

Hot Topics in Special Needs Trusts 2024

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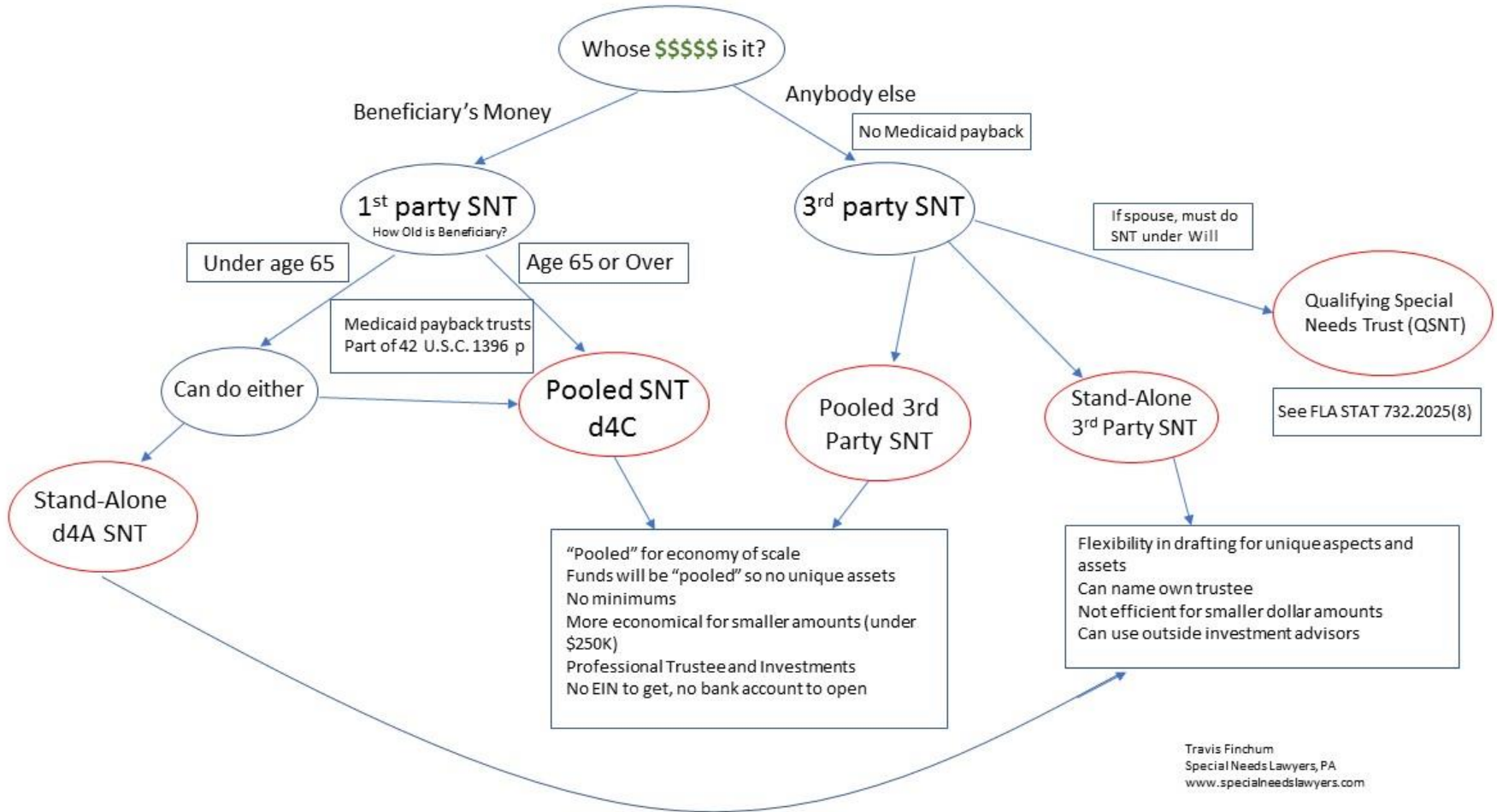
Special Needs Trusts

- To benefit individuals with disabilities.
- Maintain eligibility for public assistance programs, if any.
- Enhance quality of life.

