

Special Needs Trust

Value Beyond Minors & Diminished Capacity Scenarios

WHAT IS A SPECIAL NEEDS TRUST (SNT)

A legal entity designed to protect the financial interest of those materially injured. A trustee and other advisors can be used to guide the injured client through their financial needs. Although SNT's are often thought of for minors and diminished capacity scenarios, they also provide meaningful value to capable adults with injury settlements as well. Characteristics of the legal entity can be tailored to meet the specific needs of the injured party. Additionally, SNT's can be paired with domestic asset protection provisions to further safeguard the funds.

VALUE BEYOND MINORS & DIMINISHED CAPACITY SCENARIOS

- **Asset Protection Provisions:** Adding these qualities to a SNT can provide strong protection from 3rd party claims.
- **Government Benefits Eligibility:** Medicaid, SSI, and other means-tested benefits remain possible as SNT assets are excluded from eligibility considerations; while personal assets held outside of a SNT can prevent eligibility.
- **Peace of Mind:** Protecting a settlement with a legal entity can enhance financial security.
- **Tailored to Your Needs:** An SNT can and should be customized to an individual's specific situation and needs.

This is intended to inform you and enable you to have a further conversation with your hired financial and legal advisors. Every injury and situation is unique, these recommendations should in no way replace proper consultation.

IMPORTANT CONSIDERATIONS

TRUST FLEXIBILITY

Trusts, including Asset Protection Trusts, can be established without SNT constraints, but with triggerable events that can kick in SNT attributes should the client become further medically challenged over time.

TRUSTEE REQUIREMENTS

A trustee will be required. The proper selection of a professional, family member, or friend to serve as trustee or in another role can allow acceptable access to funds for most situations, including regular payout schedules under the right circumstances.

MEDICAID PAYBACK

Medicaid can provide large savings over a lifetime; although funds are paid out of the Trust estate at death to reimburse the state, the delayed payment and reduced rates for medical services create large financial benefits. If funds are exhausted pre-death, no government payback is required by the Trust. As a result, a SNT can effectively create a zero interest, unsecured loan from the government, which pays for services at discounted rates.

OPTIONS TO DISSOLVE THE TRUST

SNT's can be written to allow the client to request court termination of the Trust if certain conditions are met; meaning that the decision to establish an SNT can be reversed. In our experience, most settlement beneficiaries keep their trust intact for life due to the extensive benefits it offers.

SCENARIOS AND IMPACT OF "EXAMPLE SPECIAL NEEDS TRUST IN ASSET PROTECTION STATE"

Long-term Unexpected Illness & Inability to Continue Working

- A SNT's income and assets are excluded from consideration by Medicaid and SSI, preserving eligibility if ever needed by the client. Often this saves large sums of money from covered medical expenditures.
- Many clients plan not to use these assistance programs, but future medical conditions can materialize unexpectedly and often more severely due to the compromised health condition of disabled individuals.

Child Involved in an Auto Accident Resulting in a Third-party Lawsuit

- Minors can expose their parents, including a parent who has an SNT, to civil liability through their actions.
- A SNT with asset protection language can put a barrier in between the claimant and assets in the SNT, as the SNT protects it from many forms of legal claims.

Protection from Creditors and Other Liabilities

- Large sums of money can attract claims for damages by third parties.
- A SNT with asset protection language can put a barrier in between these claims and the trust assets if properly constructed and administered.
- A SNT with asset protection language can offer protection in bankruptcy proceedings and from a variety of voluntary and involuntary liabilities such as creditors, former spouses, and other lawsuits.

Trust and Estate Planning for those you Care About

- A SNT combined with proper estate documents can transition into Trusts for your spouse, children, or others.
- Transferring funds upon death via these vehicles can provide many benefits.

OTHER COMMON QUESTIONS

How is this different than creating a Limited Liability Corporation (LLC)?

