

# Special Needs Trust Foundation

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**The Special Needs Trust Foundation is a cooperative project of:**

- ♦ Access to Independence
- ♦ The Arc of San Diego
- ♦ Community Catalysts of California
- ♦ Developmental Services Continuum
- ♦ Employment and Community Options
- ♦ Friends of Vista Hill
- ♦ Home of Guiding Hands
- ♦ NAMI San Diego
- ♦ Sharp Healthcare Foundation
- ♦ St. Madeleine Sophie's Center
- ♦ United Cerebral Palsy, San Diego
- ♦ Unyeway, Inc.

## **SPECIAL NEEDS TRUST**

To financially assist a person with a disability is a challenging task. To balance the private resources of a family or individual with public support is a delicate task. Too much on either side tips the scales and the person with a disability may suffer.

To that end, the **Special Needs Trust Foundation** created a First Party/Self-Settled Special Needs Master Trust that is funded by the beneficiary or the beneficiary's agent **in a manner that is compatible with the continuation of public assistance.**

The trust allows contributions of many to be pooled for increased investment leverage, but each individual has a separate trust account. Disbursements are made from individual accounts through a carefully monitored partnership between the trustee and the person's primary service provider.

# QUESTIONS FREQUENTLY ASKED ABOUT THE FIRST PARTY/SELF-SETTLED SPECIAL NEEDS TRUST

## *What is a first party/self-settled special needs trust?*

The Special Needs Trust Foundation (SNTF) was developed to assist individuals with special needs to establish a special needs trust (SNT) that allows them to supplement their monthly income from SSI with distributions from their special needs trust, but with no adverse effects on their SSI, Medi-Cal (the California Medicaid agency), IHSS (In Home support Services), Section 8 Housing, or other “needs based” public benefits. Although the special needs trust cannot give the beneficiary cash (over \$20 a month), it can enhance the quality of an individual’s life by paying certain bills and by purchasing goods and services for their benefit.

A “self-settled” or “first-party” trust can be established and funded by the court, by the individual himself or herself or by a family member. The “first party” trust can be used to manage the proceeds of personal injury and other litigation, for inheritances, and for retroactive Social Security payments, which might otherwise disqualify these individuals from receiving public benefits. If the beneficiary is not competent, this type of trust requires court approval, which may occur in contexts other than personal injury actions, such as guardianships, conservatorships, or pursuant to other state statutory authority. Such trusts must include a Medi-Cal or Medicaid payback provision requiring that on the termination of the trust, usually the death of an individual, the trustee shall reimburse the state Medicaid agency for benefits paid to the beneficiary during the existence of the trust. However, there is no reimbursement right for SSI, IHSS or Section 8.

The first party SNT, created by the **Special Needs Trust Foundation** in San Diego, offers an opportunity which families might choose over an individual trust for two main reasons. First, because the first party SNT is a pooled trust, families with smaller amounts of money have access to the special needs trust solution that they would not have had otherwise.

Second, the first party SNT offers services that promote continuity of fiscal management through a well-known and respected local San Diego trust providing broad access to professional expertise through the participating members of the **Special Needs Trust Foundation**.

The **Special Needs Trust Foundation** in San Diego was created in 1989 at the request of families in this community. Pooled special needs trusts similar to this one have been established in a number of states.

***Can this trust be set up to be the principal means of support for our loved one?***

No. The first party SNT is set up to pay for “extras”, not core support for the individual.

***What is meant by “extras”?***

Funds in a 1<sup>st</sup> Party/Self-Settled SNT can be used to purchase those “extras” for individuals with disabilities, which they may not be able to receive from Government assistance. These “extras” may well be expenses that are very important to a beneficiary’s happiness and welfare. For example, a special needs trust can pay for dental treatment, travel, purchase of personal goods or services and recreational activities.

***Will our loved ones lose their government benefits?***

No. The first party SNT has been carefully researched and drafted to prevent a negative effect upon the flow of government benefits or the attachment of trust assets by any outside entity.

