Trust-Owned Housing: Key Considerations for Trustees

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Introduction & Overview

There is no simple "yes or no" answer to whether an SNT should own a home – each situation demands detailed consideration

In this session, we will cover:

- **Trust Ownership vs. Individual Ownership:** Who should own the home?
- **Budget Considerations:** Funding purchase and upkeep without jeopardizing the trust's longevity
- **Considerations in Selecting the Right Home:** Location, Safety, Education, Accessibility
- **Long-Term Strategy:** Occupancy and eviction issues, and compliance with trust/benefit regulations (Forever Home)
- **Case Study:** Chicago residential ADA remodel

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Trust Ownership vs. Individual Ownership

Who Should Own the Home – Trust or Beneficiary? This foundational question affects many downstream decisions.

- **Medicaid Payback (First-Party SNT):** (funded with the beneficiary's own assets) buys a house, that house is subject to Medicaid payback provision within the SNT when the beneficiary dies
  - The home may need to be sold to repay Medicaid, potentially displacing family
- **Medicaid Payback (Third-party SNT)** (Wealth)(funded by others) has no Medicaid payback, allowing the home's value to pass to remaining beneficiaries
- **Beneficiary Ownership to Avoid Payback:** One strategy in some cases is for the beneficiary to own the home outright, with the trust distributing funds to purchase it (Possible state dependent Medicaid estate recovery)
  - When trust funds are utilized to purchase a home, ensure a security interest
- **Capacity and Management:** Consider the beneficiary's legal capacity to hold title. Minors cannot hold real estate directly, and adults with significant cognitive impairments may need a guardian or conservator to manage an individually owned home.

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Trust Ownership vs. Individual Ownership

Bottom Line: Choosing who holds deed/title (trust vs. beneficiary) involves balancing Medicaid recovery risks, the beneficiary's ability to manage a home, and the family's **long-term** plans. Each option has pros and cons, and often the decision is made in consultation with an attorney knowledgeable in special needs planning.

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Budget Considerations

Budgeting for the initial purchase and long-term maintenance costs are as critical as buying the right home for the beneficiary and their needs:

- **Pre-purchase Budget:**
  - *Percent of trust (20-25%)*—includes modifications and closing costs
  - *Taxes*—normally go up year-over-year
  - *Insurance*—home/contents/additions or improvements/rider policies, umbrella policy
  - *Maintenance/Repair*—approximately 1-4% of home value, per year
    - Increases to maintenance (pool/elevator/generator)
  - *HOA Fees*—$200 to $$$$$ per month
  - Condo Fees—replaces responsibility for maintenance, but fees are normally high
- **Maintenance and Repair:**
  - Who will oversee repairs/maintenance/modifications/inspections of home?
    - Internal program or outsource?

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Budget Considerations

Bottom Line: It is in the best interest of the trustee to perform this budgetary planning exercise to avoid overpaying or buying a problematic property.

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Considerations in Selecting the Right Home

When selecting a suitable house for the trust to purchase or for the beneficiary to live in, the trustee must exercise due diligence and keep the beneficiary's needs at the forefront:

Accessibility and Layout:

- Beneficiary/ Caregiver does not always take this into consideration, because they've always made do, and this house is better than where they came from
- ADA: Ramps, Doorways, Flooring, Baths, Personal Space, Caregivers Quarters, Medical Supply Storage

Location and Community:

- Safety, Security, Hospitals, Fire Dept., Education/Therapy Facilities, Caregiver/Guardian location

Size and Shared Housing Needs:

- Number of family members, Caregivers Quarters, etc., 2-story vs ranch style

Due Diligence:

- Inspections are essential, but having expert with ability to read and implement repairs is crucial
- Environmental, Flood Zone, Permits, Deed

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Considerations in Selecting the Right Home

Bottom Line: Selecting the right home for the beneficiary and their family involves planning and careful consideration for the best interest of the beneficiary.

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Case Study

Why would a SNT purchase a 12K sq. ft. home for a family of 5?

Complete ADA renovation:

- Home was purchased for $899K in 2019
- School district was reason for purchase
- Explored alternative options
- Three court appearances

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Setting Expectations: House Rules

Rule #1 – Trust Ownership of the Home
The home is provided by the Trust for the beneficiary's benefit, with the understanding that it may need to be sold if living there is no longer safe or after the beneficiary's passing.

Rule #2 – Trustee's Right to Inspect
The Trustee may enter and inspect the home as needed to help ensure it remains safe and properly maintained.

Rule #3 – Trustee's Right to Monitor
The Trustee may arrange for professionals to visit the home to observe the beneficiary's well-being and confirm that benefits remain in place.

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Setting Expectations: House Rules

Rule #4 – Trustee's Duty to Maintain
The Trustee will use Trust funds for major repairs and improvements, while everyday living expenses are generally covered by the family or beneficiary.

Rule #5 – Trustee's Duty for Taxes & Insurance
The Trustee is responsible for paying property taxes and insurance with Trust funds, while the family or beneficiary may need separate coverage for personal belongings.

Rule #6 – Trustee's Authority Over Modifications
The Trustee makes the final decision on home modifications, while considering input from the beneficiary, family, and professionals.

Rule #7 – DON'T BREAK THE RULES!

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Long-Term Strategy

Being a trustee for a house-owned by SNT is akin to being a landlord and financial manager rolled into one. Some corporate trustees even have dedicated "real estate asset management" teams or outsource to companies specializing in trust-owned real estate (to handle tasks like home inspections, contractor bids, new builds etc.).

With purchase you must have an exit strategy:

- **Setting Expectations:** Reasonable Living Standard, Funds Depletion, Beneficiary Passing
- **Formal Housing Agreement:** Document that fully outlines parent/sibling/guardian responsibilities of both parties (emotionally difficult to handle)
- **Evictions via Courts:** Normally per state jurisdiction, but necessary if beneficiary status changes
  - *Reasons:* Violation of the agreement, using for illegal purposes, court ordered
- **Compliance:**
  - Corporate trustees are normally held to OCC and/or FDIC...hold yourself to same standard

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Long-Term Strategy

"THE" Bottom line: Setting expectations upfront with the family and the beneficiary is crucial.

The trust is the legal owner, so it has the obligation to ensure the home is a safe environment and durable asset for the life of the beneficiary. Long-term strategy is really a planning exercise in the beginning.

Enforcing the standards and evicting unauthorized occupants should be handled with sensitivity and legal counsel advice.

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Questions?

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