LLC provides protection for a more limited set of scenarios; it provides no benefit to many other scenarios.

What if my settlement was not recent, can I still pursue this legal entity?

Likely yes, your drafting attorney can help you investigate this option.

Why don't I just wait until I see an immediate need and then construct a trust?

- Asset Protection Trusts have waiting periods before becoming effective, ranging from 1 - 2 years usually.
- SNTs need to be established while a person is disabled and before reaching 65 years of age
- The laws on SNTs are subject to change; an existing SNT could be "grandfathered" in under current law.

How much does it cost annually to have a SNT?

Coldstream's clients have access to trust services for as little as a fixed \$2,000 a year or up to 1% AUM based on service level of professional trustees. Using trusted family or friends as the trustee often is without fees to the trust. Outside of Coldstream, SNT costs and fees will vary.

One of my concerns is that family and friends are starting to ask for financial help, can a trust help?

Family and friends don't always understand your situation, saying your trustee won't approve uses beyond your beneficiary needs is often an easier way to preserve your assets - keeping the funds available for your injury needs.

PROCESS FOR CREATING A TRUST

- Step 1: Discuss with your PI attorney about your needs and concerns if you are currently finalizing a case.
- Step 2: Work with your PI attorney to research & hire an experienced and knowledgeable Drafting Attorney.
- Step 3: Drafting Attorney helps you select the right solution for your needs and creates your documents.
- Step 4: The courts review and approve your Trust (if needed).
- Setup Cost: Can start as low as \$3,000 depending on your needs, complexities, and jurisdiction.

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Disclaimer: This document was prepared by Coldstream and B&H Law in a joint partnership. The strategies described may not be suitable for you. We believe the information provided is reliable, but we do not guarantee its accuracy, timeliness, or completeness. This is intended to inform clients and enable them to have a further conversation with their hired expert financial and legal advisors. Every injury and situation is unique, these recommendations should in no way replace proper legal consultation. Asset protection is an important part of any detailed wealth plan.

Greg's Story

A Joint Case Study

Greg was injured at age 16 in a car accident and received a small settlement. He is a t-8 complete paraplegic from the mid-chest down. Due to his age his settlement was protected in a Special Needs Trust (SNT) with a professional trustee.

Greg had a stable family and was able to graduate on time from his local high school. He then went on to attend a prestigious university and earn a degree in Finance and Marketing. He has worked for almost 20 years in a leading technology company in the USA. He is a highly competent financial investor.

At age 30 Greg was considering terminating his Special Needs Trust; looking to reduce cost. At this time, his trust had grown substantially from successful investing.

PROJECTS THAT WE HAVE CONDUCTED ON BEHALF OF GREG AND HIS FAMILY:

- We assisted Greg in engaging with drafting attorneys to gauge the risks/rewards associated with terminating his Special Needs Trust. His primary focus was on reducing the trustee fee which was 0.75%/year (Now over \$20k/yr)
- After this investigation, he decided to adjust his trust rather than dissolve it; moving it to Nevada to enable asset protection attributes.
- He also transitioned to a family member as a trustee to reduce annual costs. Preserving the Special Needs Trust retained future options to use government benefits if his health ever suffered and provided significant peace of mind in terms of legal protection from the unknown in life.
- By moving the Trust to NV and using a family member as the Trustee he reduced his annual cost to 2.2k. [Not right for every situation, but it was right for him].
- Sadly, two years later he suffered a re-break of his spine; he had four consecutive failed surgeries over the next three years to try to repair it. He had to leave his job for a total of two years while dealing with this medical emergency. Because of his SNT he was eligible for government benefits and support during this challenging time.
- Years later Greg also went through a divorce, the trust was not included in the funds divided as it was excluded from his personal assets and designated to serve the purpose of supporting his known and unknown future disability related financial needs.



Life has certainly been a journey for Greg, but his SNT has been able to protect and evolve with him over the years, providing him peace of mind during his most challenging times.