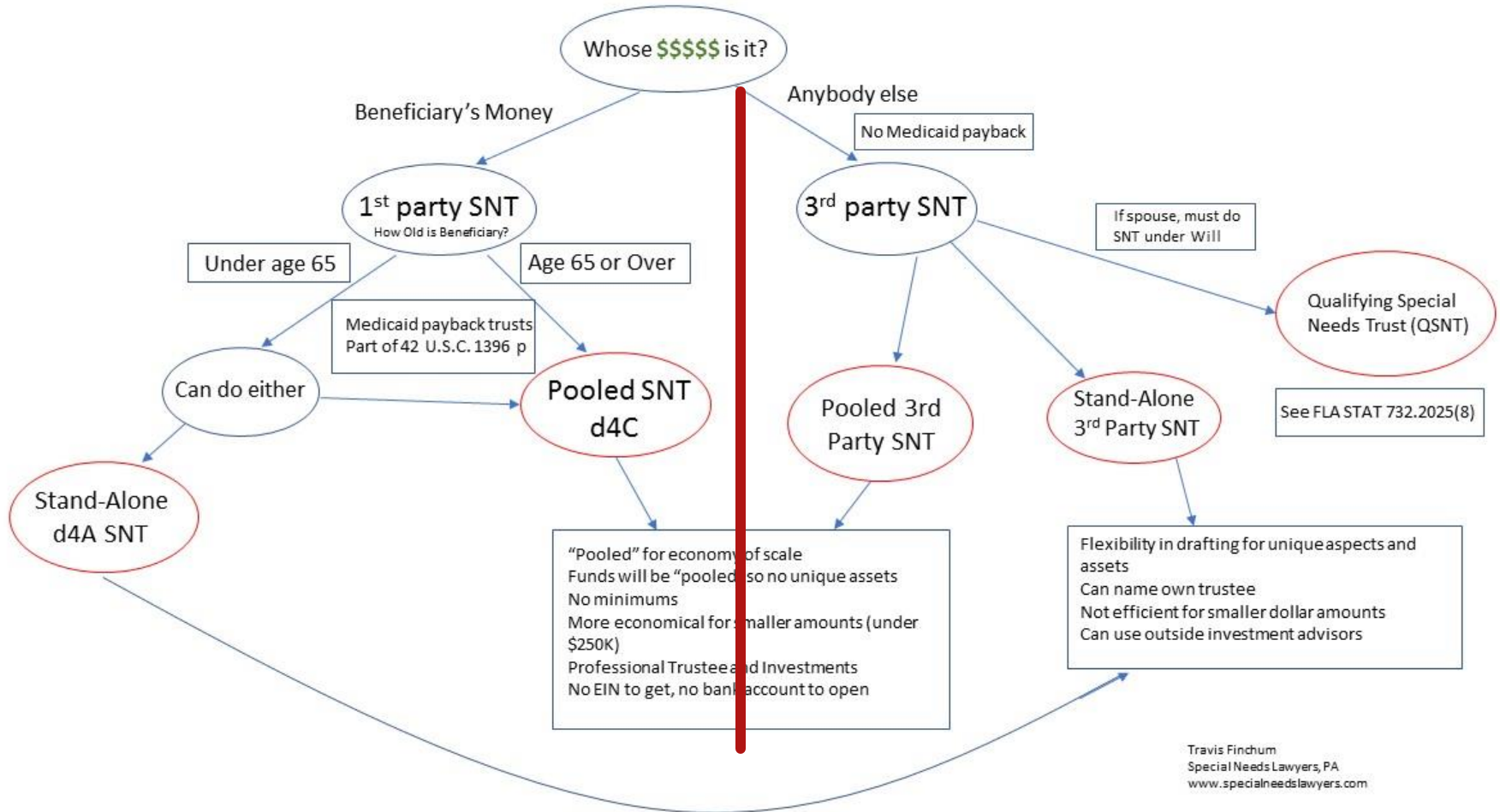
Two Categories of SNT's

- Self Settled – d4A, d4B and d4C
 - Under age 65, QIT, Pooled Trust
- Third Party – set up by others

SNT (Special Needs Trust) Analysis



SNT (Special Needs Trust) Analysis



Where is the Guidance

- Federal law – 42 U.S.C. 1396p - from 1993
- Federal Policy – Social Security POMS
 - SI 01120.200-203
 - CMS Medicaid Manual
- Florida Policy – DCF Program Policy Manual
 - 1640.0576.01 et. seq.

