

The Coalition of Texans with Disabilities



## Family Financial Planning ABLE and Trusts

7/05/2018

## GOALS

- What is family financial planning?
- ABLE
- Trusts
- Interaction between
- Resources



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## DISCLAIMER

- **Not an estate or financial planner**
- All information is a compilation and distillation
- Each estate lawyer and trustee may only offer certain services and limit the general options of a particular trust/program to better suit their business model
- Federal and State rules and guidance change on a regular basis



**Be aware, informed and involved when making these crucial life-planning decisions**

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## WHAT IS FAMILY FINANCIAL PLANNING?

- Why do we need to go through these financial gymnastics?
- Worries and Concerns?
  - Future care
  - Fees/maintenance
  - Accumulation of \$'s
  - Will all that you do be enough for your loved one, your children, and you?

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## THE ABLE ACT A NATIONAL MOVEMENT

- 1st time in history
- A person with a disability can save money in their **OWN NAME**
- Flexible tax-advantaged savings account
- Can be 100% self-directed



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## THE ABLE ACT A NATIONAL MOVEMENT

Why is ABLE Important?

**PWD's Can SAVE Money**

beyond the individual Medicaid resource limit of \$2,000!



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## WHO QUALIFIES?

- Any individual who has a significant disability that was:
  - diagnosed before the age of **26**
  - regardless of their current age
- No Residency Requirement!



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## WHO QUALIFIES?

CONTINUED...

- If you receive SSI and/or SSDI
  - Automatically eligible
  - Others will need a disability determination
  - Each plan has a certification process included in the sign up



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## THE ABLE ACT A NATIONAL MOVEMENT

- **Anyone can deposit a maximum of \$15,000/yr**
- At \$102,000 - SSI payments are suspended (does not apply to SSDI)
- Pay for certain disability expenses (wide variety)
- Only **ONE** account per person



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## THE ABLE ACT A NATIONAL MOVEMENT

- ...AND **Beneficiaries can save more money!**
  - Their earned income...
- Plus Savers info



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## WHAT EXPENSES QUALIFY?

Qualified disability expenses include, but are not limited to:

- Education
- Housing
- Transportation
- Employment training & support
- Assistive technology & personal support services



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## WHAT EXPENSES QUALIFY?

CONTINUED...

Qualified disability expenses include, but are not limited to:

- Health, prevention, & wellness
- Legal fees
- Funeral & burial services
- Expenses for oversight & monitoring
- Financial management & administrative services
- Other expenses



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## THE ABLE ACT A NATIONAL MOVEMENT

**ABLENRC.ORG**



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## TEXAS COMPTROLLER



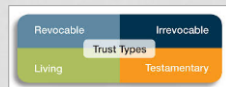
[www.texasable.org](http://www.texasable.org)

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## TRUST(S)

To protect our children we sometimes need complex financial instruments called TRUSTS.

- Protect assets from creditors, misuse of funds, the government, and for other uses
- 37 types of trusts
- Types: living, irrevocable, blind, and special needs (SNT)



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## TRUST(S)

Parents, why do we need to learn one more thing?

**Because we have to...** \*\* It's simple: If we (or anyone else) gives, wills, or donates money to our children in almost any way, they may become ineligible for services and supports.



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## TRUST(S) TERMINOLOGY

**Trustee:** The person designated in the Trust Agreement to take possession of the trust assets and manage those assets. The Trustee must also preserve and manage the assets according to the provisions in the Trust agreement.

**Trust Agreement:** The Trust Agreement is the document that creates the Trust and sets out the provisions related to the Trust. For instance, it will generally designate the trustee, the beneficiaries, and the purposes of the Trust. It will also typically include provisions designed to guide the trustee in fulfilling his duties.



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## TRUST(S) TERMINOLOGY

**Grantor:** The person(s) who creates the Trust Agreement. In order for the Grantor to create a valid trust, he must designate a trustee and a beneficiary. He must also transfer assets into the Trust.

**Beneficiary:** The Trust Beneficiary is the person(s) who receives the benefit of the assets in the Trust.



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## SPECIAL NEEDS TRUST

### REVIEW:

**Special Needs trusts are not self-directed accounts!**




The trustee has a fiduciary responsibility to protect the funds in the trust and ensure that the funds are used properly in accordance with applicable regulations and laws. This sometimes creates friction between beneficiaries, but is an essential characteristic of a SNT that cannot be altered.



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## TYPES OF SNT TRUSTS

### Three types:

- A First Party (or Self-Settled) 
- A Third-Party Trust 
- A Pooled Trust 

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## TYPES OF SNT TRUSTS



Each has advantages and disadvantages

- Must be tailored to individual
- **Must** meet family's needs also



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## SPECIAL NEEDS TRUST (SNT)



1<sup>st</sup> Party



3<sup>rd</sup> Party



Pooled

- Most commonly used by parents of children with disabilities
- Sometimes called a **(Supplemental Needs Trust)**
- A specialized legal document designed to benefit an individual who has a disability
- A SNT is most often a "stand alone" document, but a SNT can be created by, or be a part of, a Last Will and Testament

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## SPECIAL NEEDS TRUST

### Definition:

A Special Needs Trust is a discretionary trust that allows a trustee to use trust funds to *supplement, not replace, a beneficiary's government assistance*. The primary goal is to maintain eligibility for needs-based supports (ex. Medicaid) while providing funds to support the beneficiary for a fuller and more satisfying life.



