



**WEISINGER**  
LAW FIRM, PLLC

> peace through planning

# THE ARC OF SAN ANTONIO SPECIAL NEEDS TRUSTS NOVEMBER 2020

Presented By:  
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# What Is An Estate Plan?

- A plan that handles your assets and provides for your loved ones upon your death.
- In the case of disability or total incapacity, an estate plan also provides for your well-being while you are living.
- You decide!



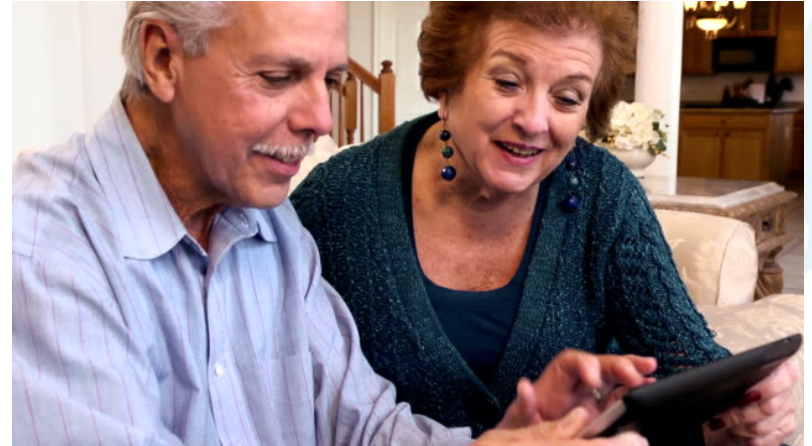
## Why Do You Need To Plan?

- Your Children - Make sure that they are taken care of, the way you, not the state, intended.
- Your Assets - Leave them to whom you choose. Avoid expensive costs for distribution and potential litigation.
- Your Health and Your Life - Choose people while you are well to assist you in emergency situations and in the event of incapacity.



# Important Documents

- 1) Durable Power of Attorney
- 2) Medical Power of Attorney
- 3) HIPAA Release
- 4) Declaration of Guardian
- 5) Appointment of Guardian for Children
- 6) Directive to Physicians
- 7) Last Will and Testament



## Last Will and Testament

- Contains instructions as to how property and assets are to be distributed upon death.
- May also contain provisions about future Guardians for your child, if not addressed in a separate document.
- Executor has no authority until will admitted to probate

## WHY YOU NEED A WILL

- Testate vs. Intestate
  - Testate = passing away with a will
  - Intestate = passing away without a will
- Proper planning allows you to protect loved ones from losing government benefits

## YOUR CHILD WITH SPECIAL NEEDS

- Your life changes when you have children.
- Having a child with special needs brings both added joys and unique challenges.
- How can you ensure that your child with special needs is cared for and protected after you're gone?



## SSI AND MEDICAID

### Supplemental Security Income (SSI):

- Program for “needy” disabled individuals
- If you Qualify for SSI you will generally be eligible for Medicaid as well in many states

### Definition of Disabled for children:

- “The child must have a medically determinable impairment that causes marked severe functional limitations. The impairment must have lasted for a continuous period of at least 12 months or expected to result in death.”

## SSI AND MEDICAID CONT'D

Monthly SSI payments are made to disabled individuals who qualify with limited income and resources.

- Resources (normally \$2,000.00 or less)
- Maximum payment \$783 (in 2020)

## WHAT IS COVERED?

### The basics and necessities

- Food
- Clothing
- Shelter

Benefits can be at or below poverty level

## WHAT IS NOT COVERED?

- Extraordinary medical expenses
- Trips to visit relatives, vacations, entertainment
- Eyeglasses, personal care items, combs, toothbrush, etc.
- Transportation
- Rehabilitation, athletic training
- Essential dietary needs
- Hobby, recreation
- Computer electronics, cable TV, furniture, TV,  
.....MUCH MORE

Why is it so important to preserve public benefits?



