies significantly by jurisdiction. Local zoning and property laws determine whether separate ownership is allowed.

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Condominiumization

This situation arises most often when:

(1) properties are on top of one another as in multi-story buildings, or

(2) land use regulations make it difficult or impossible to subdivide property horizontally (i.e., minimum lot sizes can't be met; subdivision regulations that preclude a desired site layout; there's no way to provide every lot required street frontage).

Conveniently, all 50 states and the District of Columbia have adopted condominium statutes that allow property to be converted to condominium ownership and back again. Legally, condominiums are 'creatures of the state,' meaning that their existence depends on state laws that lay out the rules for their creation, maintenance, and dissolution.

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Possible Solutions for the Ownership Issue

Partial Life Estate

- One possible avenue that could be explored is the use of a partial life estate. I say "partial" life estate since both the primary house and the ADU are part of the same deed and property, and a regular life estate would give the tenant use of and rights to the entire property. A partial life estate can legally apply to a specific portion or acreage of a larger piece of real estate (such as an ADU) rather than the entire property.
- When you create a partial life estate, you split the legal ownership and use rights for just a designated section of land or a specific structure (such as a house while leaving surrounding acreage out, or vice versa). It can apply to a specific floor, a guest house, or a defined acreage of a larger farm.

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How a Partial Life Estate Works

- The deed or trust must explicitly describe the specific portion assigned to the life tenant. It requires an accurate, legally sound survey and distinct legal description of the specific portion attached to the deed.
- **The Life Tenant**: Obtains the exclusive right to use, occupy, or collect income from that specific part of the property for the rest of their life.
- **The Remainderman**: Holds the future interest to inherit that exact portion of the property automatically when the life tenant passes away, and, if the remainderman is not the original grantor, bypassing probate.
- Duties like taxes and maintenance are typically prorated or assigned based on the terms of the agreement.

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Key Advantages

- Targeted Inheritance**:** Directs a specific house, building, or section of land to a chosen heir, unless it returns to the grantor.
- Probate Avoidance: Transfers the designated portion automatically to the remainderman upon death.
- Continued Control: Guarantees the life tenant a secure place to live or use during their lifetime without interference.

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Critical Risks & Limitations

- Subdivision Restrictions: Local zoning laws, county ordinances, or HOA rules may may legally restrict dividing a single residential structure or lot.
- Shared Control: Depending on whether it is with or without "powers," you may need the remainderman's signature to sell, mortgage, or alter the designated portion later.
- Practical conflicts: Sharing access to utilities, land, or common areas can create friction between the life tenant and the remainderman.
- Maintenance & Taxes: The life tenant remains legally responsible for taxes, insurance, and upkeep on the property, which can get complicated if only a sub-portion is metes-and-bounds defined.
- Medicaid recovery implications: Medicaid estate recovery depends on the rules of the State where the property is located. There may also be transfer implications for the original property owner.

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Tiny Houses

There is some variation in defining a tiny home, but there are examples and they are usually based on floorspace.

- The International Residential Code states that a tiny house's floorspace is no larger than 400 square feet (37 m^2).
- Merriam-Webster says they can be up to 500 ft^2.
- One architectural firm used a threshold of 600 ft^2 to define a tiny home.

What further complicates the definition is that tiny homes may or may not be mobile and lack clearly defined features.

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Tiny Houses

One of the biggest obstacles faced by the tiny-house movement is the difficulty of finding a location in which such a house can be constructed.

- Zoning regulations typically specify minimum square footage for new constructions on a foundation, and
- For tiny houses on wheels, parking on one's own land may be prohibited by local regulations against camping.
- Prohibitions may also extend to mobile homes, RVs, or temporary structures. Many localities do not allow these forms as legal dwellings, primarily due to concerns over stability, sanitation, and permanence.

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Tiny Houses on Wheels

- RV parks do not always allow tiny houses unless they meet the criteria required for Recreational Vehicles (RVs).
- Tiny houses on wheels are considered RVs and are not suitable for permanent residence, according to the Recreational Vehicle Industry Association (RVIA).
- From *RV Business,* "The RVIA will continue to shy away from allowing members who produce products that are referred to as 'tiny houses' or 'tiny homes.'

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SSI Policy on Tiny Houses

- In general, SSA should consider any tiny house built on a foundation with utility hookups as real property, the same as it would consider an ADU or other full-sized house and the same policy considerations would apply.
- Considering a mobile tiny house (which would be considered as personal property), for purposes of the home exclusion, a home can be real or personal property, fixed or mobile, and located on land or water. For purposes of excluding "the land on which the shelter is located," it is not necessary that the individual own the shelter itself.
- EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

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Use of Land

- The use of land alone is not a household cost. Thus, if an individual receives land or the use of land without charge, this does not result in outside ISM. Similarly, third party vendor payments of real property tax, rent or mortgage on land alone do not cause an individual to receive ISM in the form of shelter.
- A trailer space rental fee which is for space alone is not a household operating expense for purposes of determining ISM, However, if the fee is not for use of land alone, that part of the fee which is for water, sewer, etc., is part of the household costs for purposes of determining inside and outside ISM.

