



Ten Reasons to Use a Stand-Alone Supplemental Needs Trust

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Supplemental Needs Trusts, also known as Special Needs Trusts (SNTs), can be created in several ways. Specifically, when a family member, the “trustmaker” (also known as the “settlor” or “grantor”), wishes to leave assets to benefit a person with a disability, i.e., the “beneficiary,” through the use of an SNT, the trustmaker has three options: create an independent, stand-alone SNT; include the SNT as a subtrust of the trustmaker’s living trust; or establish the SNT as a testamentary trust in his or her will. A “stand-alone” SNT has substantial advantages over the other two options, suggesting that a stand-alone SNT should be considered whenever possible.

- 1. A stand-alone SNT provides a handy receptacle that can receive gifts from the beneficiary’s relatives and friends without interfering with his or her public benefits.** Because the trust legally “stands alone,” it exists as soon as it is signed and properly funded. The trustee named in the SNT can immediately open a bank or investment account in the name of the SNT, and family or friends can then make gifts to the trustee for the benefit of the beneficiary. This can work nicely for birthday or holiday gifts. On a larger scale, relatives can incorporate this same stand-alone SNT into their own estate planning and direct a portion of their estate to it upon their death.
 - Example: Benjamin is the son of David and Margaret. Benjamin receives Supplemental Security Income (SSI) and Medicaid. Benjamin’s grandfather, Gary, wants to leave each of his grandchildren \$20,000 at his death, but Gary is concerned that \$20,000 delivered directly to Benjamin would disrupt his SSI and Medicaid. Good thing David and Margaret have created a stand-alone SNT for Benjamin. Gary can simply use the SNT that David and

Margaret have already created. Gary can direct \$20,000 to the trustee of Benjamin's stand-alone SNT. Because Gary can use the existing stand-alone SNT, he does not have to incur the expense of creating an SNT in his own estate plan. Gary is also relieved he can fulfill his wish of giving each grandchild a substantial gift. In this way, the stand-alone SNT offers all of Benjamin's friends and relatives a mechanism to show their love and generosity for Benjamin.

2. **A stand-alone SNT permits real-time approval from government agencies resulting in peace of mind.** Once the stand-alone SNT is funded with even a modest amount of money, it is time to transmit the document to the Social Security Administration (SSA) and the Medicaid agency that oversee the beneficiary's benefits. These agencies review the SNT to make sure that it meets all applicable legal requirements. If the SNT does not meet these requirements, the beneficiary will receive a notice indicating that the trust does not comply and that benefits may be terminated. That can be a scary notice to receive. However, in the example above, if David and Margaret have established this trust during their lives rather than at their deaths in their estate planning documents, they can be advocates for Benjamin to be sure that the trust meets all requirements. They might either revise the SNT so it complies or convince the government agency that it already complies. There is a second advantage to getting advance approval. When an SNT goes to SSA or Medicaid soon after it is prepared, it may be fully consistent with current law. However, an SNT that was written 10 or 15 years earlier may or may not be consistent with law at the time of review. There is a reasonable chance that an SNT that has been reviewed and approved earlier will either be "grandfathered" or provided an opportunity for an amendment. Finally, if the trustmakers wait to create the trust in their wills, Benjamin may not then have an advocate to support him in dealing with SSA or Medicaid.
3. **A stand-alone SNT creates comfort and familiarity for a family member trustee.** Sometimes a trustmaker will name a family member as the trustee of a stand-alone SNT. This is not always appropriate. However, when the family has a skilled and willing family member to serve as trustee, using a stand-alone SNT gives everyone an opportunity to discover systems and protocols in advance of a crisis. When the trustmakers eventually die, or another crisis eventually happens, the stand-alone SNT is already chugging along with an experienced person at the helm. It is one less thing to worry about during a difficult time. In the example above, let's say Benjamin's trustee is his sister Sarah, who is a financial planner familiar with special needs planning. She feels comfortable working with an accountant and

special needs attorney, and she agrees to be the trustee. After the SNT is formed, Sarah establishes bank and investment accounts, and she refreshes her knowledge on the rules for distributions and eligibility for SSI and Medicaid. She sets up accounting software to track trust income and principal. Sarah makes distributions for Benjamin throughout the year and she files trust tax returns. When David and Margaret have major health problems or die, Benjamin's trust is already in place—working just fine—and Sarah has resources available to use for Benjamin. She is not worrying about how to handle the trust or who can advise her. She feels confident that she knows what she is doing and she can focus on other matters.