## IMAGINE....

You have two children, one with special needs who is receiving government benefits, and one without.

When you pass away, you want to treat each child the same.

## IMAGINE .....

- You have an estate worth \$500,000.00.
- You have no plan in place.
- You want to leave  $\frac{1}{2}$  to each of your children, Jim and Joe. Joe is receiving government benefits.
- Jim pays off debts, takes a vacation, and increases his savings.
- Joe loses all his government benefits because his inheritance exceeds the resource limits, and then loses all his inheritance paying for his care needs.

## LEAVE IT ALL TO JIM?

- What if you leave it all to Jim and have him take care of Joe?
- Sounds simple but what if...
  - Jim gets sued?
  - Jim has creditor issues?
  - Jim gets married and then divorced (rights of spouse)?
  - Jim passes away without a plan in place?
  - Jim becomes disabled?
  - Jim just keeps the money? (It is his legal right!)
  - Jim is terrible with money?
  - Jim just doesn't want to take care of Joe?



## DILEMMA

- Leave assets to special needs child to be used up before government benefits take hold, or
  - Disinherit special needs child, or
  - Leave assets to other family member
- Or.....

# SOLUTIONS

- Create a “special” type of trust.
- A Special Needs or Supplemental Needs trust
  - Different from the “regular” trusts created as part of an estate plan that has unique requirements and rules
- Beneficiary does not have direct access to trust assets and therefore it is not considered “available”- does not affect qualification for public benefits
- Lasts for child’s lifetime and terminates when child dies

## TYPES OF SPECIAL NEEDS TRUSTS (CON'T)

- **Funding During Life**
  - Self-Settled (d4A) trust
  - Pooled Trust (d4C) trust
  - Third Party Trusts
- **Funding At Death**
  - Third Party Trusts

## TYPES OF SPECIAL NEEDS TRUSTS

### SELF-SETTLED SNT (d4A trust)

- Available to disabled individuals under 65
- Set up by the individual/parent/guardian/grandparent or court
  - Earnings
  - Inheritance due to no will or plan in place
  - Proceeds from a lawsuit
- **MUST HAVE PAY-BACK PROVISION**



\$2,000

+



=



Inheritance/Lawsuit:  
\$250,000

# SUPPLEMENTAL NEEDS TRUST (d4A)

Inheritance  
Lawsuit  
Earnings



**TRUSTEE: MANAGER**

- YOU (SOLE-T)
- YOU + \_\_\_ (CO-TT)
- H& W (CO-TT)



**BENEFICIARY**

- INDIVIDUAL RECEIVING GOVT. BENEFITS

**SUPPLEMENT**

≠

**SUPPLANT**

# SUPPLEMENTAL NEEDS TRUST (d4A)

## TRUSTEE: MANAGER

- YOU (SOLE-T)
- YOU + \_\_\_\_ (CO-TT)
- H& W (CO-TT)

## BENEFICIARY

- INDIVIDUAL  
RECEIVING GOVT.  
BENEFITS



  
MERP CLAIM

## TYPES OF SPECIAL NEEDS TRUSTS (CON'T)

### POOLED TRUSTS (d4C trust)

- Assets of disabled individual pooled with others and managed by nonprofit organization
- Available to individuals of all ages and can be created by the individual
- *May* have a payback provision if created by individual's own assets
  - Any remaining funds after payback go to other pooled trust beneficiaries