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## SPECIAL NEEDS TRUST

### Characteristics:

- The beneficiary cannot manage the assets
  - The beneficiary cannot have direct control over the assets
  - The use of the funds are strictly for the benefit of the beneficiary
  - Income taxes **may** apply to **income and distributions** on the accounts **from the date that the trust is funded**
- \*\* **taxable income** is not necessarily "countable income" for purposes of Medicaid or other government supports



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## SPECIAL NEEDS TRUST (SUPPLEMENTAL NEEDS TRUST)

To maintain eligibility for governmental assistance and supports, SNT funds **cannot** be used for:

- acute medical care,
- food,
- clothing,
- or shelter



**Can** be used for just about anything the government doesn't pay for...

\* Sometimes you just have to do what's best for the **person!**

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## SPECIAL NEEDS TRUST

**In a nutshell:**

- A **beneficiary** of a properly drafted SNT **does not** have legal claim to the property (including cash) in the trust
- Assets **do not** affect the beneficiary's **eligibility** for assistance and supports
- Funds in the trust can be used to **supplement expenses** such as therapies, certain living expenses, transportation, and other qualified expenses.



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## FIRST PARTY TRUST (SELF-SETTLED)

ME

**Used When:**

- person with a disability has assets
- expects to receive assets



**Examples:**

- Settling a lawsuit
- Receiving an inheritance for a PWD
- After a divorce settlement in which one party must pay either a lump-sum or monthly supports to a spouse with a disability

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## FIRST PARTY TRUST (SELF-SETTLED)

ME

**Characteristics: (includes SNT general characteristics):**

- Must be established by a parent, grandparent, guardian, or a court AND NOW the INDIVIDUAL.
- The trust must be "**irrevocable**," (not cancelled or rescinded)
- The **beneficiary's assets** (only) must be used to fund the trust
- The beneficiary must be **under age 65** at the time the trust is established

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## FIRST PARTY TRUST (SELF-SETTLED)



### Advantages and Disadvantages:

- Allows a beneficiary's **own money** to be sequestered
- (In theory) a beneficiary has more control as the **grantor** and **beneficiary** may be the same person.

\*\* All funds in the trust **are available** for the Medicaid Estate Recovery Program (**MERP**) - *payback provision that reimburses the state for Medicaid expenses that were incurred during a beneficiary's lifetime*

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## THIRD PARTY TRUST

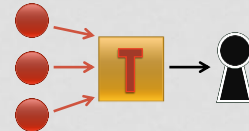


### Used When:

- A third party, (Ex. grandparents, family members, life insurance policy, almost any other source) wants to give or bequeath assets to a individual with a disability

### Examples:

- Family's estate plan
- Inheritance
- Kickstarter, crowdfunding,



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## THIRD PARTY TRUST



### Characteristics: (includes SNT general characteristics):

- \$ or assets never belonged to the beneficiary
- Must be set up by donor (anyone but beneficiary)
- No age limit for the beneficiary
- No limit on the the amount of money
- Assets can pass to another person or another trust
- Variable set up and management costs
- The trust may be "irrevocable," or not ("revocable"). If revocable, may be subject to the (**MERP**) provision.

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## THIRD PARTY TRUST



### Advantages and Disadvantages:

- If correctly structured, not subject **MERP** provision
- A beneficiary **absolutely cannot** place their **earned income** or an **inheritance** that is **paid directly** to them into the account
- Can be expensive to create and maintain

\*\* It is crucial that everyone who may be a donor to the individual with a disability name the third party SNT (not the individual) as the receiver of any donations or gifts.

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## POOLED TRUST



In Texas,

- Pooled trusts were authorized in 1997
- Three authorized –one fully in-state
- Potentially lower costs of creating and maintaining
- Typically managed by nonprofit organizations
- Can “**pool**” all of the funds to invest more efficiently and in order to maintain **low services and maintenance fees**

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## POOLED TRUST



**Characteristics: (includes SNT general characteristics):**

- Beneficiary may be over or under age 65 at the time the trust is established (depending on the specific plan)
- Can be **either** third party trusts or self-settled trusts
- **Not** subject to **MERP** provision as long as the funds are retained in the trust for the benefit of other disabled beneficiaries
- Funds **are** subject to the **MERP** provision **IF** the funds were deposited directly from the beneficiary’s own money

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## POOLED TRUST



**Advantages and Disadvantages:**

- Lower set-up and maintenance costs
- One-stop-shop environment (management, payments, taxes, and investments)
- In some plans - beneficiary can deposit earned income
- Mixed bag - may increase overall investment power, but eliminates the ability for trustees to manage individual account investments

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## COMPARE AND CONTRAST TRUST VS. ABLE

### SNT

- Not self-directed
- Managed by Trustee
- Funds cannot pay for medical care, food, clothing or shelter

### ABLE

- Can be self-directed
- Managed by Individual or Designated Manager
- Broad expense categories

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## COMPARE AND CONTRAST TRUST VS. ABLE

### SNT

- No max limit for funds
- Trust drafted by lawyer
- No MERP lien for 3<sup>rd</sup> party, MERP applies for 1<sup>st</sup> party

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### ABLE

- Deposits of \$14K/yr with \$370K max limit
- Simple to open an account
- MERP applies \*\*TX



## RECOMMENDATIONS TRUST VS. ABLE

### SNT

- Find a lawyer and a trust manager you can **TRUST** (use other parent referrals, etc...)
- Consider all options of funding
- Don't save for tomorrow at the expense of today

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### ABLE

- Be cautious when choosing program
- Plan when to fund
- Weight risks vs. ease-of-use and potential for independence
- Don't save for tomorrow at the expense of today

**AS COMPLEMENTARY TOOLS YOU WILL PROBABLY WANT ONE OF EACH AND MANAGE.**



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