



**BROTHERS & HENDERSON, P.S.**

## Special Needs Trusts and Planning

**Presented by:**

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## Will vs. Revocable Living Trust

- No will/living trust = “intestate succession”
- Most common estate planning documents
- Decision based on state probate process
- Estate tax considerations
  - Exemptions (2019)
    - Federal: \$11,400,000
    - Washington: \$2,261,000
  - Living trusts and estate taxes
  - Estate Taxes



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## Primary Roles of Individuals in a Will

- **Executor**
- **Guardian**
- **Trustee**



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## Considerations for Special Needs

- Public benefit preservation
- Financial management
- Decision making
- Transitions between generations

## SSI/SSA Benefit Coverage

- SSI
  - Cash benefit of up to \$771 to be utilized for food and shelter expenses (as of 1/19).
  - Some States provide cash supplements to base SSI limit
  - “Gatekeeper” to Medicaid and other public benefit programs
- SSA
  - Cash benefit depending on amount paid into Social Security system
  - Received through earned credits of self, spouse, or parent

# Medicaid/Medicare Coverage

- Medicaid
  - Medical Assistance
    - No premiums, co-pays, or deductibles
  - Long-Term Care
    - Personal care hours
    - Assisted living, nursing homes, etc.
- Medicare
  - Hospital, doctor visits, prescription drugs
    - Premiums, co-pays and deductibles
  - Limited rehabilitation care, but no long-term care

# Public Benefits Eligibility Review

## SSI/Medicaid

- SSI/ “Traditional” Medicaid
  - Disabled, blind, >65
    - Disabled = no SGA (\$1,220/month)
  - “Means tested”
    - Income
      - Earned (\$2:\$1)
      - Unearned (\$1:\$1)
      - ISM (up to 1/3)
    - Assets < \$2000 (individual)
      - Exemptions include primary home (<\$585k), vehicle, personal property, household goods, ABLE Accounts, SNT
- Medicaid Expansion
  - No “category”
  - Income below 138% of FPL (\$17,236/year for 1 person)
  - No Resource Limit

## SSA/Medicare

- Disabled, blind, >65
  - Disabled = no SGA (\$1,220/month)
- Work History
  - Available to individuals who have paid FICA taxes in the last 20 of 40 quarters prior to disability
  - Not “means tested”
- Medicare available when:
  - Over 65
  - Meet SSA disability definition, 29 months post injury

## Trust Basics

- Separate legal entity
- Essential Roles
  - Trustor or Settlor
  - Trustee
  - Beneficiary
- Basic Functions of a Trust
  - Administrative tasks
  - Safeguard assets
  - Financial management
  - Distributions



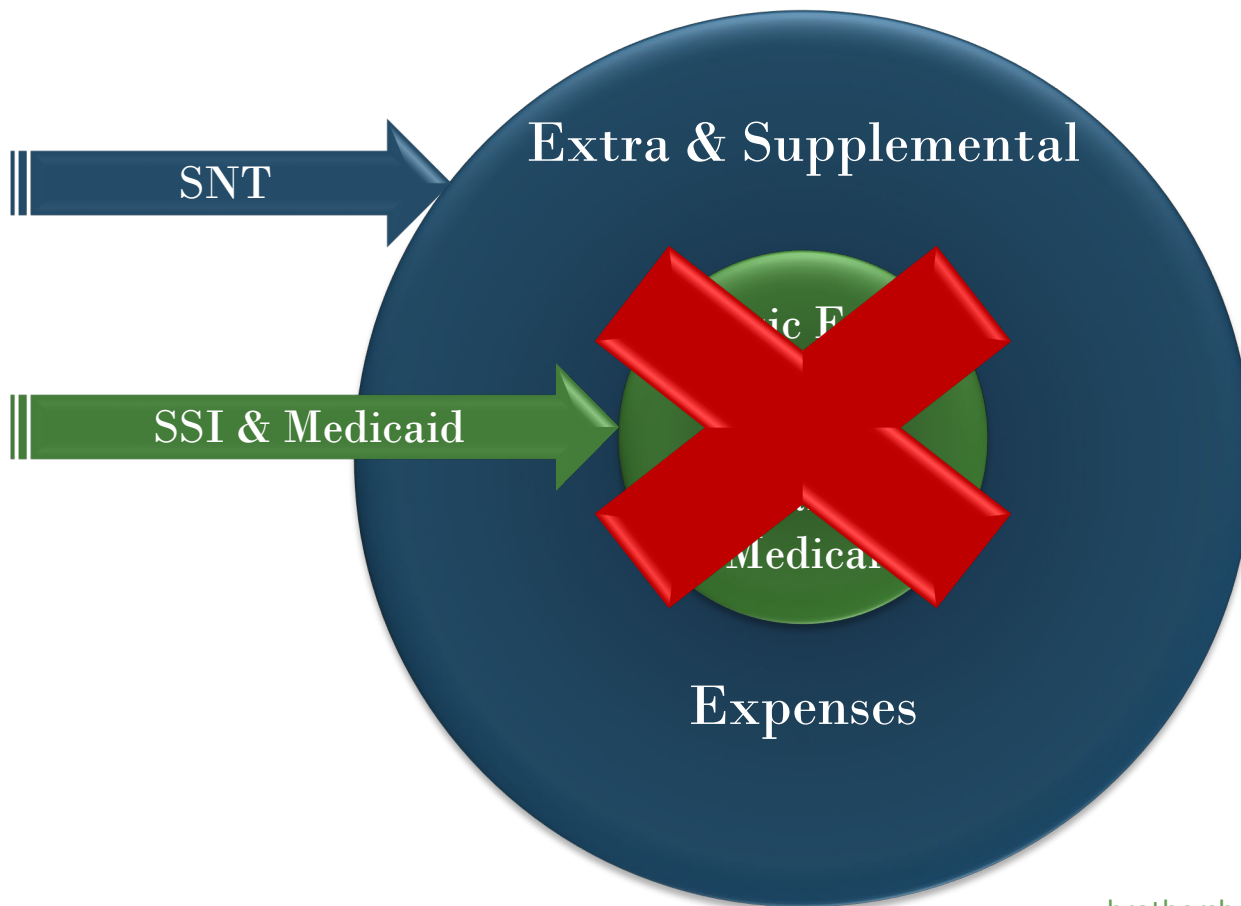
- “Types” of Trusts are just restrictions on basic functions



