

TRUSTEE GUIDELINES FOR ADMINISTRATION OF A SUPPLEMENTAL NEEDS TRUST

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DEFINITIONS

As the trustee of a Supplemental Needs Trust (SNT), you may have many questions about what you need to do and how to do it. This booklet should answer most of those questions. It will explain what your responsibilities are and how to fulfill them.

First, let us define some important terms that you need to know. The most important are Trust, Beneficiary and Trustee.

Trust

An arrangement where someone's property or money is legally held or managed by someone else or by an organization (such as a bank).

Supplemental Needs Trust

A trust created for a person who is certified as disabled, and is less than 65 years old when the trust is created, that supplements, or enhances, government benefits such as Medicaid.

Annual Accounting

A complete report that details all the financial transactions of the trust for the year.

Order

A document from a Court of Law that tells someone what to do and how to do it.

Fiduciary Duty

The legal relationship the Trustee has to the beneficiary. Because the Trustee manages the beneficiary's money, the Trustee must act in the best interests of the Beneficiary. Failure to act in the best interests of the Beneficiary can lead to legal action against you for breaking, or 'breaching,' your fiduciary duty. If you breach your fiduciary duty, you may be required to repay money to the SNT or face possible criminal prosecution.

Trust Agreement

This is the legal document that starts the trust. The Agreement has instructions that the trustee must follow to administer the trust.

Beneficiary

The person who will benefit from the trust.

Self-Dealing

Using your position as the Trustee to benefit yourself or someone else.

For example, hiring friends to do a job, or loaning yourself or a friend money from the trust at a favorable rate.

Trust Principal

Also known by the term, "corpus." Corpus means "body" in Latin. The trust principal is all the property and assets put into the trust. The principal produces ordinary income like dividends and interest.

Trustee

The person or organization to which the property of a Beneficiary is entrusted.

GETTING STARTED

A Trust is a legal arrangement where one person manages another person's property. This arrangement is written down in the Trust Agreement. Sometimes, a Court of Law helps set up the trust and issues an "Order" that gives the Trustee instructions to help manage the Trust.

A **Supplemental Needs Trust (SNT)** is a special kind of trust. The SNT allows a person who is certified as disabled to get government benefits, such as Medicaid. Under Medicaid law, a person with a disability is not eligible for Medicaid if they have too much money or savings ("excess resources"). The SNT allows a person who is certified as disabled and who has excess resources to receive Medicaid, if the excess resources are placed within the SNT. Trust funds pay for expenses not paid for by public benefits. This arrangement helps to improve the quality of life for the person with a disability.

The **Beneficiary** is the person who benefits from the trust. Decisions made for the trust must always take into account the Beneficiary's needs.

The **Trustee** manages the trust. The Trustee could be an individual or an organization (such as a bank). The Trustee protects and administers trust funds for the Beneficiary of the trust, and manages the day-to-day activities of the SNT.

Being a trustee creates a "fiduciary duty." The Trustee must act in the best interests of the Beneficiary. Failure to act in the best interests of the Beneficiary can lead to legal action against you for breaking, or 'breaching,' your fiduciary duty. If you breach your fiduciary duty, you may be required to repay money to the SNT or face possible criminal prosecution.

Always remember that the SNT is a legal arrangement. The SNT may be subject to Court orders. If the Court issues an Order regarding the SNT, you must follow the court order and submit a copy of the order with the annual accounting (see page 15). You must complete the annual accounting by reporting all assets, income and disbursements related to the trust accounts for the previous year.



DSS will mail to you the Annual Accounting document each January. You must complete and return it to DSS by May 31st. With Court Approval, you may use SNT funds to pay for a professional financial advisor or certified public accountant to help prepare the Annual Accounting. For details on documents, you must include with the annual accounting, see the list on page 12 of this informational.

We are available to answer any questions you have or need clarified. Our contact information is found at the end of this booklet.

RESPONSIBILITIES OF A TRUSTEE

You have four main responsibilities as the trustee for a SNT. They are:

- 1) Managing the Trust
- 2) Keeping Records
- 3) Reporting or Accounting to the Department of Social Services (DSS)
- 4) Providing a final accounting, including providing any orders that terminate the trust, and closing the SNT

These responsibilities will be discussed in more detail in each section of the booklet.

