

# Supplemental needs trust

## **What is a supplemental needs trust?**

A supplemental needs trust is a trust account set up for the benefit of an individual with disabilities to provide financial support in addition to what they receive from government assistance. It is a legal instrument that must meet the guidelines of government assistance programs and state law, and therefore should be drafted by an attorney experienced in the area of disability planning to ensure its validity. It is a legal instrument that allows parents and others to contribute money and other assets to be preserved and used for a person with special needs without being counted as personal assets, protecting their eligibility for any benefits the individual might receive from Social Security or Medical Assistance. At the end of the beneficiary's life, the remaining funds go to whomever the creator of the trust designated as a residual beneficiary, such as family members or a charity foundation.

## **What are the reasons to have a supplemental needs trust?**

A supplemental needs trust helps improve the lifestyle of the trust beneficiary with additional funds that can be used during their lifetime. It allows gifted assets or an inheritance to be collected, saved, and used for the benefit of the individual without risking the loss of Social Security or state benefits. It also provides a legal structure with a trustee to manage the assets, a major advantage for individuals who are not able to manage their own finances.

## **How is it funded?**

This type of trust is not funded by the beneficiary, but by relatives and/or friends. It is frequently funded by a parent's or grandparent's estate plan or by others who would like to make contributions to improve the individual's quality of life. All contributions must be directed to the trust and not to the individual.

## **What assets can be contributed?**

Supplemental needs trusts can accept cash, but they can also include other assets, such as actual property like a house or other complex investments. There are no limits on the amount of money or other assets that can be contributed to the trust.

## **Are trust assets taxable?**

Assets contributed to the trust are not taxable, but if the trust assets are able to generate a significant income while being held in trust, the IRS will require that an income tax return be filed on behalf of the trust and taxes may need to be paid based on the earnings.

## **What are the advantages of this trust compared to a special needs trust or ABLE account?**

Like an ABLE account or a special needs trust, a supplemental needs trust provides a way to preserve additional resources for the benefit of the individual during their lifetime without the funds being counted

as personal assets. A “special needs trust,” or “first party trust,” is distinguished by the fact that it is funded with assets that belong to the individual that must be transferred to preserve their eligibility for government assistance. For the transfer of those assets to be valid, the special needs trust is required to include a provision that creates a Medical Assistance recovery lien on the remaining assets of the trust at the death of the beneficiary.

An ABLE account, though it can be funded by third parties, can also be funded by the individual. Because the individual is allowed to contribute their own assets, the ABLE account is likewise subject to a Medical Assistance recovery lien on the remaining assets of the account at the death of the beneficiary. Additionally, the rules of the ABLE account state that the maximum amount of TOTAL contributions in one year is \$19,000, which means it is typically not a viable recipient for an inheritance, life insurance benefit, or other gift from an estate plan.

When a supplemental needs trust is used and funded by anyone other than the individual, there is no limit to the amount that can be contributed and at the end of the individual’s life the funds are not subject to a lien to pay back Medical Assistance, but are instead distributed to the beneficiaries designated by the creators of the trust when it was established.

**For further information contact PACER Center’s Health Information Center by calling (952) 838-9000 or email at [pacer@pacer.org](mailto:pacer@pacer.org).**