

This document is not legal advice. Please discuss your individual situation with an attorney.

Contact The Arc of King County at 206.829.7053 or ask@arcofkingcounty.org with questions.

When you, or your loved one with a disability, receives public benefits, financial planning is crucial! Currently in Washington state, there are three major financial planning options for people with Intellectual and Developmental Disabilities (I/DD) that can help to protect public benefits like Social Security and Medicaid. The following document will first explain the purpose of establishing a will and second outline Special Needs Trusts (including the Developmental Disabilities Endowment Trust Fund) and ABLE accounts that can be established for your loved one with I/DD. It is important to remember that you can use one or all of these tools for you or your loved one's future.

Wills and Trusts Overview

A Will is the legal document that controls the distribution of your property at death and serves several important purposes. In Washington, if a parent dies without a Will and is survived only by their children, the parent's estate will be divided equally among those children. For individuals with disabilities, the direct inheritance of money may disqualify them from Supplemental Security Income (SSI), or needed Medicaid services, like housing, job coaches, and other benefits. While this problem can often be fixed after a parent dies, it is a cumbersome process and people may be disqualified from benefits until the problem is remedied. Parents of children or adults with disabilities should therefore have a Will which directs all monies into a Special Needs Trust (SNT). A SNT can provide funds for items not covered by government benefits such as clothes, vacations, and gifts. Proper language in a SNT is critically important and an attorney familiar with SNTs should be consulted.

When setting up your Will with a SNT, you can select the Trustees to handle funds inherited by minor children and adults with disabilities. When a person with a disability inherits money, it may leave that individual vulnerable to exploitation; a trust with a chosen Trustee helps safeguard this vulnerability. The choice of a Trustee is very important because this is the person who manages the assets of the trust and decides when distributions should be made for the beneficiary with disabilities. Without a will, the parent will have had no say in who this Trustee is. Because the trust may continue for many years, it is good to select a Trustee who understands the Beneficiary's needs and who is roughly the same age as the Beneficiary. A professional Trustee may be chosen if the estate is large or if there are no family members that are able to serve as Trustee. The Developmental Disabilities Endowment Fund is a SNT operated by the State of Washington, and another option to consider, particularly for families who cannot think of someone who is trustworthy and knowledgeable enough to serve as Trustee. The Trustee must be very careful in making disbursements from the trust for the benefit of the beneficiary so as not to jeopardize eligibility for SSI and Medicaid. Increasingly, Social Security reviews the administration of SNTs to determine whether the beneficiary continues to qualify for SSI and Medicaid. If a Will with a SNT is created, it is important to change bank accounts, life insurance policies, and retirement benefit beneficiary designations to specify the trust as the Beneficiary for the portion of funds left to the person with disabilities.

While some SNTs are used for bequests in Wills, other SNTs can be set up immediately. Relatives and friends who may consider naming your child with a disability in their Wills should be advised that such a bequest must be done properly to avoid disqualification of benefits. Any such bequest should be made to a SNT, *not the individual*. If you know that someone is planning such a gift, you can set up a SNT right now, of which you could be the Trustee while you are alive. In addition, people with disabilities can save funds more than Medicaid asset limits by setting up a SNT to protect their wages or settlements. The trust can purchase a condo, a house, a specialized vehicle, or other things that a person wishes to save money to buy.

Overview originally drafted by Thompson & Howle, Attorneys at Law. Later revised by attorney Larry A Jones and most recently by attorney Karen M Thompson.

Frequently Asked Questions & Answers About Wills and SNTs

What is a Special Needs Trust?

A Special Needs Trust (SNT) provides a way for a person with a disability to receive financial support while remaining eligible for federal benefits such as Supplemental Security Income (SSI) and Medicaid. Almost all Developmental Disability Administration (DDA) services are reliant on Medicaid funding. There are set resource limits that the SSI recipient's assets need to stay below to maintain their benefit status. If assets go above the resource limit the recipient will lose those government benefits. For a single adult, the resource limit is \$2,000. For a married couple, it is \$3,000. If the money is properly distributed directly to the SNT, then the Beneficiary will be able to access the assets owned by the trust, without losing their benefits.