MANAGING THE SUPPLEMENTAL NEEDS TRUST

As defined above, the Trustee is the person who manages the trust. As Trustee, you are responsible for protecting trust funds and managing the day-to-day activities of the SNT. This includes making decisions about what items to purchase, and the handling and investing of the trust assets.

You must always keep in mind your fiduciary duty. You must keep trust assets in a safe place, such as a separate bank account. If you make investments for the Trust, the investments must be prudent and not overly risky. Purchases must help the Beneficiary and be for their sole benefit. If you breach your fiduciary duty, you may be required to repay money to the SNT or face possible criminal prosecution.

In short, your main responsibility is to use the SNT funds sensibly, wisely and for the sole benefit of the Beneficiary. You use the SNT funds to fill your Beneficiary's needs when a government program, such as Medicaid or Social Security, does not cover those needs.

It may be helpful, but is not required, for you to budget your beneficiary's needs. This may help you make investment decisions and determine which disbursements are appropriate and prudent.

The most common asset placed into the SNT is cash. As Trustee, you are required to open a separate bank account to place the cash assets. You, the Trustee, are also responsible for depositing cash received, also called "income," into the trust account and making payments, or "disbursements," from the trust account.

BANK ACCOUNTS

We advise you to open at least two bank accounts. A savings account will allow you to hold most of the trust principal safely. The trust principal is the asset that is the basis of the trust. A checking account with a small balance will allow you to make disbursements by simply writing a check. The two accounts can be linked to allow you to move money between them easily.

INVESTMENT ACCOUNTS

Part of your job as trustee is investing the funds to try to make them grow in value. Whether and how to invest are your decisions, and you may use SNT funds to pay for professional financial advice to help guide you, unless prohibited by a Court. If approved by the Court, you may use SNT funds to pay for this advice.

As Trustee, you must ensure that every investment is "prudent." There is some risk with every investment. You must balance the risk against the value of the trust, the amount of income, and the long-term needs of the Beneficiary. Prudent investing means ensuring that no investment is unreasonably risky and that the investments are varied in their type. You should also keep in mind the immediate needs of your beneficiary, and ensure that your investments do not leave your trust account "cash poor" and unable to make needed disbursements.

Whatever investment strategy you decide on, you must keep records on the status of these investments and report each year in the annual accounting (see page 15) how those investments are valued. You should submit statements related to the investments. If the investment is something like a "Certificate of Deposit," also called a CD, be sure to submit documentation stating the maturity date and interest rate.



Example: You invested some of the SNT funds in a brokerage account. At the end of the year, the brokerage firm sends you a statement showing how your assets changed over the year. You should keep this document and submit a copy of it with the annual accounting.

OBTAINING A BOND

You may be required to obtain a bond. A bond is a type of insurance that protects the Beneficiary from the Trustee. A bond is for a set amount of money and guarantees that if you, as Trustee, do something inappropriate with the trust funds, the company will pay the amount you used inappropriately, up to the value of the bond.

The SNT contract usually details the bonding requirements. The Court Order that appointed you will also list this information.

Bond Premiums: Just like other types of insurance, a premium is usually due. You can pay your bond premium from SNT funds. Keep the receipt of your bond premium payment as proof and submit it with the annual accounting (see page 13).

RECEIVING INCOME ON BEHALF OF THE BENEFICIARY

As Trustee, you must deposit any payment made to you on behalf of your Beneficiary into the SNT. Income may come from many sources, such as a lawsuit, gift, pension, or annuity. Bank interest and investment dividends on the trust principal are also income.

You should keep records of all income received and report this income in the annual accounting (**see page 13**) each year.

Supplemental Security Income (SSI) and Supplemental Needs Trusts: SSI is a stipend for a permanently disabled individual. If your Beneficiary receives SSI benefits, DO NOT deposit them into the SNT account. That violates the rules of the SSI program. If the beneficiary is capable of managing their own SSI funds, they should deposit the funds into an account in their own name. If the beneficiary is incapable of managing their SSI funds, and you have been named by the Social Security Administration as the beneficiary's "representative payee," you should follow the rules of the SSI program, and deposit the funds into an account titled "(Beneficiary's name) by (your name), representative payee."



SSI benefits are for low income adults who have never worked, or worked very little. The funds are only for needs like food, clothing, or shelter. To receive SSI, the recipient must submit a brief accounting of how they use the funds each year.