POMS Rewritten in 2018 and Updated May and June, 2022

- Rewrite of:
 - SI 01120.200 – Trusts in General
 - SI 01120.201 – Self Settled Trusts
 - SI 01120.202 – Development and Documentation of Trusts
 - SI 01120.203 – Exceptions for Self Settled Trusts

New POMS April 30, 2018

- Definitions updated
- Removed Table of Contents
- 90 day Grace Period Expanded
- Incorporated ABLE Accounts throughout
- Veteran's Survivor Benefit Plans (SBP) was added to list of income streams that can be assigned

New POMS April 30, 2018

- Clarified that all court ordered assignments of income will be considered irrevocable (alimony, child support, etc.)
- Remember SBP's must be assigned to self-settled trusts (d4A or d4C)
- Discussed titling of assets purchased from self-settled SNT's – home, vehicle

New POMS April 30, 2018

- Sole Benefit vs. Primary Benefit
 - Still calls d4A and d4C “sole benefit trusts”
 - But can be for the primary benefit
 - Others can benefit
 - Home, television, vehicle

New POMS April 30, 2018

- Paying Caregivers
 - Don't need medical or certification
 - Can be related
 - Can't request tax information (unless a deemor)

New POMS April 30, 2018

- Travel Expenses
 - For the Beneficiary – can pay and can cover others necessary including admissions tickets – travel, lodging and food
 - Visitation – still needs to be to ensure the wellbeing of a beneficiary in a facility

New POMS April 30, 2018

- ABLE Accounts – Updated ABLE POMS SI 10030.740 on 4/2/18
- Specifically contemplates funding ABLE accounts with SNT's
- Transfers to ABLE not income to beneficiary

Special Needs Trust Fairness Act

- 21st Century Cures Act – signed December 13, 2016
- Amended 42 U.S.C. 1396p (d)(4)(A)
 - To allow individual to create own d4A

Special Needs Trust Fairness Act

To allow individual to create own d4A

Planning Tips

- Make sure your Power of Attorney document allows for the creation of these trusts by your Agent for your Principal
- Now can consider “Trigger” trusts that could convert a typical RLT into a d4A with a Trigger.

ABLE Accounts and SNT's

Updated ABLE POMS SI 10030.740 on 4/2/18

Funds deposited into an ABLE account from a SNT is not income to the beneficiary

Can't use an ABLE account in lieu of a QIT

Can roll a 529 into an ABLE (529A) account

Can also put earned income (up to \$15,060) plus \$18,000 annually

Favorable recovery in Florida?

Pooled Trust for over age 64

Continues to be a topic of litigation nationwide

There are various arguments and some have been successful – “Fair Market Value”

In Florida can use a Pooled trust over age 64 for Florida Medicaid (and likely for SSI)

Issue with “proving disability” for older folks

Pooled Trust for over age 64

What about the Pooled Trust for a person on SSI over age 64?

Thought was it was a transfer that caused a penalty... not so fast.

Numerous SSA ALJ opinions say we can rebut the presumption that the funding is a transfer for less than fair market value.

Pooled Trust for over age 64

For Florida Long Term Care Medicaid Eligibility - Issue with “proving disability” for older folks

The beneficiary must be “disabled”

Can't get Social Security to do a disability determination if elderly

Must ask State to do determination – need medical records – DMRT - DDD

QIT Problems

Florida one of the few states with an income limit for our long term care programs

QIT only works for LTC programs (\$2,829 monthly income limit)

QIT's are such a pain to explain, execute and administer

QIT Problems

Difficulty getting it executed properly

Spouse can sign, POA but need power

Who will be the Trustee?

Requires monthly work

Good luck finding a bank to open one of these accounts

Will there be a service charge?

QIT Problems

What do you mean funding is a “Transfer?”

QIT Problems

What do you mean funding is a “Transfer?”

Funding a QIT is a transfer that causes a penalty unless used for medical care.

1840.0110 states:

“Funds deposited into a qualified income trust are not subject to transfer penalties provided they are paid out of the trust for medical care for the individual.”

QIT Problems

What do you mean funding is a “Transfer?”

This isn't a problem for a single person in a nursing home – all goes to patient resp.

Can you pay MMMIA out of QIT to spouse?

What if in community on Waiver? No facility

Thank You!

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