


Special Needs Trusts Seminar

Presented by Sheri R. Abrams
Attorney at Law

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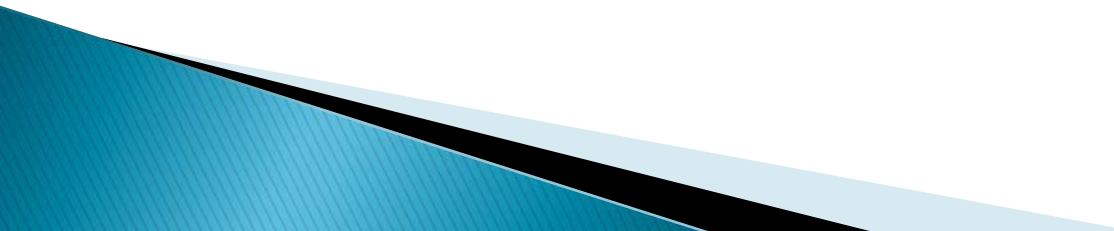
About Sheri R. Abrams

- ▶ Practicing Social Security Disability Law, Estate Planning, Elder Law and Special Needs Planning for more than 20 years
 - ▶ Rated “AV Preeminent,” “Super Lawyer,” “Best Lawyers in America”
 - ▶ Board of Directors of Virginia Academy of Elder Law Attorneys (VAELA)
 - ▶ George Washington University Law School
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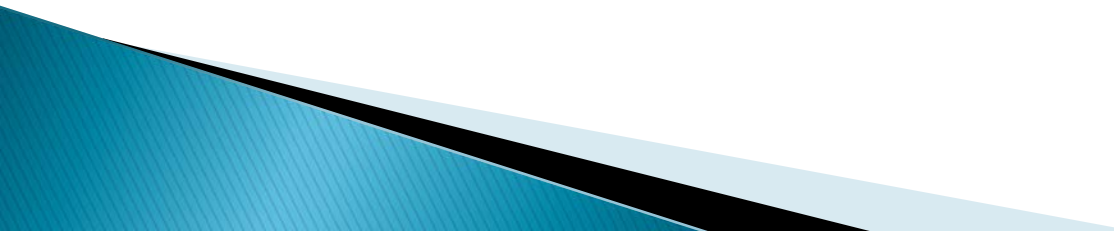
About Sheri R. Abrams

- ▶ Author of the Book “Don’t Gamble with Your Social Security Disability Benefits”
 - Available For Free Download:
 - www.sheriabrams.com
 - Also Available at Amazon.com, Kindle, Nook (Barnes & Noble)
- ▶ See my Blog:
 - www.virginiadisabilitylawblog.com
- ▶ Free Monthly Newsletter
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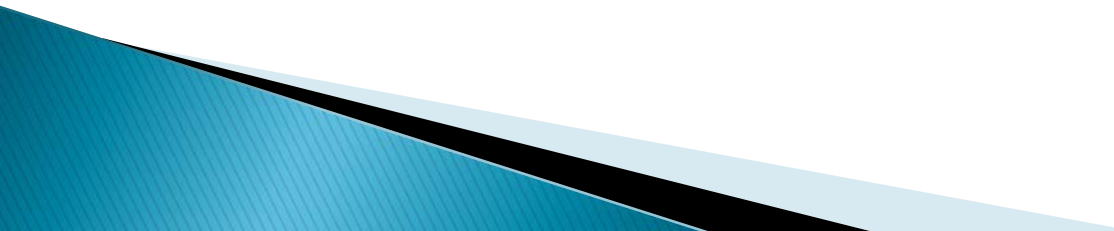
What Public Benefits Can a Disabled Person Receive?