Social Security Disability Insurance (SSDI), Social Security, Survivor's Benefits, and Supplemental Needs Trusts: These benefits are for persons who worked (or had a parent or spouse who worked) before they became disabled or elderly. They must meet the program requirements. These benefits do not require a separate accounting. You should deposit these benefits into the SNT account.

MAKING PAYMENTS ON BEHALF OF YOUR BENEFICIARY

As Trustee, you are responsible for meeting your Beneficiary's needs when a government program, such as Medicaid or Social Security, does not cover those needs. SNT distributions must be for the Sole Benefit of the disabled beneficiary. In NY, that means that any disbursements from the SNT must be for the Primary and Direct benefit of the disabled individual. Others may only receive a minor and indirect benefit. You must keep records of all distributions made for the beneficiary from the trust.

Example: A Trust beneficiary is taking a vacation to Disney World, and needs an aide to assist them. The SNT pays for the beneficiary and the aide. This follows the sole benefit rule. While the aide may enjoy being at Disney World, the aide is working and helping the beneficiary during the trip, so the benefit to the aide is indirect.

Most importantly, you, as the Trustee, have the right to say 'no' to a request by the Beneficiary! If you do not think the request follows the rules or is prudent, you do not have to do it! This money is supposed to last for the lifetime of the disabled individual. Think about how long that could be!

Here is a list of expenses and some guidance to help you decide if you can pay for them from the SNT:

Rent and Utilities: These expenses owed on behalf of the Beneficiary may be paid from the SNT. If someone else lives with the Beneficiary, the SNT may only pay the Beneficiary's share of the expenses. For example, if three adults live together, the SNT may only pay 1/3 of the rent and utilities each month. The SNT contract may also provide specific guidelines regarding these payments.

Vacation, Dining, Activities: Trust monies may pay only for the Beneficiary and one companion.

Gifts, Charitable Donations, Political Donations: These are not allowable expenses. They do not provide a direct benefit to the Beneficiary.

Insurance: The SNT can only pay for insurance on items that are owned by the SNT, such as a house or a car.

Pre-Needs Funeral Arrangements: Federal and State laws prevent a trustee from using SNT funds to pay for funeral expenses after the Beneficiary has died. However, laws allow trustees to buy a pre-needs funeral contract. You can use SNT Funds to pay for these services.

Pre-needs arrangements are smart planning. They minimize the financial and emotional stress a person may experience when having to take care of a loved one's funeral. Most importantly, the law requires funeral directors to keep funeral expense funds in a special account. If you decide to use a different funeral home to handle the final arrangements, the funeral expense funds will be transferred.

Medical Equipment or Services: The SNT may pay for Medical Equipment or Services, such as additional home care or therapies. You must first ask Medicaid to cover the equipment or service. If Medicaid denies coverage (or expanding existing coverage) of the equipment or service, you may pay for them using SNT funds. Keep proof that Medicaid denied coverage and provide it to DSS with the annual accounting.

Example: The beneficiary requires a handicapped accessible vehicle. You must first ask Medicaid to purchase the handicapped accessible vehicle. If Medicaid denies the costs, the SNT may pay for the handicapped accessible vehicle.

Example: The Trust beneficiary receives 12 hours of home care per day. The beneficiary wants to receive an additional 6 hours per day. The person in charge of Medical decisions for the beneficiary must request the additional 6 hours of home care from Medicaid. If denied an increase, the Trust can pay for the additional hours.



Again, it is important to remember that the SNT is a legal arrangement. Several legal mandates and general rules that govern SNT purchases are:

1. Federal and state laws require that all purchases be for the sole benefit of the Beneficiary. This means that the only reason to buy something with trust funds is to help the Beneficiary. The trustee must use SNT assets to improve the quality of life of the Beneficiary. You, as the trustee, must provide for your beneficiary's special needs and supplemental care. You must not use the SNT funds in a lavish or excessive way.
2. If the Beneficiary is a minor, you must consider whether the purchase is a 'parental obligation.' If the purchase is something parents should provide for their child, like food, clothing, or shelter, the parents must provide it. The trust cannot pay for it.
3. Using trust funds to benefit anyone other than the Beneficiary is forbidden. "Self-dealing" is the act of paying friends, family, or yourself from the trust fund. It is a breach of your fiduciary duty. Examples of self-dealing include loaning yourself or someone else money from the SNT, or hiring yourself or a close friend to do something for the trust.
4. The Beneficiary cannot have any access to the funds, or be allowed to direct the funds in any way.
5. Trustees have broad discretion over what is an appropriate expenditure to make from trust funds. However, those decisions are subject to review by the DSS Supplemental Needs Trust Program and the Courts.