EXAMPLE: James Smith, an eligible individual, lives alone in a house trailer they own. The trailer is situated on the property of their sibling, Bill. James pays no rent for the use of the land. Bill provides water and electricity free of charge. The free use of the land results in no ISM to James. However, James is charged with outside ISM based on the CMV of the water and electricity.

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Pooled Trust Management Provisions

- To qualify for exception under the provisions of section 1917(d)(4)(C), a pooled trust must be managed by a non-profit association.
- By law, each trust beneficiary must have a separate account, but the non-profit manager can pool these funds with the funds of other members of this communal trust.
- In some instances, the non-profit manager(s) may employ the services of a for-profit entity to manage some of the financial activities of the trust.

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Pooled Trust Management Provisions

SSA Chief Regional Counsel opinions have identified two distinct categories of cases arising under the pooled trust management provisions.

- The Trust Must be Established and Managed by a Non-Profit Association
- Appointment of Successor Trustees and Co-Trustees

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Policy on Use of For-Profit Entities

If a non-profit association employs the services of a for-profit entity, the non-profit association must maintain ultimate managerial control over the trust. The for-profit entity may handle certain trust functions on behalf of the non-profit association; however, the use of a for-profit entity must always be subordinate to the non-profit managers of a pooled trust under section 1917(d)(4)(C).

For example, the non-profit association must be responsible for:

- determining the amount of the trust corpus to invest;
- removing or replacing the trustee; and
- making the day-to-day decisions regarding the health and well-being of the pooled trust beneficiaries.

NOTE: This list is not intended to be exhaustive. These are a few examples of the type of authority that must vest in the non-profit association. For example, a pooled trust may not meet the criteria in section 1917(d)(4)(C) if the trust includes a provision that allows the for-profit entity to determine whether to make discretionary disbursements from the trust.

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Impermissible Provisions

- The [for profit] Trustee may "pay or apply for the benefit of each Beneficiary such amounts from the principal or income, or both, of the Trust sub-account maintained for such Beneficiary, up to the whole thereof, as the Trustee, in its sole discretion may from time to time deem necessary or advisable
- The [for-profit] Trustee shall have full power and authority in its absolute discretion to do all acts and things necessary to accomplish the purposes of the Trust.
- The Trust Declaration also allows the Trustee to delegate to an agent or agents, any of the fiduciary powers expressed directly or by implication in the Trust.
- The Trust seemed to impermissibly allow the Trust Fund Manager to determine the amount of the Trust corpus to invest. Moreover, the provision allows the Trustee to delegate such powers and duties to the Trust Fund Manager as it sees fit.

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Impermissible Provisions

- The Trustee has the power to delegate to a corporate fiduciary the exercise of any powers, with the same effect as if the Trustee had joined in the exercise of such power."
- The delegation of authority authorized by the Trust appears overly permissive; certain responsibilities cannot be delegated. Assuming that the corporate fiduciary is a for-profit entity, it raises the possibility that the delegation of authority could exceed the limits set forth in POMS SI 01120.225. For example, the delegation provision does not make clear that Secured Futures, as Trustee, must be responsible for determining the amount of the Trust corpus to invest.

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Permissible Provisions

The Trustee may rely on the services of an "Investment Firm," but it now makes clear that the Investment Firm operates under the direction and overall management of the Trustee. The trust has been revised to clearly indicate that the Trustee maintains ultimate managerial control over the Trust.

The trust now provides, for example:

- a list of examples of the types of discretionary payments that may be made "by the Trust Manager or the Trustee under the management of the Trust Manager." It later reiterates that the list is nonexhaustive and that it is meant "to illustrate for the Trustee certain items which the Trustee may, under the management of the Trust Manager, wish to provide for the Beneficiary."
- "Powers of the Trustee" includes express language limiting the Trustee's authority such that it cannot act without the consent of the non-profit Trust Manager, Life Navigators.
- that "all of the foregoing authorities that may be exercised by the Trustee are with the consent of Life Navigators, Inc. pursuant to their managerial duties per 42 U.S.C. § 1396p(d)(4)(C)."

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Appointment of Successor Trustees and Co-Trustees and For-Profit Entities

To qualify for exception under the provisions of section 1917(d)(4)(C), a pooled trust must be managed by a non-profit association. All for-profit entities must be subject to managerial control of the non-profit association including:

Trustee	Managers	Appraisers
Co-trustee	Agents	Accountants
Successor trustee	Investment manager	
Substitute trustee	Care manager	
Replacement trustee	Attorney	
Distribution trustee	Corporate fiduciary	

(Not an all-inclusive list)

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