

Introduction to Special Needs Trusts and ABLE Accounts



Information to Cover

- General discussion of benefits and the need for additional assets
- General SNT Planning
- 1st Party or Self-Settled SNTs (Individual Trusts and Pooled Trusts)
- 3rd Party SNTs (Under Agreement or Under Will)
- General Distribution Consideration for SNTs
- ABLE Account

Benefits 101 & The Need For Assets

- Supplemental Security Income (SSI) allows \$2,000 of total assets, allows an individual to automatically qualify for Medicaid but only provides \$928 in monthly income in NYS
- Medicaid based supports are robust for individuals with Intellectual/Developmental Disabilities but inadequate for Brain Injury, Mental Health, Substance Abuse etc.
- According to the CDC 3.7M New Yorkers have a disability and 511,000 cannot perform self-care unassisted

<https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/new-york.html>

SNT Planning

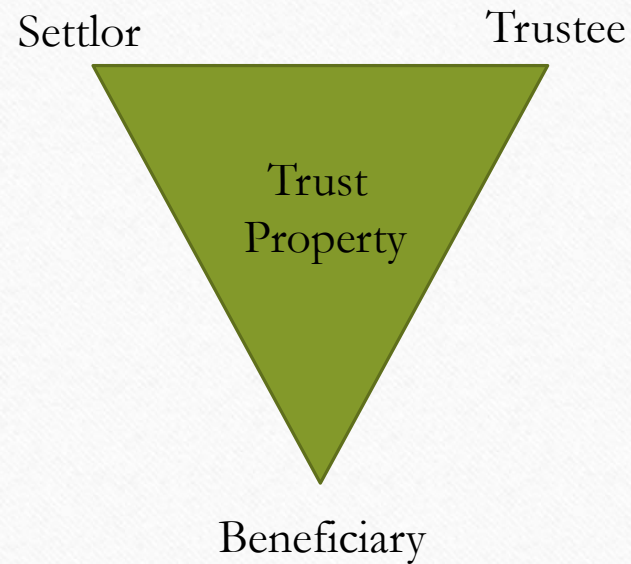
- Important to preserve funds used to supplement the lives of individual's with disabilities.
- Authorized by statute and standard NY language provided in EPTL 7-1.12
- Trustee manages trust assets for the sole benefit of the beneficiary with disabilities.
- Funds do not count against the beneficiary for purposes of eligibility for government benefits.

1st v. 3rd Party SNTs

- 1st Party SNT is a Trust funded with the disabled beneficiary's own money and can be divided categorically into Individual Trusts and Pooled Trusts, which are compared in more detail later in the presentation.
- 3rd Party SNT is a Trust funded with assets from an individual other than the beneficiary.

Explaining to Clients

- Trust planning is very often a complicated and new concept for clients.
- Trust Triangle