Who can contribute to a trust?

Person with a disability:

Self-Settled Trust (aka First Party Trust): a person with a disability (Beneficiary) is contributing his or her own assets into the trust. There is a "Medicaid payback provision".

Family member or friend:

Third Party Trust: Anyone but the Beneficiary may contribute to and establish a trust for a person with a disability. The Beneficiary cannot be the one to administer the trust; it needs to be established by a third party. There is no "Medicaid payback provision".

What is Medicaid Payback Provision?

Any funds left in the self-settled trust after the Beneficiary passes away must be used to pay back the government for Medicaid benefits that the beneficiary had received. This is sometimes referred to as Medicaid Recovery.

What are the options to establish a SNT?

Developmental Disability Endowment Trust Fund (DDEFT): Is an option available to clients of the Developmental Disabilities Administration (DDA), see further into this document for more details.

Private Special Needs Trusts: An individual may be the Beneficiary of more than one type of SNT. The self-settled aka first party SNT must be established and funded before the Beneficiary is age 65. A third party SNT has no age limit for funding. A private SNT can be established as a first party or third party SNT. The Trustee can be a family member or an organization of your choosing. Unless a family member is the Trustee there are Trustee fees associated with that service. An attorney will

draft the private SNT. It is important to ensure your attorney is knowledgeable on the Medicaid and SSI rules regarding SNTs. The cost of an attorney varies, when speaking with attorneys ask about their flat fees to set up a SNT.

How do I include a SNT into my Will?

There are two ways to direct your inheritance to a SNT in your Will.

- 1) Provision to establish Third Party Special Needs Trust: You may leave direction in your Will to establish a third party SNT starting immediately upon your death. This can be edited or revoked prior to death and nobody else can contribute.

- 2) A stand-alone Third Party Special Needs Trust: when a Will directs inheritance to a third party SNT that is already established. If you believe that other family members or loved ones are planning to leave money inform them about the SNT.

Is it easier to leave my inheritance to someone else who understands my wishes and uses the money to meet the beneficiary's needs?

It may seem easier but ultimately it is a safer option to establish a SNT. For example, if the person you leave the money to is in an accident and is liable to pay for damages, is sued, files bankruptcy, or goes through a divorce the inheritance intended for the family member with a disability is not protected. There are no legal ramifications for siblings abiding by the wishes of the parent to distribute the funds for the person with a disability.

What if I am not a DDA client but want to participate in a pooled trust?

Contact The Arc of King County for updated SNT resources.

How should I ensure the trust funds are being used in the Beneficiary's best interest?

- Choose the Trustee wisely, they make decisions regarding the trust.
- Include a Trust Protector, or someone to oversee the interest of the Beneficiary, within the drafting of the trust. The Trust Protector can be a friend or family member that provides checks and balances of the trust. The Trustee needs approval from the Trust Protector to distribute funds.
- Include a Letter of Intent within the trust, a detailed description of the individual's needs and what the trust should be used for to assist the trustee.
- When a person agrees to become a Trustee, that person assumes a fiduciary duty, which means they are required to act in the best interest of the trust Beneficiary, not in the Trustee's own self-interest. A Trustee can be sued for violating their fiduciary duty. To report suspected financial exploitation, call 1-866-END-HARM

Special Needs Trust Resources

The Arc of King County - www.arcofkingcounty.org , 206.829.7053, ask@arcofkingcounty.org .
Special Needs Trust Resource Guide: https://arcofkingcounty.org/resource-guide/legal/special-need-trusts-wills.html
Disability Rights of Washington - https://www.disabilityrightswa.org/ , 206-324-1521, info@dr-wa.org
NOLO Law for All How to leave property to a special needs trust: http://www.nolo.com/legal-encyclopedia/how-leave-property-special-needs-trust.html Choosing a trustee for a special needs trust: http://www.nolo.com/legal-encyclopedia/choosing-trustee-special-needs-trust.html

When should you consider a pooled trust?:

