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2013 CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS
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Drafting for Various Beneficiary Circumstances

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Drafting for Various Beneficiary Circumstances

By Renée C. Lovelace

A. Introduction. Each individual is unique and presents a different set of circumstances. In drafting a special needs trust (SNT), the attorney will balance factors such as the individual's disability-specific and age-specific needs, the grantor's and beneficiary's objectives, current and possible public benefits, social and family companion networks, formal and informal support systems, medical provider and care systems, geographic location, and funding available for SNTs. This article discusses beneficiary circumstances such as:

- #1 Insufficient funding for all needs and wants
- #2 No ideal trustee
- #3 Great trustee but limited successor options
- #4 Less-than-devoted remainder beneficiaries
- #5 Complex medical needs
- #6 Strong mental capacity but increasing physical limitations
- #7 Intellectual impairments
- #8 Diminished or diminishing mental capacity
- #9 Physical disabilities and diminished mental capacity
- #10 Trusts in place that do not work well
- #11 Decreasing social and family support systems
- #12 Strong social and family support systems the grantor wants to preserve
- #13 Beneficiaries who are angry or hostile to the trustee
- #14 Families with unrealistic expectations
- #15 Employment impact on life and benefits
- #16 Young beneficiary / timelines
- #17 Beneficiary whose household may change
- #18 Drafting based on the type of disability

B. Special Needs Trust (SNT) Drafting Approaches. SNT drafting is not a science. There are many approaches to drafting valid SNTs. Quantifying the value of one SNT approach over another may be difficult, or impossible, without the ability to predict the future. Some attorneys and clients may decide that the best approach, on balance, is to keep the trust short, simple, and general. Other times, the client may want to build a stronger safety net for the beneficiary, and may decide that an effective strategy for achieving that goal is to develop a more detailed SNT and/or special needs plan.

Short, Simple, and/or Inexpensive SNTs. Where there are trusted individuals available to serve as trustees or advisors, a short SNT that provides the trustee with broad discretion may serve the beneficiary well. The cost of a short and simple SNT should be lower to the grantor in terms of fees charged, time spent on documents, and the stress associated with making the wide variety of decisions required by a more detailed trust and plan. The costs of future administration may be lower given that the trust will have fewer terms to analyze, fewer records needed to document distributions, and fewer individuals involved with the process. For example, the costs of more detailed planning may exceed the benefits when:

- (1) The grantor is ill, exhausted, or unable to consider more choices,
- (2) Little money or other property is involved,
- (3) There are few anticipated transitions for the beneficiary,
- (4) Transitions are likely to be inexpensive,
- (5) Trustees are devoted to the beneficiary and/or need no guidance, or
- (6) The trust will play a minimal role in promoting the beneficiary's best interests throughout the future.

Examples of language to add to trusts are found in *Texas Estate Planning*, by Dianne Reis, James Publishing, Sections 5:130 through 5:144. As of January 2013, a simple SNT form was available at Glenn Karisch's legacy Texas Probate website at www.TexasProbate.net under "Forms" (see bottom of the listing, under "Other Forms").

With simple SNTs where a caregiving plan is not completed in advance, consider whether to draft the SNT solely for supplemental items or provide the trustee with broader discretion. If the trust is strictly limited to supplemental items, the trustee may not be able to choose to displace public benefits even when the displace benefits are not that important to the beneficiary—and not even when the trust has sufficient funds to make distributions for items preferable to the beneficiary while making up for the lost public benefits. Conversely, where the trustee has broad discretion and modest funds, there could be a greater risk of the trust being depleted quickly if the trustee makes distributions for both supplemental and support purposes.

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[Drafting Special Needs Trusts: Blatant Mistakes; Understanding the Meaning in Your Words; plus Drafting for Various Beneficiary Circumstances](#)

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