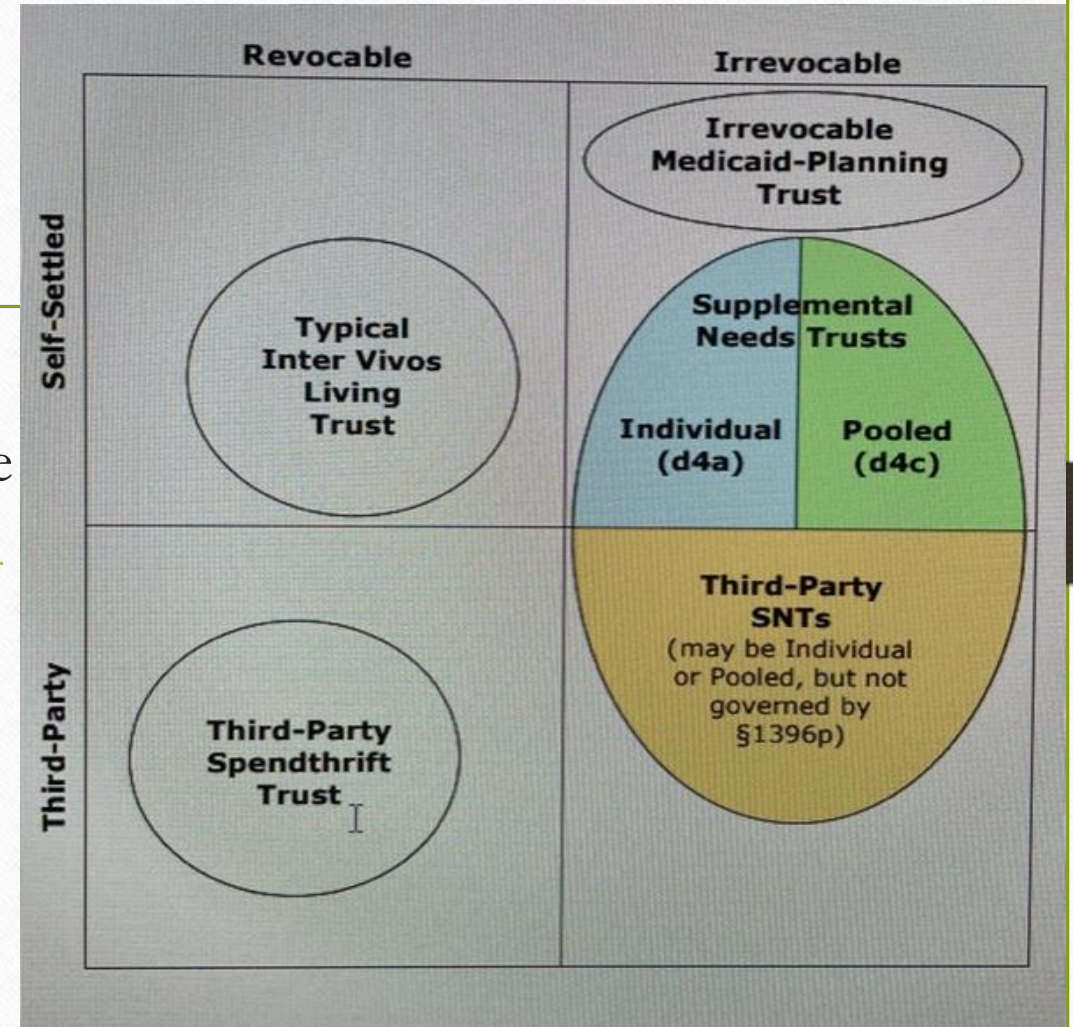


Explaining to Clients

- Explaining the policy reasons behind why these planning techniques are allowed when the government created programs with asset and income eligibility requirements can be helpful for the client.
- 1st Party Trusts - Government does not want to incentivize indiscriminate spending [insert joke about government's ability to budget and/or responsibly spend money here]
- 3rd Party Trusts – Government does not want to incentivize disinheritance or financially disowning family members with disabilities.

Explaining to Clients

- SNT Venn Diagram
Pulled from V. Bogart, Esq. SNT Outline
<http://www.wnylc.com/health/entry/5/>



1st Party SNT: Individual v. Pooled Trust

Individual	Pooled
Funded with Disabled Beneficiary's assets/income	Funded with Disabled Beneficiary's assets/income
Created by individual/parent/grandparent, legal guardian, or court	Funded by individual with access to Disabled Beneficiary's assets (17a; POA with Gifting)
Beneficiary must be < 65 years old	Beneficiary can be any age
Irrevocable and for sole benefit beneficiary	Irrevocable and individual account set up for beneficiary
Requires Payback to Government on Termination	Remaining funds pass to trust on death of beneficiary
Funeral may be prepaid but not paid for after death	

3rd Party SNTs

- Can be created Under Agreement (UA) or Under Will (UW)
- No payback provision on trust termination
- Usually advise clients to create UW
 - Flexible for clients as laws change
 - Less time for government review

Trustee Selection

- Trustee work is difficult to begin with, adding specialized SNT issues adds complexity.
- Individuals; Professionals, Banks, Trust Companies, Non-Profits.
- Local Non-Profits for Pooled Trusts (See materials for additional information on Trustees and costs)
 - Center for Disability Rights
 - Future Care Community Pooled Trust
- SNT specific difficulty for Trustees: Understanding Impact of Distributions (see next slide)

Understanding Distributions from SNTs

- While assets and income **INSIDE** the trust do not count against eligibility, distributions to or for the benefit of the beneficiary may have impacts on eligibility.
- Cash paid directly to the beneficiary is unearned income, reducing SSI benefits.
- Distributions for food or shelter (including rent, mortgage, taxes, gas, electricity, water, sewer, garbage removal) are considered “In-kind Support and Maintenance” reducing SSI by the lower of the actual value or a maximum of one-third of the monthly Federal benefit amount.
- Allowable expenses include: cable, telephone, internet, travel, local transportation, entertainment, educations, clothing (since 2005).

ABLE Accounts

(Achieving a Better Life Experience)

- Accounts held and controlled by individual with disabilities while protected against eligibility for benefits.
- Must be disabled prior to age 26.
- Funds held within ABLE will not impact Medicaid, SSI, Section 8, SNAP or other government benefits but may NOT be used for Medicaid spenddown.
- Distributions must be made for Qualified Disability Expenses (QDE)

ABLE General Characteristics

- Assets held will grow tax-deferred and qualified distributions are income tax free
- \$16k total annual contributions by all participating individuals, including family and friends.
 - The first \$100k in ABLE Accounts is exempt from the SSI individual resource limit.
 - Total Asset limitation \$520,000 (2022)
- Contributions to an ABLE Account are NOT tax deductible in NY (Can accept 529 Rollovers until 2025)
- NY ABLE has a Medicaid Lien/Payback in the event the beneficiary dies
- Has a debit card option, checking option (for one account owner) and 4 investment options

Qualified Disability Expenses (QDE)

- A qualified disability expense (QDE) is any expense related to the account owner's blindness or disability that assists them in increasing and/or maintaining their health, independence and/or quality of life.
- Education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other disability-related expenses that the ABLE account owner might incur as a result of having a disability.
- Can use ABLE for Food & Shelter
- Review <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-22144.pdf>

Special Needs Trusts

- Higher cost to establish
- **No** contribution limits
- Can receive assets during lifetime and at death
- Can hold different asset classes/financial products
- With 3rd Party Trusts there is a remainder beneficiary
- Self-settled trusts may be used for Medicaid Spend-Down
- Individual **CANNOT** access their own money

ABLE Account

- \$16,000 contribution limit (more if working)
- Growth is tax deferred
- Subject to a Medicaid Lien
- Low annual expenses
- Individual can access own money
- Does not create ISM or 1/3 reduction in SSI benefits if beneficiary eligible for SSI

Helpful Resources

- ABLE Accounts - <https://www.mynyable.org/>
- ABLE National Resource center – <https://www.ablenrc.org/>
- IRS Guidance on QDE - <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-22144.pdf>
- Outline on SNTs, which provided much of the good information in this presentation: <http://www.wnylc.com/health/entry/5/>
- General information: <http://www.wnylc.com/health/entry/2/>
- NYS Pooled Trust Options: <http://www.wnylc.com/health/entry/4/>