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#### TWO SIDES OF THE COIN .....

Side A: Planning the Special Needs Trust

- Is it needed?
- Mandatory or "trigger?"
- What are the tax considerations?
- How will it be funded?
- How much should it hold?
- Who to name as trustee?
- Who should be the remainder beneficiaries?



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#### TWO SIDES OF THE COIN.....

Side B: Administering the Special Needs Trust

- Are the "trigger" conditions met?
- Is the Trustee able and willing to serve?
- Does the beneficiary receive benefits now?
- How will it be funded?
- Specific amount?
- Percentage of the residuary estate?

If it is for a spouse, how do you tease out the Trust's share?



#### Things to Do

- Ask: What does the client do now to support the disabled person? What do they envision in the future?
- Spend time talking about the advantages and disadvantages
- Consider how soon the trust is likely to be established
- Talk about optimal funding (does it need \$10,000 or \$1,000,000?)
- Talk about the job of the trustee—who should be named?

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- Gloss over tax considerations
- Treat all Special Needs Trusts the same
- Overfund trusts unnecessarily
- Make it too complicated ("Nevermind, I'll just leave his share to his sister.")

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### PLANNING THE TRUST

#### Advantages to Discuss

- Preserves benefits and eligibility
  - SSI, Medicaid, LTC Medicaid
- No Medicaid payback if it is testamentary (differentiate from a first-party trust)
- Builds in trust protections (trustee, spendthrift)
- Makes it possible for a disabled person to have more than benefits will cover

Disadvantages & Challenges to Discuss

- Requires a will-based plan for spouses
- Income taxation
- Potential problems getting an IRA stretch
- Trustee hesitancy
- Remainder beneficiaries

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#### Requires a <u>will-based</u> plan for spouses

- A testamentary provision in a Will is the ONLY way a person can create a SNT for a spouse. (WAC 182-516-0115)
  - All other trusts for spouses are treated as first party SNT's and generally deemed available.
- What about a beneficiary designation of retirement account to Testamentary SNT?
- Should be okay if the test. SNT was initially funded with estate assets.

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# PLANNING THE TRUST

#### Disadvantages & Challenges to Discuss

- Income Taxation
  - If you expect the trust to generate net income, the best-case scenario is a <u>qualified disability trust</u> in most cases.
  - As of 2020, a qualified disability trust can claim an exemption of up to \$4,300
  - The rest can be taxed at the beneficiary's marginal rate.
  - Great resource: <u>https://www.specialneedsalliance.org/the-voice/is-a-qualified-disability-trust-appropriate-2/</u>



- Qualified Disability Trust treatment requires:
  - The trust must be irrevocable;
  - The trust must be established for the <u>sole benefit</u> of the disabled beneficiary;
- The disabled beneficiary must be <u>under the age of 65</u> at the time the trust is established; and
- The beneficiary <u>must have a disability</u> that is included in the definition of disabled pursuant to the Social Security Act.

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- SECURE Act of 2020
  - To get the stretch for IRAs directed to a Special Needs Trust (which is an accumulation trust), you must make it a seethrough trust and the beneficiary must be disabled.
  - Still a lot of controversy about this.

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# PLANNING THE TRUST Disadvantages & Challenges to Discuss • Trustee Hesitancy • What is the relationship between the trustee and the beneficiary? • Is it "wishful thinking" to imagine the trustee in the role? • Does a professional make more sense?

Disadvantages & Challenges to Discuss

- Remainder Beneficiaries
  - They will continue to have rights as beneficiaries. Is this good?
  - Will they be alive when the primary beneficiary dies? Does the Will make a good plan for the trust estate?

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- What benefits does the beneficiary receive now? Are there benefits he or should could obtain in the future?
- Do not rely on general trustee guidance; the rules are very different across benefits programs and jurisdictions.

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# ADMINISTERING THE TRUST Examples of how the actual benefits matter: • Beneficiary is on <u>SSI and Medicaid</u>: • Food and shelter expenses paid by the trust (in-kind support and maintenance) will reduce the SSI benefit. • Cash distributions will reduce and potentially disqualify the beneficiary • Beneficiary is on <u>SSDI and Medicare</u>: • These benefits are not affected by the trust.

However, the beneficiary may be receiving a Medicaid supplemental benefit with an asset/income limit!

# ADMINISTERING THE TRUST

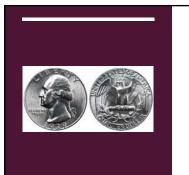
Things to Avoid

- Assuming the Trustee will know what to do ("Good luck!")
- Funding the trust poorly (e.g., a house with no assets for maintenance and taxes)
- Adding the Beneficiary's own assets to the same trust (tainting it into a d4A)

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