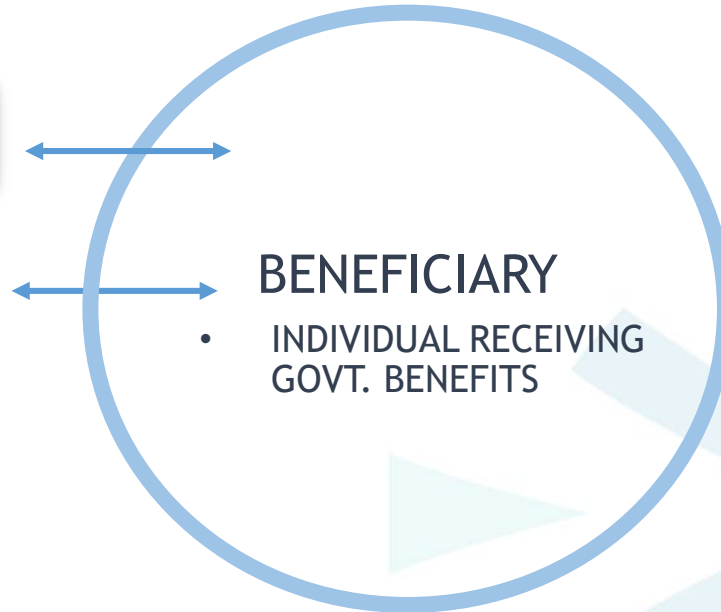
# SUPPLEMENTAL NEEDS TRUST (d4c)

Inheritance  
Lawsuit  
Earnings  
Parent's Money



**TRUSTEE: MANAGER**

- **NONPROFIT ORG.**
  - EX: ARC OF TEXAS



**SUPPLEMENT**

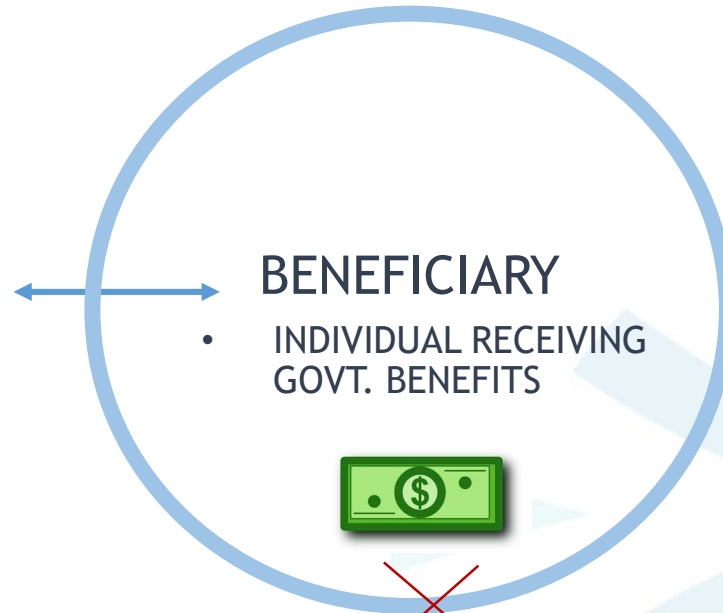
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**SUPLANT**

# SUPPLEMENTAL NEEDS TRUST (d4c)

## TRUSTEE: MANAGER

- NONPROFIT ORG.
  - EX: ARC OF TEXAS



## TYPES OF SPECIAL NEEDS TRUSTS (CON'T)

### THIRD PARTY TRUSTS

- Trusts created by others to assist the special needs individual
- Stand alone- created and possibly funding during lifetime
- Testamentary- created and funded upon death of parent(s)
- NO PAY-BACK PROVISION

