

# Special Needs Lawyers, PA

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Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate | Wills & Trusts  
Incapacity Planning | Guardianship | Developmental Disabilities | Veteran's Benefits

## “The A, B, C’s and 1, 2, 3’s of S N T’s” (Special Needs Trusts)

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Special Needs Trusts (SNT’s) come in several varieties. The primary purpose of all SNT’s is to hold assets for a disabled beneficiary while exempting the contents of the SNT for programs like Medicaid, Supplemental Security Income (SSI), food assistance and some other public benefits. There are **d4A**, **d4B** and **d4C** Special Needs Trusts and there are **1<sup>st</sup>** Party SNT’s and **3<sup>rd</sup>** Party SNT’s...so we only left out the “2.”

1. The first category of SNT’s consists of assets of the beneficiary (from lifetime earnings, an inheritance, gift or personal injury award). These are “**1<sup>st</sup>** party SNT’s.” These are commonly called “self-settled” SNT’s and are found in **42 USC 1396p**.
2. The second category of SNT’s are Trusts established by a spouse, for the benefit of his or her spouse, within a will and therefore only upon death. These are called Qualifying SNT’s.
3. The third category of SNT’s consists of assets of others (not the beneficiary or his or her spouse) set aside for a disabled person, either during life or upon death of the person setting up the Trust. These are called “**3<sup>rd</sup>** party” SNT’s.

Special Needs Trusts can help individuals with a disability of any age. SNT’s can help them qualify for programs to assist with **medical** and **long term care** expenses as well as possibly get a **monthly income stream** from Social Security, even when the individual may have never worked.

SNT’s are very powerful planning tools and are complex to establish and administer. There are many ways to mess up these trusts including: 1) having an improperly drafted document (faulty language used by the drafter) or 2) the trustee administers the trust improperly (making distributions or disbursements not permitted under the terms of the document or paying for things that adversely affect the beneficiary’s eligibility for programs).

Even well intentioned trustees can make mistakes in administration of a SNT and then there are the trustees that do not have good intentions. Preserving the limited funds for an

individual with a disability is critical. Selection of a qualified trustee is imperative and you should hesitate before putting a family member in charge of one of these trusts.

Often times we can correct defective SNT's, when the drafter didn't get it right. Sometimes we have to go to court and convince the judge to allow the changes. When a SNT is defective some benefits may have been awarded incorrectly and the government may seek to recover the program funds expended on the beneficiary improperly. This can get very expensive for the beneficiary in lost future-benefits and for the drafting attorney in the form of malpractice.

You don't need to be an expert on SNT's, but you should be able to identify when they can help. If you have someone with medical bills that are out of control and has little or insufficient medical coverage you should think of a SNT. If you know someone who faces long term care, either in an institutional setting or out in the community, you should think of a SNT.

SNT's are tools. They will work well for some individuals with a disability and possibly not for others. An Elder Law Attorney or Special Needs Lawyer can consider all of the tools and determine whether a SNT should be part of the solution to protect resources and to supplement public assistance programs.

Here is your cheat-sheet on the types of SNT's:

<p><b>FIRST PARTY</b> <i>42 USC 1396p</i> SNT with beneficiary's funds</p>	<p><b>d4A</b> – Under age 65, Medicaid payback, works for SSI and Medicaid, works for income and assets</p>	<p><b>d4B</b> – Qualified Income Trust, only income deposited, only works for some Medicaid programs, not SSI</p>	<p><b>d4C</b> – Pooled Trust, works for all ages for Medicaid but under age 65 for SSI, works for income and assets</p>
<p><b>THIRD PARTY</b> SNT with the funds of others</p>	<p>Spouse can set up a trust under their will (must die), no Medicaid payback</p>	<p>Anybody other than the beneficiary or spouse can set up a stand-alone SNT, establish one upon death in a will or in a trust or participate in an existing SNT. No Medicaid payback upon the death of the primary beneficiary, can go to others.</p>	

The Guardian Trusts administers both First and Third Party Special Needs Trusts. An individual can shelter excess assets in most First Party SNT's as well as deposit excess monthly income above the 2021 income limit of \$2,382 to get eligibility for Florida's Medicaid Long Term Care Programs.

[www.GuardianTrusts.org](http://www.GuardianTrusts.org) - 800.669.2499

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