<https://www.specialneedsalliance.org/blog/when-should-you-consider-a-pooled-trust/#:~:text=There%20are%20usually%20enrollment%20and,a%20family%27s%20special%20needs%20planning.>

Book: Special Needs Trusts: Protect Your Child's Financial Future (10th Edition)

Authors: Attorneys Kevin Urbatsch & Jessica Farinas Jones

This book is located in King County Seattle Public Library System

Book: Special Needs Trust Administration Manual: A Guide for Trustees (2005 edition)

Authors: Barbara D Jackins, Richard S. Blank, Ken W. Shulman, Peter M. Macy, & Harriet H. Onello

The Developmental Disabilities Endowment Trust Fund (DDEFT)

Establishing a private SNT is not the only financial planning option families have for their loved one's future. The Developmental Disabilities Endowment Trust Fund (DDEFT), formerly called the Developmental Disabilities Life Opportunities Trust (DDLOT) is a pooled trust that enables families or individuals to open first or third party SNTs with a minimal cost.

The DDEFT can be used to pay for things like education, transportation, vacations, personal care support, clothing, and more. The Trust cannot pay for expenses such as housing/shelter costs (like rent, heat, water, etc.) or food. These costs should be paid through Social Security such as SSI.

To be eligible for the DDEFT first or third party SNT the individual with a disability must:

- (1) be under the age of 65 at the time of enrollment
- (2) reside in Washington State
- (3) meet the state definition of developmental disability as determined by a representative of the Washington State Developmental Disabilities Administration (DDA). In this definition, the developmental disability must have occurred before the age of 18.
- (4) Additionally, for first-party SNTs, the trust must be irrevocable and funded with the beneficiary's own assets.

Depending on the type of trust set up, the savings in a DDEFT may be subject to Medicaid payback. There is no payback required in a Third-Party trust; however, Medicaid/Medical Assistance Recovery will occur in a self-settled First Party trust.

Contribution to the trust can occur until the individual turns 65 years old. An attorney is not required to set up this trust. The state offers some incentives in the form of state matching funds on fees. The DDEFT has selected The Arc of Washington State to act as the Trust Manager. For up-to-date information regarding the DDEFT, refer to this website: ddef.wa.gov/ or call 1-888-754-8798 EXT 1.

If you are unsure whether the DDEFT or a private trust is best for you or your loved one, consult with both DDEFT and an attorney familiar with the DDEFT and private SNTs to discuss your circumstances.

The Washington State ABLE Savings Plan (ABLE Accounts)

The Washington State ABLE Savings Plan (also known as ABLE Accounts) is form of 529 Account Tax Favored Qualified ABLE program in IRS code. In other words, it is a savings plan for people with

disabilities who receive Supplemental Security Income (SSI) benefits or Social Security Disability Insurance (SSDI). An ABLÉ Account can be used by people with disabilities to save money for qualified expenses without having their savings impact their eligibility for Social Security and Medicaid. Qualified expenses include: basic living expenses, housing, transportation, education, assistive technology, employment training, personal support services, legal fees, health and wellness.

There are different reasons why a family or individual would open an ABLÉ savings account in addition to, or instead of, a Special Needs Trust. One of the major advantages offered through an ABLÉ account is the ability to use funds for housing related expenses, which you cannot do with a Special Needs Trust.

To be eligible for an ABLÉ Account, the individual with a disability must: receive SSI or SSDI OR have their licensed physician sign a document ([sample disability certificate](#)) including the diagnosis and stating that they have “marked and severe” functional limitations which began before age 26. have documentation that the disability or condition occurred / existed before the age of 26

Savings will be available on a prepaid debit card that can be used anywhere a MasterCard can be used (cannot be used at an ATM). There are three different investment options: conservative, moderate and aggressive. It is important to note that savings in an ABLÉ Account are subject to Medicaid payback, after the person with disability passes away. For up-to-date information on investments and costs, see the Washington State ABLÉ Savings Plan website: www.washingtonstateable.com or call 1-844-600-2253

If you have general questions about ABLÉ Accounts, please contact the Arc of King County. For questions specific to you and your loved one’s finances, contact a financial planner or a private attorney.