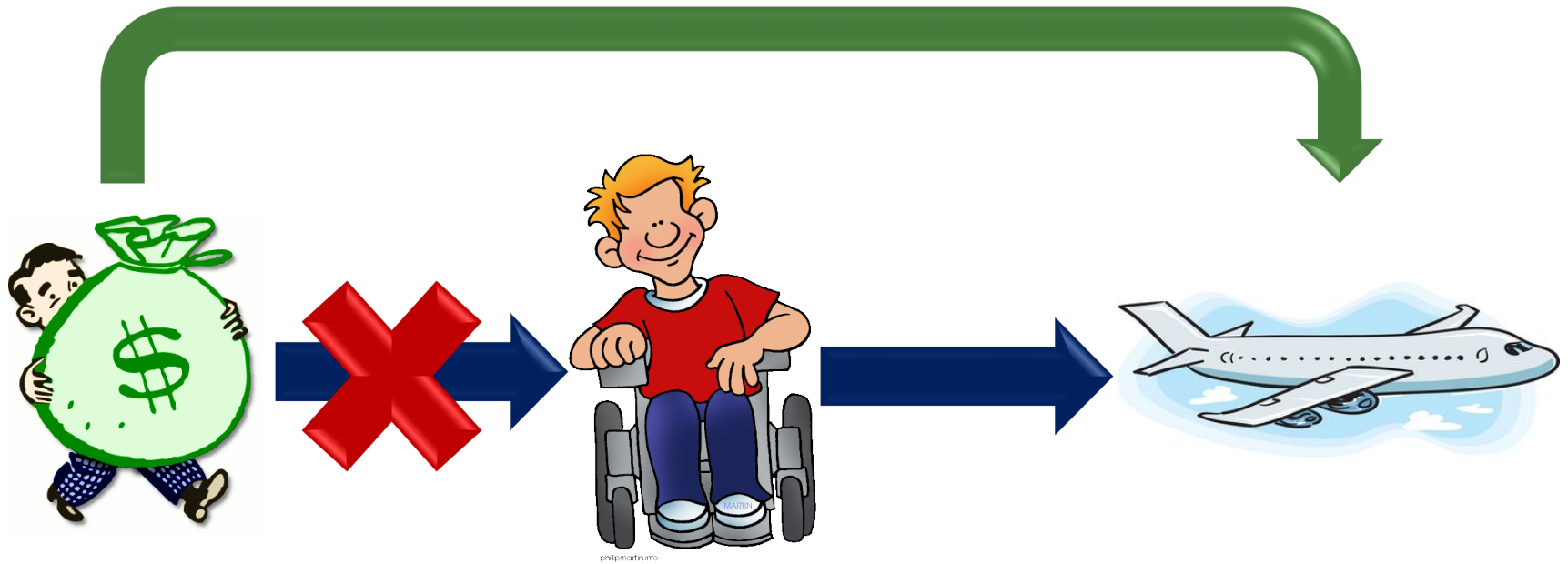
## What is a Special Needs Trust (SNT)?