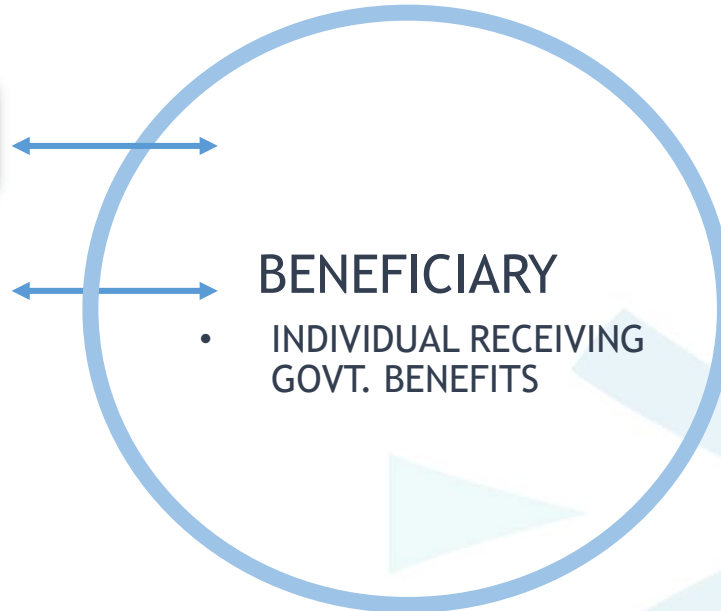
# SUPPLEMENTAL NEEDS TRUST

Parents  
Grandparents  
Estate Assets



## TRUSTEE: MANAGER

- YOU (SOLE-T)
- YOU + \_\_\_ (CO-TT)
- H& W (CO-TT)



## BENEFICIARY

- INDIVIDUAL RECEIVING  
GOVT. BENEFITS

SUPPLEMENT

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SUPLANT

# SUPPLEMENTAL NEEDS TRUST

## TRUSTEE: MANAGER

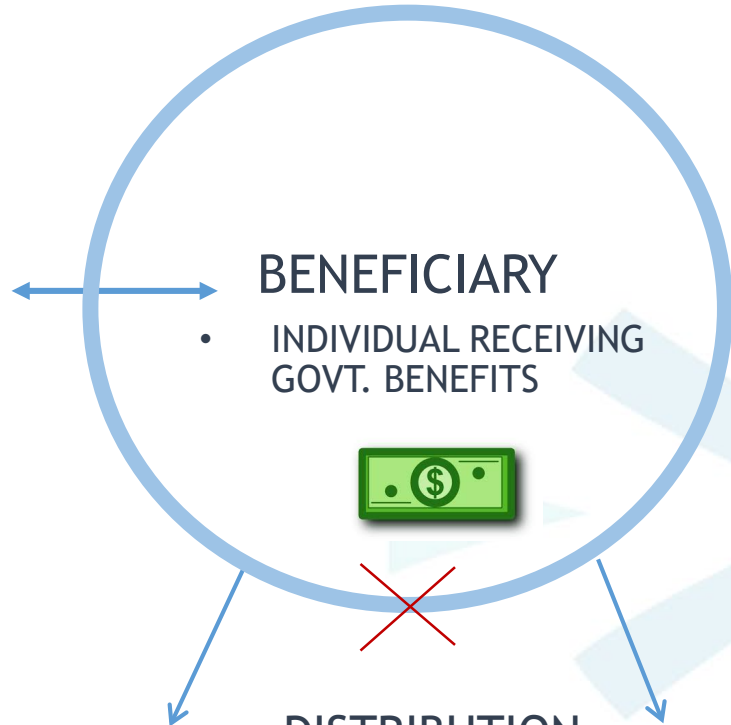
- YOU (SOLE-T)
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- H& W (CO-TT)

## BENEFICIARY

- INDIVIDUAL RECEIVING GOVT. BENEFITS



~~DISTRIBUTION~~



## WHAT ARE THE LIMITATIONS OF A SNT?

- Good Rule of Thumb:
  - If SSI and Medicaid can pay for it, they should!
    - Should not go towards covering the basics like food, clothing, shelter.
    - If certain distributions from trust go toward covering those items, SSI can be reduced

## WHAT CAN THE SNT PAY FOR?

- Cars
- Clothing
- Clubs
- Education and vocational training
- Furniture and home improvements
- Non-food grocery items (cleanings supplies, laundry, paper towels, toilet paper, etc.)
- Advanced medical and dental care not covered by Medicaid
- Vacation and travel
- And so much more!

## PLANNING OPTIONS WITH SNTs

Life Insurance- Name Supplemental Needs Trust as the beneficiary of a life insurance policy.

