

TESTAMENTARY “SNT” TRUSTS – What are they and should I have one?

“Supplemental Needs Trusts” (or “SNTs”) are designed to allow an elderly or disabled person maintain eligibility for government benefits such as SSI and Medicaid, while still being able to enjoy an inheritance or personal injury settlement. This handout focuses on only one kind of SNT: one created by the Last Will & Testament of a spouse.

The Medicaid rules allow spouses to transfer assets back and forth between themselves without any penalty. And, in determining eligibility, the rules exclude any assets held for a patient’s benefit in a “supplemental needs trust” created in a Last Will & Testament. Thus, we have the opportunity to take advantage of those rules and use them to effectively put a “bubble” around your assets in the event that your surviving spouse needs Medicaid assistance in the future.

A typical Will of a married person says “when I die, give everything I own to my spouse.” (And, when you own everything together either as joint tenants or as tenants by the entirety, you are basically saying the same thing. When Spouse #1 dies, jointly owned property instantly becomes the 100% property of Spouse #2.) This is sometimes called an “I love you” estate plan.

To preserve the assets, we need to change that typical plan. Instead, we write the Wills to say “when I die, do NOT give everything outright to my spouse because that will expose our assets. Instead, I want everything (or part of everything) to be held in trust for my spouse, and to be used for his/her benefit to supplement any government benefits to which he/she may be entitled.” This puts a bubble around the assets. Medicaid will not count any assets in such a trust, and cannot later seek recovery against those assets on the death of Spouse #2. However, Spouse #2 gets to enjoy the assets during his/her life just as if he/she had been given them outright.

It is not enough to include this language in a Last Will & Testament. In order to make the plan work, we have make sure that you own the assets in the proper manner while you are both still living. If you own the assets jointly, the plan won’t work. On the death of Spouse #1, ownership will change instantly; the asset won’t be subject to probate, and will never go through the Will.

Along with a carefully crafted Durable Power of Attorney, a “testamentary supplemental needs trust” plan can be an important strategy for long term care planning, especially when a couple owns real estate but does not have a lot of cash assets. The plan allows us to maintain flexibility and to make adjustments up to the very last minute before someone passes away. But it can only be created when both spouses are alive and competent. **Do not delay in exploring this important asset preservation strategy for your family.**