- ▶ Supplemental Security Income (SSI)
 - ▶ Medicaid
 - ▶ Subsidized (Section 8) Housing
 - ▶ Other means-tested benefit programs
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What is Supplemental Security Income (SSI)

- ▶ Welfare Type Program (limited to U.S. Citizens with some exceptions).
 - ▶ Never had to work.
 - ▶ Very limited assets (\$2,000 for 1 person, \$3,000 for a couple).
 - ▶ Can receive up to \$733 per month for 1 person, \$1,100 per month for a couple (2015), but this varies by State.
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Supplemental Security Income (SSI)

- ▶ Will receive Medicaid immediately (only need \$1 of SSI to get Medicaid)
 - Medicaid is free
 - ▶ SSI Benefits start at date of application
 - No waiting period
 - ▶ Need rental agreement for full SSI Benefits
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SSI For Children

- ▶ Eligible for child SSI benefits beginning at birth
- ▶ Eligible for child SSI benefits until age 18
 - Can then be determined eligible for adult SSI
- ▶ Deemed Income
 - Parents income used to determine child's financial eligibility
 - Only until age 18


Disabled Adult Child Benefits (DAC)

- ▶ Adults who were disabled before age 22
- ▶ Eligible if parent is deceased or are receiving Social Security Disability or Retirement benefits
- ▶ 50% of benefit if alive, 75% if deceased
- ▶ Receive Social Security Disability benefits (not SSI) and Medicare
 - no income/resource limitation.
- ▶ Strict rules on marriage

What To Do When a Disabled Child is Turning 18

- ▶ Guardianship
- ▶ Supplemental Security Income (SSI)
 - No more “deeming”
 - Rental agreement
 - Rep Payee
- ▶ Special Needs Trust (SNT)

Special Needs Trusts

- ▶ Also known as a Supplemental Needs Trust
 - ▶ Holds and disburses assets for a disabled person
 - ▶ Intended to provide supplemental funds for living expenses not covered by public benefits
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Purpose of a Special Needs Trust (SNT)

The essential purpose of a Special Needs Trust is to improve the quality of a disabled person's life without disqualifying him or her from eligibility for public benefits.

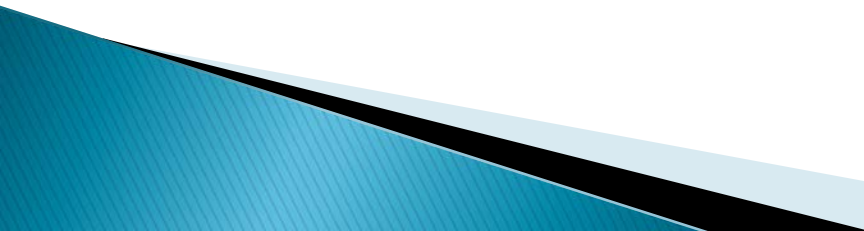
Why are Special Needs Trusts important

- ▶ Public benefits asset test (\$2000)
- ▶ Management of assets for vulnerable disabled persons -- from themselves and from others:
 - creditor protection;
 - divorce protection; and
 - other threats

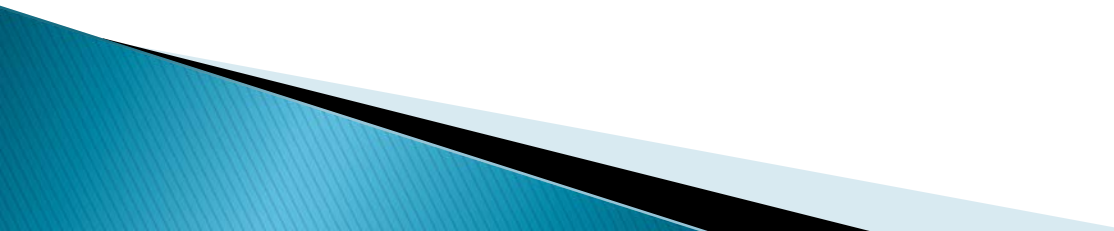
Types of Special Needs Trusts

- ▶ Self-Settled or 1st Party Special Needs Trust -- Also referred to as a “d4A” trust (42 U.S.C. §1396p(d)(4)(A))
- ▶ Third-Party Special Needs Trust
- ▶ Pooled Special Needs Trust -- Also referred to as a “d4C” trust (42 U.S.C. §1396p(d)(4)(C))

Self-Settled Special Needs Trusts

- ▶ Established with the disabled person's own money
 - ▶ Most commonly funded by proceeds from a lawsuit or inheritance payable directly to the disabled person
 - ▶ Trust must include a “payback” provision directing trustee to repay, at the death of the disabled person, anything Medicaid has paid
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Additional Rules for Self-Settled Trusts

