

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## EstatePLANNING

# The basic features of Supplemental Needs Trusts

Supplemental Needs Trusts (SNTs) are arrangements that are designed to provide for the financial needs of a disabled individual without causing him or her to become ineligible from receiving benefits from governmental programs, such as Medicaid or Social Security.

When considering whether to establish an SNT and when deciding how to structure it, there are a variety of issues that practitioners should consider and discuss with their clients. This article describes the basic features of SNTs and to address some of the common questions regarding their administration.

### How are SNTs funded?

There are two basic types of SNTs: a "first party" SNT, in which the beneficiary's own assets (e.g., an inheritance, personal injury award or other resources) are used to fund the trust, and a "third party" SNT, in which another individual funds the trust. In general, the trust can be funded with a variety of assets, including, but not limited to, cash, real property, annuities and insurance.

### Who can create a SNT?

For a first party SNT, the trust must be established by the disabled person, or by his or her parent, grandparent or legal guardian. If an individual other than a parent, grandparent or legal guardian wishes to set up the trust, then a court order must be obtained as a prerequisite. By contrast, a third party SNT can be formed by anyone without receiving prior approval from a court.

### How are SNTs created and who can be named as trustee?

As with traditional trusts, SNTs can be created under a decedent's will or through an *inter vivos* agreement. In general, any individual or corporate fiduciary can serve as trustee of an SNT, although an individual who is named as a remainder beneficiary should refrain from acting as sole trustee due to the obvious conflict of interest.

### Who can be named as primary beneficiary of the SNT?

Under the applicable rules for SNTs, the beneficiary of a first party trust must be a disabled person under the age of 65. If a "pooled SNT" (see below) or third party SNT is created, however, then the disabled person can be age 65 or older.

### What is a "pooled SNT?"

A "pooled SNT" is a specific type of SNT that is administered by a nonprofit organization. For this type of trust, the managing organization pools assets from SNTs created for multiple beneficiaries (hence, the term "pooled"), although each individual beneficiary retains a separate account within the pooled trust. As with a standard first party trust, a first party pooled trust must be established by the disabled person, or by his or her parent, grandparent or legal guardian.

In addition, a third party may create and fund a pooled trust using his or her own assets. Regardless of the source of funds (i.e., first or third party), a pooled trust can be created for a beneficiary who is 65 or older, as opposed to a traditional SNT.

### What provisions must be contained in the SNT?

SNTs must contain specific language to ensure that the beneficiary will not be deemed to own the assets within the trust, which would disqualify him or her from receiving government benefits. With regard to first party SNTs, the trust agreement must provide that, upon the death of the beneficiary, the state Medicaid agency will be reimbursed, up to the full amount of the trust, for any medical assistance provided to the beneficiary.

Notwithstanding this requirement, remainder beneficiaries can be designated to receive any assets that might remain in the trust following any such reimbursement to the state Medicaid agency.



By **MICHAEL S. CANFIELD**

Daily Record  
Columnist

*Continued ...*

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

---

## *Continued ...*

With respect to third party SNTs, there is no requirement that the trust agreement contain a similar payback provision. Accordingly, upon the death of the disabled beneficiary, the entire trust estate will pass to the remainder beneficiaries listed in the trust agreement. For most pooled trusts, the nonprofit organization that administers the trust must be named as the remainder beneficiary.

### **For what purposes may distributions be made?**

The SNT can be used to provide for any of the beneficiary's expenses that are not covered by government benefits. Thus, distributions cannot be made for the beneficiary's food or shelter, but the trustee can distribute principal to the beneficiary for a variety of other items, such as vacations, entertainment (e.g., music, com-

puters) and transportation. Put differently, the SNT can supplement, but not supplant, the governmental benefits.

### **Who must be notified?**

The local Dept. of Social Services is responsible for supervising SNTs and must be notified whenever a first party SNT will be created.

Moreover, since the language set forth in the trust agreement must adhere precisely to the statutory requirements to immunize the beneficiary from losing his or her government benefits, it is good practice to ensure that DSS approves of the trust terms prior to creating and funding the trust.

*Michael S. Canfield, an associate attorney at Pettig Torres PC, has been practicing trust and estate law for over four years. He can be contacted at (585) 586-1430 or mcanfield@pettig.com.*