- Purposes:
  - Financial management
  - Public benefit coordination (e.g. SSI and Medicaid)
- “Extra and supplemental needs”
  - Needs not covered by SSI and Medicaid
  - No payment for
    - Food (groceries)
    - Shelter (rent and basic utilities)
    - Primary medical services otherwise covered by benefits
  - Examples of expenditures
    - Vacations
    - Clothes
    - Entertainment
    - Education

# SNT Purpose and Distributions



# Distributions from SNT



## Source of Funding Matters



## Self-Settled (d)(4)(A) SNT

- 42 USC 1396p(d)(4)(A)
- Requirements
  - Under 65 years of age
  - Disabled
  - Irrevocable
  - Sole benefit
  - Established by individual, parent, grandparent, guardian, or court
  - Medicaid reimbursement

## Pooled (d)(4)(C) SNT

- 42 USC 1396p(d)(4)(C)
- Requirements
  - Non-profit association
  - Separate accounts
  - Pooled investment and management
  - Disabled
  - Irrevocable
  - Sole Benefit
  - Account established by beneficiary, parent, grandparent, legal guardian, or court
  - Medicaid reimbursement OR retention by trust
- Transfer penalties after age 65



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## Pooled (d)(4)(C) SNT in Washington State

- Pooled Alliance Community Trust (PACT)
- Lifetime Advocacy Plus
- Developmental Disabilities Endowment Trust Fund
- Brain Injury Alliance of Washington
- Other regional or national options



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**pact**<sup>TM</sup>

Pooled  
Alliance  
Community  
Trusts

*Building Lifetime Trust*

- **Trustee:** Brain Injury Alliance of Washington
- **Trust Manager:** Robert Zielke
- **Investment Manager:** UBS Financial Services
- **Accounting:** True Link Financial





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Pooled  
Alliance  
Community  
Trusts

*Building Lifetime Trust*



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## PACT Information

- Joinder Agreement
- Basic Fees
  - \$750 enrollment fee
  - 1.75% annual fee
  - \$10 per disbursement fee (1 free disbursement each month)
- Investments
  - Cash Equivalent
  - Conservative
  - Moderate Growth

## Resources

- website: [www.pactrusts.org](http://www.pactrusts.org)
- email: [info@pactrusts.org](mailto:info@pactrusts.org)
- phone: (877) 448-7228

## Common Uses for (d)(4)(A) and (d)(4)(C) SNT

- Unexpected Disability
- Wages
- Inheritance
- Social Security Backpayment
- Settlements & Judgments

## Third Party SNT

- Assets of anyone other than the beneficiary
- Irrevocable
- No (d)(4)(A) SNT restrictions
  - Anyone can establish
  - Beneficiary can be any age
  - No Medicaid reimbursement
- Living or Testamentary Trusts



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## Common Uses for Third Party SNT

- Will and estate planning
- Gifts
- Extended family planning
- Spouse with a disability



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## SNT Administration

- Fiduciary duties
- Direct payments
- Distributions to beneficiary
- Ownership of real estate
- Tax treatment

## SNT Administration

- Can be highly intensive trusts
  - Understanding specific disabilities
  - Understanding public benefit programs
  - Family interactions
- Highly complex
- Constantly changing laws, rules, and policies



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## SNT Trustees & Fiduciary Roles

- Family Members
- Professionals
- Bifurcated Duties
- Trust Protectors



## ABLE Accounts

- Law signed on December 19, 2014
- Tax exempt account
- <\$100k as exempt resource
- \$15k annual contribution
- Disabled before age 26
- Qualified Disability Expenses (QDE's)
- Medicaid reimbursement
- Washington ABLE Program:  
[www.washingtonstateable.com](http://www.washingtonstateable.com)

## Practical uses of ABLÉ accounts

- Existing UTMA accounts & 529 education plans
- Gifts
- Protecting and saving income
  - Wages
  - Social Security
  - Child Support
- Financial control for beneficiary
- Household expenses
- Contributions from SNT's

## Comparison Chart for SNT's and ABLE Accounts

	ABLE Account	d4A SNT	3 <sup>rd</sup> Party SNT
Age (established)	Any	Under 65	Any
Age (disabled)	Under 26	Any	Any
Contribution Limit	\$15,000/year	None prior to 65	None
Account Limit	\$100,000	None	None
Distributions	QDE	Extra & Supplemental	Extra & Supplemental
Control	Beneficiary	Trustee	Trustee
Medicaid Reimbursement	Yes	Yes	No

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**BROTHERS & HENDERSON, P.S.**

**Thank You!**

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