



## Terminating a Special Needs Trust

By [Charlene K. Quade, Esq.](#)

Individuals establish [special needs trusts \(SNTs\)](#) to protect assets intended to supplement means-tested government benefits for a sole beneficiary, and to preserve the individual's eligibility for such programs. SNTs exist in the form of first party, first party pooled, third party, and third party pooled trusts. First party and first party pooled trusts hold assets belonging to the beneficiary. Third party SNTs hold the assets of anyone *but* the beneficiary. Pooled trusts are administered by a nonprofit that combines multiple sub-accounts for investment and management efficiency, while standalone trusts are handled by a selected trustee. It's critical to [understand the funding of an SNT](#) when contemplating termination.

Once established, SNTs may terminate either with the death of the primary beneficiary or in the event of specific circumstances. For example, an SNT may terminate during the lifetime of the beneficiary when one or more of the following conditions exist:

- a change in law or eligibility for benefits;
- improvements in ability to engage in sustainable gainful activity so that beneficiary no longer meets disability criteria;
- SNT no longer holds funds sufficient to justify the costs of administration.

Each SNT must contain well drafted terms detailing the complicated process of dissolution.

### SNT Termination Upon Death

When the beneficiary passes away, the trustee must pay final expenses and taxes and satisfy liens against the SNT before the trustee makes distributions to remaining beneficiaries. In the case of **first party SNTs and first party pooled SNTs**, the trustee must reimburse state Medicaid for services rendered throughout the individual's life. In stark contrast, the law does not subject a **third party SNT** to a Medicaid lien upon termination. The order in which the trustee satisfies the various obligations differs by state law governing Medicaid. In situations requiring satisfaction of a Medicaid lien, the trustee should request a listing of expenditures from the Medicaid agency in each state that provided services to the beneficiary and follow the precise process for managing the reimbursement to the Medicaid programs of the state(s) involved.

## Remainder Distributions

In SNTs holding assets other than cash, it may take considerable time to satisfy these liens. However, once complete, there may be considerable funds remaining. In those instances where the SNT exists under court supervision, the trustee must draw up a final account and obtain court approval before making further distributions. Notably, many pooled trusts require that assets left in a sub-account be retained by the umbrella trust to cover administrative costs. In contrast, standalone SNTs name residual beneficiaries—individuals, classes of beneficiaries (surviving siblings, for example) or charities to receive remaining funds. The precise process differs depending on the type of residual beneficiaries designated. In some cases, identifying and locating unnamed beneficiaries may take additional time and resources. In addition, if any of the residual beneficiaries include minors or individuals with disabilities, trust language may arrange for the trustee to continue managing the funds for their benefit in a new trust.

## Terminating SNTs Prior to Death

But what if facts and circumstances support the termination of the SNT prior to the beneficiary's death? Government regulations require that the decision to close the trust must be made by someone *other than the beneficiary* and that termination benefits *no one other than the beneficiary*. Facts and circumstances may support the continuation of the SNT, even if the beneficiary no longer receives, or remains eligible for, public benefits. For example, the beneficiary may require assistance in managing finances, or it may be wise to protect those assets from creditors. If terminating the trust is the best course of action, final expenses, taxes and Medicaid liens must be satisfied prior to distributing the remaining assets to the beneficiary.

SNTs provide a significant benefit to the beneficiary and support an excellent public policy of providing for individuals with disabilities, but the termination of the SNT can be complicated. To avoid violation of law and trustee liability, consultation with a special needs attorney remains the best way to ensure the process goes smoothly.

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