Possible inheritance from other parties- Anyone can incorporate a stand-alone special needs trust into their own estate plan- great option for other family members or friends who want to benefit special needs child.

Survivor's Military Benefit Plans- You can now name a Supplemental Needs Trust as the beneficiary of benefit plan for dependents (trust will be considered self-settled and will have pay-back provisions).



## IMPORTANT STEPS TO TAKE

### GET HELP!

- Talk to your financial advisor
- Talk to an estate planning attorney who has experience with SNTs
- Talk to your CPA
- Apply for all available programs
- Designate advocate/guardian
- Select future living accommodations
- Prepare a letter of intent
- Execute estate plan with special needs language
  - Allows you to set aside funds for your child and other beneficiaries
  - Properly safeguard assets in case of public benefit qualification



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# Two Fundamental Questions to Ask Yourself



HOW MUCH DO I NEED?



HOW DO I DO IT?

# How Much is Needed?



Determine your vision (parents') vision of future residential, educational, vocational, medical needs, etc.



Calculation of future costs based on Life Expectancy



Assessment of Current and Future Benefits

Next  
Question: For  
How Long?

## 1. Spend down approach

- Use all of account during lifetime

## 2. Interest Approach

- Draw percentage of account on an annual basis (4-5%)
- Residual to beneficiaries

# How Do I Fund a Special Needs Trust?



Check beneficiary designations on  
EVERYTHING:



all IRAs, 401(k) and retirement plans



annuities, pensions



group life insurance and personally owned  
life insurance policies



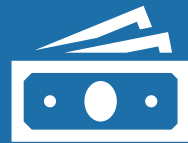
# Three Funding Strategies



1. Gift existing assets



2. Self-Fund



3. Life insurance benefits

# 1. Funding Through Gifting

Identify all Assets that could be used to fund a Special Needs Trust

Review

- all parent assets,
- grandparent assets and other relatives
- assets owned by the person with the disability (savings bonds, UGMA/UTMA accounts, custodial accounts and joint accounts)

Fund Special Needs Trust

# Gifts



## Pros

Wealth already exists

No funding costs



## Cons

Lose control of assets

No money left to meet your own personal planning and retirement needs

What about the other children?

## 2. Funding Through Personal Savings



Mom and dad are 35 and have a son with Autism



Goal is to self fund a SNT through contributions



\$250,000 desired amount by age 60.



25 years to go / assuming  
6% interest growth

\$4329/year  
\$360/month

### 3. Funding with Life Insurance



**TERM INSURANCE**



**PERMANENT INS.**



# Term Insurance



“RENTING” THE  
COVERAGE



DEFINITE PERIOD OF  
TIME



FIXED DEATH BENEFIT



LEVEL PREMIUMS



PURE PROTECTION



JUST PAYING FOR  
COST OF INSURANCE



# Permanent Insurance



HAVING A  
‘MORTGAGE’



INTENDED TO LAST  
FOR LIFE EXPECTANCY



FIXED OR INCREASING  
DEATH BENEFIT



FIXED AND FLEXIBLE  
PREMIUMS



PROTECTION AND  
CASH VALUE BENEFITS



ABILITY TO PAYOFF  
POLICY JUST LIKE A  
HOME

# Life Insurance Strategy

## Pros

Cost effective

May be creditor protected in your state

Creates an estate and large pool of money

Tax free death benefits

## Cons

Pay premiums

Underwriting Process to assess health rate



# Survivorship Policy – type of permanent policy

## Pros

- Policy on two lives
- Pooled health rate
- More cost effective on two lives versus one
- Tax free death benefits

## Cons

- Pays out only once the second individual passes away

What is my  
next step?

Build a Team: Do not wait until  
you “get organized”

Trusted Financial Professional  
(Broker Check/FINRA)

Retain a Special Needs Planning  
Attorney

Consult with CPA for any tax  
advice



**HARVEST**  
FUTURE FINANCIAL

Thank You!

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