- ▶ Trust can only be established by parent, grandparent, legal guardian or the court
 - ▶ Trust must be irrevocable
 - ▶ Must be established and funded prior to the disabled person turning age 65
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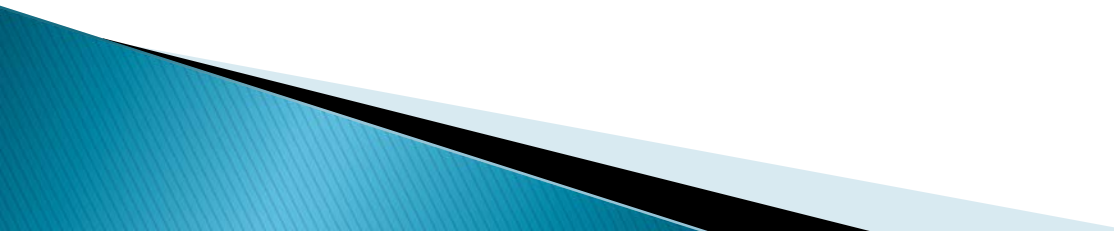
Third Party Special Needs Trusts

- ▶ Established with other people's money
- ▶ Anyone can establish and there are no age restrictions to establish or fund
- ▶ Does not require a “payback” provision for Medicaid benefits upon disabled person's death
- ▶ Can be Irrevocable or revocable
- ▶ Can be created during lifetime or at death
 - “Living” SNT lets others contribute

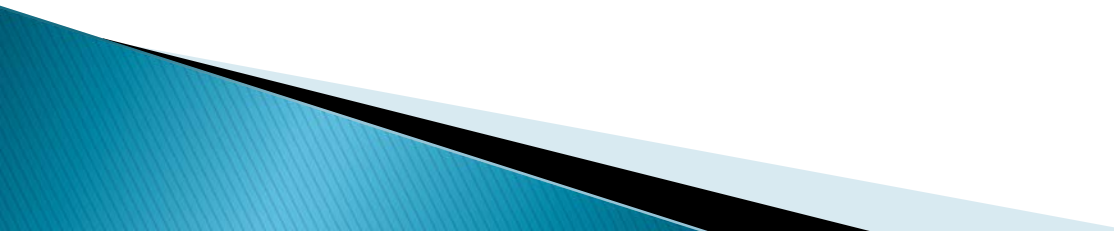
Pooled Special Needs Trusts

- ▶ Operated by a nonprofit organization
- ▶ The nonprofit is the “Trustee”
- ▶ Funds are pooled for investment purposes, but individual accounts are kept for each disabled person
- ▶ Often have low or no minimum funding requirement and low administrative fees
- ▶ Virginia Pooled SNTs:
 - The Arc of Northern Virginia
 - Commonwealth Community Trust (CCT)

Expenses that a Special Needs Trust Should Not Pay For

- ▶ Cash given directly to the disabled person for any purpose
 - ▶ Food or groceries
 - ▶ Restaurant meals (except if given as an occasional gift)
 - ▶ Rent or mortgage payments
 - ▶ Property taxes
 - ▶ Homeowners or condo association dues
 - ▶ Utilities such as electricity, gas, and water
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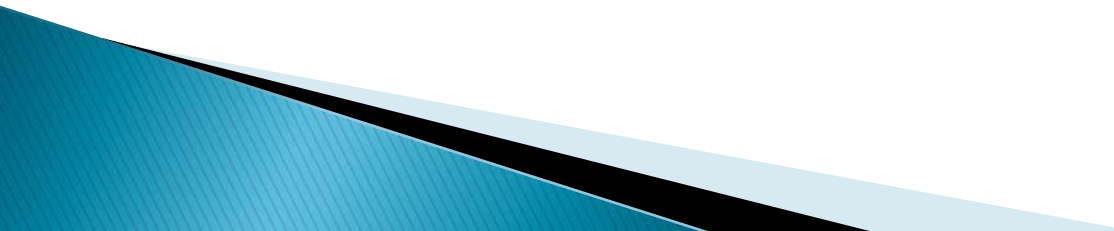
Only a 1 / 3 Reduction in SSI Benefits

- ▶ However, many of these payments will only cause a one-third reduction in SSI benefits
 - ▶ The trustee may determine that the benefit of the SNT making these payments outweighs the loss of this money
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Things that a Special Needs Trust Can Pay For