The purchase of large assets such as a house, car, or other items, e.g., furniture, may require a disbursement from the trust principal. The purchase must meet the special needs of the Beneficiary. Also, the SNT agreement may require you to take additional steps before making the purchase. You may need to get permission from a court or the Supplemental Needs Trust Program. Decisions to spend money from the trust principal must be justified from a budgetary perspective. Reducing the principal reduces future interest income. The purchase of a large asset must be for the sole benefit of the Trust beneficiary. For large purchases that require a title, such as a car or house, the SNT must be the titleholder.

PROTECTING TRUST ASSETS

Trust assets are any item with a cash value owned by the SNT. Assets can include cash, stocks, real estate or life insurance policies. Assets can also be cars, artwork, appliances, furniture and other high value items. The trustee has a duty to protect the trust assets.

Insurance should be purchased to protect large assets held within the trust, such as a house or car.

MAINTAINING TRUST ASSETS

Many assets, such as cars or houses, need maintenance to keep their value. The SNT can pay for the maintenance. However, the SNT should only pay for the care and maintenance of the asset due to use by the Beneficiary. Expenses such as gas, tolls, or utilities and routine care, should be shared among all users or residents. The purpose of a vehicle or home purchased with funds from an SNT is for the Beneficiary's transportation and shelter. Therefore, if the vehicle or home is shared, the trust can only pay for expenses incurred for use involving the Beneficiary.

SELLING TRUST ASSETS

The trustee may sell an asset, such as a car, home, appliance, or furniture. The income from the sale is the property of the trust. You must deposit the cash into the trust account immediately. Likewise, the payment for an insurance claim on a trust asset is income and must be deposited into the trust.

The trust may be required to pay taxes each year on any income received or property owned. You may want to consult with a tax professional, and you may need to get Court approval, to pay for this advice from the SNT.

KEEPING RECORDS

It is very important that you keep records of your actions as trustee. You will be able to put together the annual accounting or justify a disbursement much easier if you keep all documents. It also helps to protect you and explains your actions.

You should keep SNT records in a safe place. Protect them as much as possible from flooding, fire or other natural disasters.



DOCUMENTS TO KEEP

As trustee, you must keep and maintain appropriate records. Please keep the following documents as part of your records:

SNT Agreement – The SNT Agreement is the legal document that governs the trust. You should keep a signed copy at all times.

Court Documents – All court papers must be kept. They are legal documents that help Courts and DSS interpret the SNT agreement.

Bond – When a bond is required, you should get a certificate with the details of the bond. The certificate ensures that if the trust money is lost, the company that issued the certificate will pay for the loss.

Checks – To make a proper accounting, you should keep copies of all checks. The copies will prove when and how much you paid if there is a question.

Bills – Bills provide proof of how much utilities and other services cost.

Annual Accountings – You must keep a copy of each annual accounting you send to us each year. You should also keep a copy of any documentation you submitted to DSS with the annual accounting. If DSS reviewed the accounting and requested additional information or documents, you should keep a copy of the additional documents submitted.

Annuity Contract – If an annuity is purchased using SNT funds or funds from a lawsuit settlement, the annuity contract must be irrevocable and the SNT must be named as the “payee” and death beneficiary. Retain a statement of the current value.

Deed to Property – Keep the deed to the property owned by the SNT.

Title to Car – The proof of motor vehicle ownership; it should list the SNT as the owner of the car, or list the SNT as a lienholder against the Title.

Insurance Policies – Keep all policies purchased on behalf of the SNT as proof of insurance.

Receipts – You must submit copies of all receipts over \$250 to DSS with the annual accounting. However, DSS may request documentation for any disbursement so you should keep all receipts.

REPORTING TO DSS

As trustee, you must report to DSS how you managed the trust. You may also need to report to the Court. This report is called an “accounting” and is submitted each year. Each accounting covers a single calendar year, from January 1st to December 31st. The annual accounting is due May 31st of the year after the report year. Your first and last accounting years usually do not cover the full year, and that is acceptable.