There is no guarantee, however, that these types of trusts will never be challenged or that the law will not change. You can be assured that the situation will be continuously monitored by the trustee.

***Who is the trustee of the third party SNT?***

The **Special Needs Trust Foundation**, a 501 (c) (3) corporation is the trustee. Citi Smith Barney is the financial manager and distributor of all funds.

### ***Who will make decisions about disbursements?***

Representatives from the **Special Needs Trust Foundation** serve the trustee as the decision-making committee, reviewing disbursement requests and matching them with available resources. Current member agencies are listed on the front cover of this brochure.

### ***Can family members participate in the review of disbursement requests?***

Yes. Family participation is welcome at any time.

### ***How secure is the Special Needs Trust Foundation?***

If the Special Needs Trust Foundation members should dissolve or reorganize, successor directors would be elected from among other service providers who would be familiar with your loved one's situation. The foundation as a corporation is self-perpetuating and should always be available to advise the SNT trustee even if one or more members of the **Special Needs Trust Foundation** cease to exist.

### ***Is there a minimum amount that must be placed into the third party SNT in order for our family member to be a beneficiary?***

Yes. \$5,000 is needed to establish a 1<sup>st</sup> Party/Self-Settled special needs trust with the SNTF.

### ***Are separate accounts kept for each beneficiary?***

Yes. The funds are pooled to increase investment leverage but each individual has a separate trust account. Trust assets are invested according to the policies and procedures of the SNTF. In general, they are invested for a long-term preservation of principle, reasonable current income and in accord with the "prudent investor" philosophy.

***What assets will the trust accept?***

Any payment that might disqualify an individual from receiving public benefits such as: proceeds of physical injury or other litigation, inheritances, and retroactive Social Security payments.

***Can we change our minds about being a part of the third party SNT?***

**No. When funds are placed into the first party SNT, they are irrevocable and will only be distributed according to the Joinder Agreement which you established.**

***How will trust funds be invested?***

Trust assets will be invested according to the policies and procedures of the trustee. In general, the trustee invests for long-term preservation of principal, reasonable current income and in accord with the “prudent investor” philosophy.

***Are there fees charged to the account?***

Yes. There is an enrollment fee of \$1,000.00 per first party trust established, to be billed to the trust when the trust is funded. The annual administration fee is 1.5% with a \$1,500.00 annual minimum charge. This 1.5% of trust assets will be billed to each trust on a quarterly basis. Bank investment fees for each trust will be a 1% annual fee, billed semiannually. Annual tax returns, if required, will be prepared by a certified public accountant. Preparation fee and related tax liability will be billed to the individual trust.

***Will disbursements be made from interest only or from principal and interest?***

This is your decision and you may specify your preference in the Joinder Agreement. If you authorize disbursements from principal, you should make arrangements to replenish the account as needed.

***What happens to the money of the beneficiary's account if he/she dies before it is all spent?***

If this trust account is funded with the Beneficiary's own money, federal law requires that all unspent money in the account remaining at the time of the Beneficiary's death be used to reimburse the State(s) for medical services received up to the total amount that the State(s) has spent on Medical or Medicaid services for the Beneficiary throughout the Beneficiary's lifetime. If a balance remains after the State(s) has been reimbursed (which is highly unlikely, unless the Beneficiary has drawn Medicaid benefits for only a short period of time), said balance shall be disbursed as follows:

If the Beneficiary is a minor or is incompetent, the remainder shall be that individual's "heirs at law" as determined by the California Probate Code. For others the distribution will follow the Joinder Agreement.

***Is there a tax deduction for any of the amount placed into the trust?***

No. Amounts placed into the first party SNT are **NOT** tax deductible because they go to benefit an individual rather than a charitable organization.

***How do I get more information about the Special Needs Trust?***

If your family members has a special needs and could benefit from these services, apply to the **Special Needs Trust Foundation** at (619) 201-2672, 9575 Aero Drive, San Diego, CA 92123. Also, visit our web site [www.sntf-sd.org](http://www.sntf-sd.org).