

Memorandum

TO: LeBlanc & Young Clients
DATE: January 2019
SUBJECT: Primer on Supplemental Needs Trusts

A Supplemental Needs (or Special Needs) Trust is a vehicle designed to provide financial support to a beneficiary who is receiving, or who may receive in the future, needs-based government benefits. For beneficiaries who receive financial support or services from a needs-based government program, inheriting property may have a drastic, immediate, negative impact on their continued eligibility. And in many instances, the services they receive are provided only through a government benefits program. In other words, in order to receive any assistance, the individual must also be participating in the needs-based government program – one cannot simply “privately pay” for continued services.

A Supplemental Needs Trust is a trust arrangement wherein the Donor (the individual who creates the Trust) articulates that the trust’s primary objective is to use the trust’s assets to “supplement” and not “supplant” any needs-based government services otherwise available to the beneficiary. In addition, the Trustee of a Supplemental Needs Trust is given very broad discretion to make or not make distributions to or for the benefit of the beneficiary. The Trustee is not bound by any ascertainable standard when deciding whether or not to make distributions and the beneficiary has no authority to demand distributions; distribution decisions are in the sole and absolute discretion of the Trustee. By giving so much authority to the Trustee, and by restraining the beneficiary’s ability to demand distributions, the Donor has made the assets in the Trust “unavailable” to the beneficiary and, therefore, it should be ignored for needs-based eligibility purposes.

Trustees of Supplemental Needs Trusts must take care to ensure that their distribution decisions do not have an unexpected negative impact on the beneficiary. Consideration should be given to the rules associated with each program through which the beneficiary receives services and/or support. For example, some programs which provide support for food, shelter and clothing will reduce those benefits, dollar for dollar, if a Supplemental Needs Trust (or any vehicle) makes payments to or for the benefit of the participant in any of those areas (food, shelter or clothing). Other programs have a cap on the value of assets a participant may own at any given time. Distributions from a Supplemental Needs Trust which cause the beneficiary/participant to own assets above that threshold could result in ineligibility for some programs. Trustees of Supplemental Needs Trusts should work closely with the beneficiary’s case worker and should conduct annual reviews of the programs through which benefits are provided.