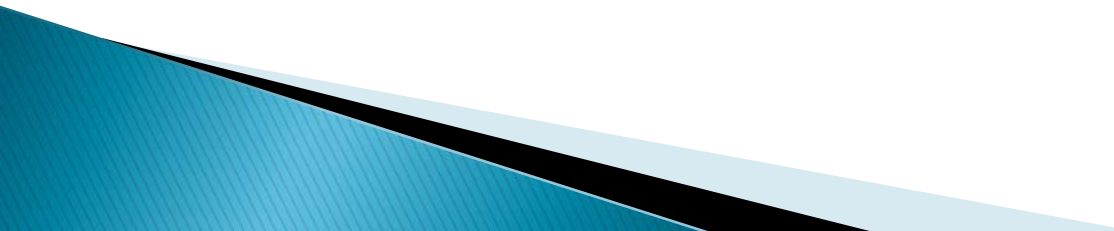
- ▶ Home upkeep
- ▶ Phone, cable & internet service
- ▶ Vehicle, insurance, maintenance & gas
- ▶ Pre-paid Burial/funeral arrangements
- ▶ Tuition, books, tutoring
- ▶ Travel & Entertainment
- ▶ Household furnishing & furniture
- ▶ Television, computers & electronics
- ▶ Durable medical equipment
- ▶ Care management
- ▶ Therapy, medications, alternative treatments
- ▶ Some taxes
- ▶ Legal, guardianship and trustee fees
- ▶ Personal hygiene (haircuts, manicures)
- ▶ Clothing

Responsibilities of SNT Trustee

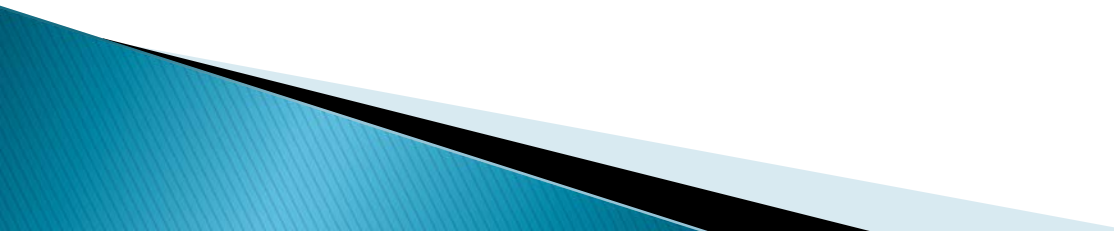
- ▶ Invests/manages assets
 - ▶ Discretion over distributions
 - ▶ Keeps books
 - ▶ Files tax returns
 - ▶ Hires advocates and care managers, etc., as needed
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Selecting an SNT Trustee

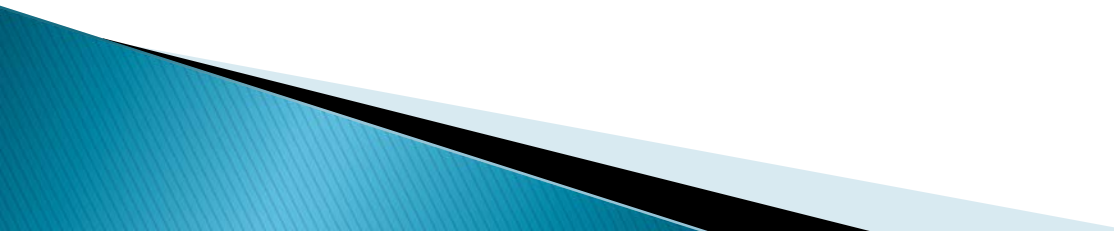
Options:

- ▶ Your other children
 - ▶ Other family members
 - ▶ Banks and Trust Companies
 - ▶ Professionals
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Funding Your SNT

- ▶ Cash and Investments
 - ▶ Real Estate
 - ▶ Life Insurance
 - ▶ Rent from disabled person
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Common Myths About SNTs

- ▶ My child is not on public benefits now so I don't need a Special Needs Trust
 - ▶ The stigma
 - ▶ SNTs are costly, difficult to set up, and burdensome
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In 2015, Sheri's office relocated to the third floor of ServiceSource's Disability Resource Center in Oakton, Virginia.

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