ANNUAL ACCOUNTING

The Annual Accounting is a complete report. It details all the financial transactions of the SNT for the year. At a minimum, the accounting must list:

- Opening balance of the SNT accounts on January 1st;
- All income deposited into the SNT; with the date, source, and amount of each deposit listed;
- All disbursements made from the SNT; with the date, purpose, payee, and amount of each disbursement listed; and
- Closing balance of the SNT accounts on December 31st.

Submitting a Complete Accounting: The accounting must also include documents to support or prove the information reported. Examples of these documents include:

- Bank statements to verify the balance;
- Receipts to verify payments over \$250.00; and
- Brokerage statements to verify investments.

Here is a summary of the documents you must submit as part of the annual accounting:

Each accounting must include copies of the following documents:

- Bank Statements;
- Receipts or Bills for any Disbursement over \$250;
- Bond Certificate and Bond Premium Paid;
- New Court Orders;
- Court Order Appointing a Guardian of the Beneficiary, if not already submitted;
- Copy of the Deed to the Property Owned by the SNT, if not already submitted;

- Copy of the Title to any Car or Vehicle purchased with SNT funds, if not already submitted; and
- Updated address and telephone number for trustee, the Beneficiary, and other professionals involved with the trust.

The first submission of an accounting must also include:

- Signed Copy of the Supplemental Needs Trust Agreement;
- Court Order authorizing the SNT to be established, if appropriate;
- Proof of trust funding (Page of bank statement showing deposit);
- Annuity Contract(s), if any; and
- Deed to the Property Owned by the SNT, if any.

DSS has designed an annual accounting form to help you complete this task every year. It is available at the website listed in this booklet. You can also request a blank form from the SNT Program by contacting us.

Once you complete your accounting, you must mail it to:

Supplemental Needs Trust Program
4 World Trade Center, 40th Floor
New York, NY 10007
Attn: Director, SNT Program

WHAT HAPPENS TO MY ACCOUNTING?

A member of the SNT Program reviews each accounting.

Once our review is complete, we may:

- Decide that the accounting is complete and no additional information is needed;
- Write to you asking for additional documentation or explanations of disbursements; or
- Write to you to tell you that we do not agree with something you have done. This is called an “objection.” You will be able to submit additional documents to clarify or explain your actions.



CLOSING THE SNT

Eventually, the SNT will need to be closed, or “terminated.”

Generally, the SNT will terminate when:

- a) The funds run out, or
- b) The Beneficiary of the SNT dies.

DEPLETION OF THE FUNDS

If the funds run out, we say they are depleted. You will need to send a final accounting to DSS. This accounting should cover the whole time the SNT was active. When you submit it to DSS, we will review it and close the SNT Program’s case file in our system. If there is an issue, DSS will contact you. You may be required to file something in Court to close the SNT.

DEATH OF THE BENEFICIARY

When the SNT Beneficiary dies, you are required to tell DSS. You can tell us by e-mail, on the phone, or in writing. We will need the date of death, and you should forward a copy of the death certificate to our office.

REIMBURSEMENT OF MEDICAID

After you tell us that the Beneficiary died, we will send you a letter that states the total amount of Medicaid paid for the beneficiary’s healthcare during their lifetime. This is the “claim.” You must pay the claim using the SNT funds remaining at the time of the Beneficiary’s death.

You must also complete a final accounting. Once you have completed the final accounting and we have reviewed it, we will contact you with instructions on how to make payment to DSS.

The SNT Program has designed a final accounting form to help you complete this task. You can use the same final accounting form regardless of why the SNT is closing, and submit the accounting to us for review. It is available at the website listed in this booklet. You also can request a blank form from the SNT Program by contacting us.

CONTACT US

If you have questions, need more information regarding an SNT, or would like to request a form, you may contact the office at the following address:

Supplemental Needs Trust Program
4 World Trade Center, 40th Floor
New York, NY 10007
Attn: Director, SNT

You can also call or e-mail us at:

SNT Program Hotline: **718-557-1399**
E-mail: **SNTProgram@dss.nyc.gov**

Many of our forms and this guideline booklet are available online, anytime

<https://www.nyc.gov/site/hra/help/supplemental-needs-trust.page>

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