4. **A stand-alone SNT offers the family an opportunity to establish rapport with a corporate trustee.** Not all families have a family member with the talent or time to serve as trustee. Often, a corporate trustee or private professional fiduciary fills the role of trustee. In those instances, establishing a stand-alone SNT in advance of the trustmaker's death or illness allows all parties to form trusting, functioning relationships. The trustee can get to know the beneficiary and his or her needs, and the beneficiary can become comfortable interacting with the trustee. Most importantly, the trustmakers can observe the trustee in action and replace the trustee if dissatisfied with the trustee's performance. Indeed, the trustee's awareness of being accountable not only to the beneficiary but also to the trustmaker may well get the trustee started on the right track from the outset. Some trustmakers will further formalize this accountability function by naming themselves as trust protectors in the SNT documents, with the authority to provide a check on the trustee without having to revoke or amend the SNT.
5. **A stand-alone SNT avoids delays in setting up and funding a SNT at death.** When a family does not opt for a stand-alone SNT, work must be done at the death of the trustmaker. If the SNT is a subtrust of the trustmaker's living trust or a testamentary trust under his or her will, the living trust or probate estate must be administered. As a result, there will be time—many months or perhaps years—before the SNT will be funded and available to the beneficiary. Using the stand-alone option can avoid these delays and can ensure that funds are available and accessible in the weeks and months following the death of the trustmaker.
6. **A stand-alone SNT offers privacy.** Trustmakers often find that everyone seems to want to see the SNT, e.g., state and federal agencies, banks, financial advisors, housing authorities, and accountants. If the SNT is contained within the parents' living trust or wills, then each of these recipients will see the entire estate

document, not just the portion pertaining to the SNT beneficiary. Using the stand-alone option avoids disclosure of the trustmakers' entire estate planning document.

7. **A stand-alone SNT can be included as a beneficiary for retirement accounts, bank accounts, insurance, and other assets that use pay-on-death, transfer-on-death, or other beneficiary designations.** For an SNT formed under a living trust or will, the trust will not exist until a person dies. Some financial institutions refuse to permit naming a SNT under living trust or will on various beneficiary or transfer on death forms because technically the trust does not exist yet. Using an existing stand-alone SNT avoids this problem. Finally, if the stand-alone SNT is to receive funds from a retirement account, it can be drafted as a "see-through" trust for IRS purposes, so that beneficiaries with a disability are allowed to stretch distributions over their lifetimes rather than being forced to remove all the funds from the retirement account within ten years.
8. **A stand-alone SNT will not be eliminated by mistake.** Once established and funded, the stand-alone SNT cannot be inadvertently or unintentionally eliminated when updating an estate plan. In the example above, let's say that Margaret has a will with a SNT for Benjamin that was prepared in 2010. She moves to a new state and contacts an estate planning attorney to update her plan. The attorney draws up a new will but, by oversight, does not include a testamentary SNT for Benjamin. Margaret does not realize that the SNT for Benjamin has not been retained in her revised document. Had Margaret prepared a stand-alone SNT for Benjamin, her subsequent new will would not unravel that important planning.
9. **A stand-alone SNT can be revocable, giving the trustmakers greater flexibility.** Let's say in the example above that David and Margaret want to purchase a condo for Benjamin. If the condo is owned by David and Margaret, Benjamin will receive a reduction in his SSI benefit because his parents are providing "third-party" shelter for him. However, David and Margaret can create a stand-alone SNT and fund it with the condominium. Because Benjamin has what SSA calls "a beneficial interest" in his SNT, SSA treats the condo as if he owns it directly, and, his SSI is not reduced. Further, David and Margaret may be uncertain about whether Benjamin will be successful living independently in the condo. If they use a revocable stand-alone SNT and if the arrangement fails, they have the flexibility to remove the condo from the SNT and try a different arrangement.
10. **A well-drafted stand-alone SNT will generally be a more comprehensive and customized document.** A trustee is governed by the trust declaration. Often when an SNT is included as a subtrust of a larger estate planning document, like a will or

living trust, the SNT shares general provisions with the larger document. That can lead to ambiguities or oversights. For example, the SNT may easily omit incorporation of trustee powers that are applicable to the overall living trust. Or it may fail to include provisions for appointment of successor trustees. If the SNT is written as an independent whole trust, key components are included. Finally, a well-drafted stand-alone SNT is more likely to address additional nuances and details such as information about the beneficiary, trustee replacement, and directions for distribution of the remainder, care management, and trust protectors to provide accountability and help with administration, and even assist with modification or amendments to the trust.

While families and attorneys will discuss all the options available when planning for a special needs beneficiary, the stand-alone SNT outshines other options for all of these reasons. It should be seriously considered as a component of a comprehensive estate plan, and yes, it is probably a little more expensive, but, given its advantages, it is worth it in the long run.

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