



# SPECIAL NEEDS TRUSTS

*For people with intellectual & developmental disabilities*

**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](mailto:ask@arcofkingcounty.org) with questions.**

## **Special Needs Trust & Wills Overview**

A will is the document that controls the distribution of your property at death and serves several important purposes. Your will can contain a special needs trust (SNT), which allows a person with disabilities to inherit money or property without becoming disqualified for public benefits like Medicaid and Supplemental Security Income (SSI). In Washington, if a parent dies without a will and is survived only by his or her 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 SSI, or needed Medicaid services, like housing, job coaches, and from other benefits. While this problem can often be fixed after a parent dies, it is a cumbersome process and persons 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 funds for the person with disabilities into a 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 should be consulted.

When setting up your will with 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. The trustee 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 SNT operated by the State of Washington Developmental Disabilities Endowment Fund is 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. 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 in excess of 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**

### **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. Many 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. If the money is properly distributed directly to the SNT, then the beneficiary will be able to keep the assets without losing their benefits.

### **Whose money goes into the 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. The trust must be established by someone other than the person with a disability. There is a "Medicaid payback provision".

#### **Family member or friend:**

Third Party Trust: a family member or friend 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?**

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.

### **What are the options to establish a SNT?**

Developmental Disability Life Opportunities Trust (DDLOT): is a pooled trust that enables families or individuals to open first or third party SNT with a minimal cost. To be eligible for the DDLOT first or third party SNT the individual with a disability needs to be under the age of 65 at the time of enrollment, reside in Washington State, and meet the state definition of developmental disability as determine by the Washington State Developmental Disabilities Administration (DDA). 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 may have incentives to reimburse the trust for upfront costs. The trustee appointed by the DDLOT is The Arc of Washington State. Contact the DDLOT for up to date incentives and costs. See [DDLOT](#) on page 4 for more details.

Private Special Needs Trusts: An individual may be the beneficiary of more than one type of SNT. The self-settled SNT must be established and funded before the beneficiary is age 65. The third party SNT has no age limit for funding. The 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, ensure your attorney 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 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: a provision in the will that permits the fiduciary to establish a third party SNT and fund it through the beneficiary's inheritance rather than having the assets go directly to the beneficiary. The SNT is not established until the person passes away and can be edited or revoked prior to death. No one else can contribute to the SNT, only the person who sets this up.
- 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 don't know if I should go through DDLOT or a private attorney?**

If you are unsure which trust works best for you then consult with both DDLOT and an attorney familiar with both DDLOT and private SNT s to discuss your particular circumstances.

### **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 within the drafting of the trust, the trust protector can be a friend or family member that provides a checks and balance to 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 requires that the trustee 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**

Contact 206.829.7053 or [ask@arcofkingcounty.org](mailto:ask@arcofkingcounty.org).

View our Community Calendar to see upcoming trainings and workshops.

<http://www.arcofkingcounty.org/index.php/what-we-offer/community-calendar>

### **The Arc of Washington**

What's Next: [http://arcwa.org/library/whats\\_next](http://arcwa.org/library/whats_next)

Email: [trust@arcwa.org](mailto:trust@arcwa.org)

### **Developmental Disabilities Life Opportunities Trust (DDLOT)**

Website: [www.ddlot.org](http://www.ddlot.org)

Phone: 1-888-754-8798

Special Needs Trust Video Part 1: <https://www.youtube.com/watch?v=cjaCCsCer40>

Special Needs Trust Video Part 2: <https://www.youtube.com/watch?v=0MscmEtuc0Y>

### **Disability Rights of Washington**

Frequently Asked Questions on Special Needs Trusts:

<http://www.disabilityrightswa.org/special-needs-trusts-0>

Phone: 206-324-1521

Email: [info@dr-wa.org](mailto: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:

<http://www.nolo.com/legal-encyclopedia/choosing-trustee-special-needs-trust.html>

Finding and choosing a pooled trust:

<http://www.nolo.com/legal-encyclopedia/finding-choosing-pooled-special-needs-trust.html>

### **Book: Special Needs Trusts: Protect Your Child's Financial Future (5<sup>th</sup> Edition)**

**Authors: Attorneys Stephen Elias & Kevin Urbatsch**

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**

This book is located in King County Seattle Public Library System

### **Special Needs Alliance**

2014 Special Needs Trustee Handbook:

<http://www.specialneedsalliance.org/common/files/SNA%20Handbook%20for%20Trustees%20-%202014.pdf>