

# Wispect Special Needs Trusts - How Can They Help Live a Self- Directed Lifestyle

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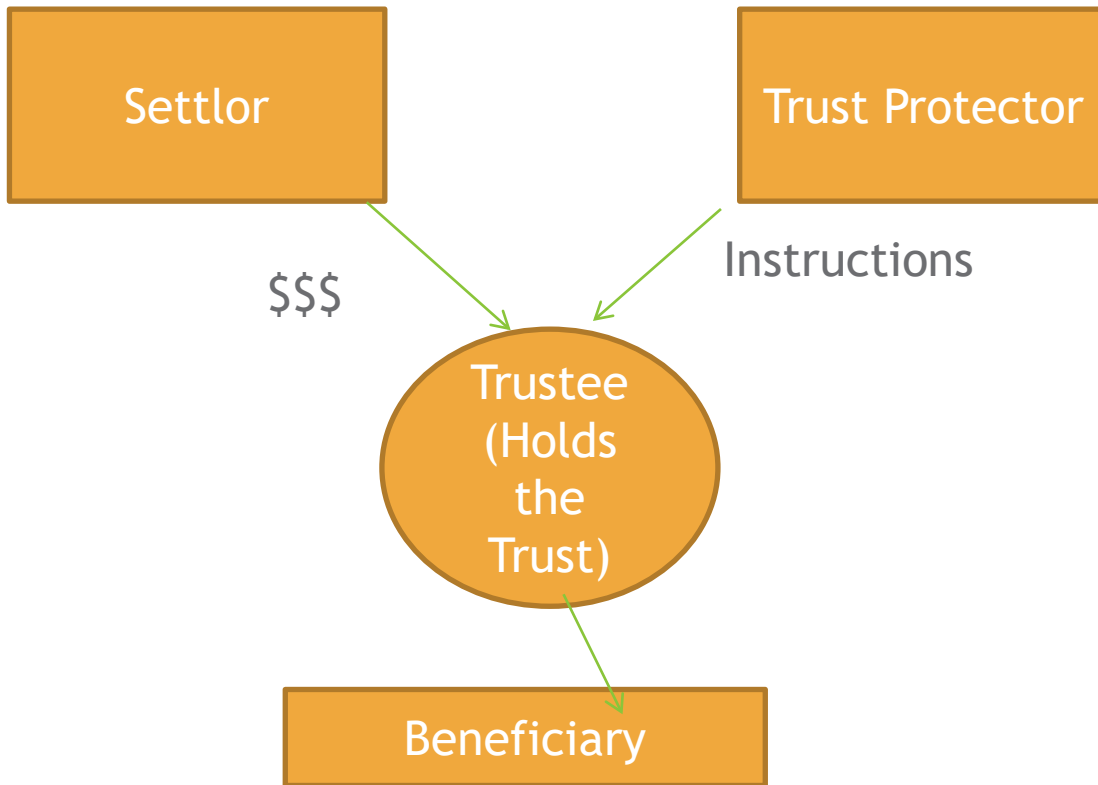
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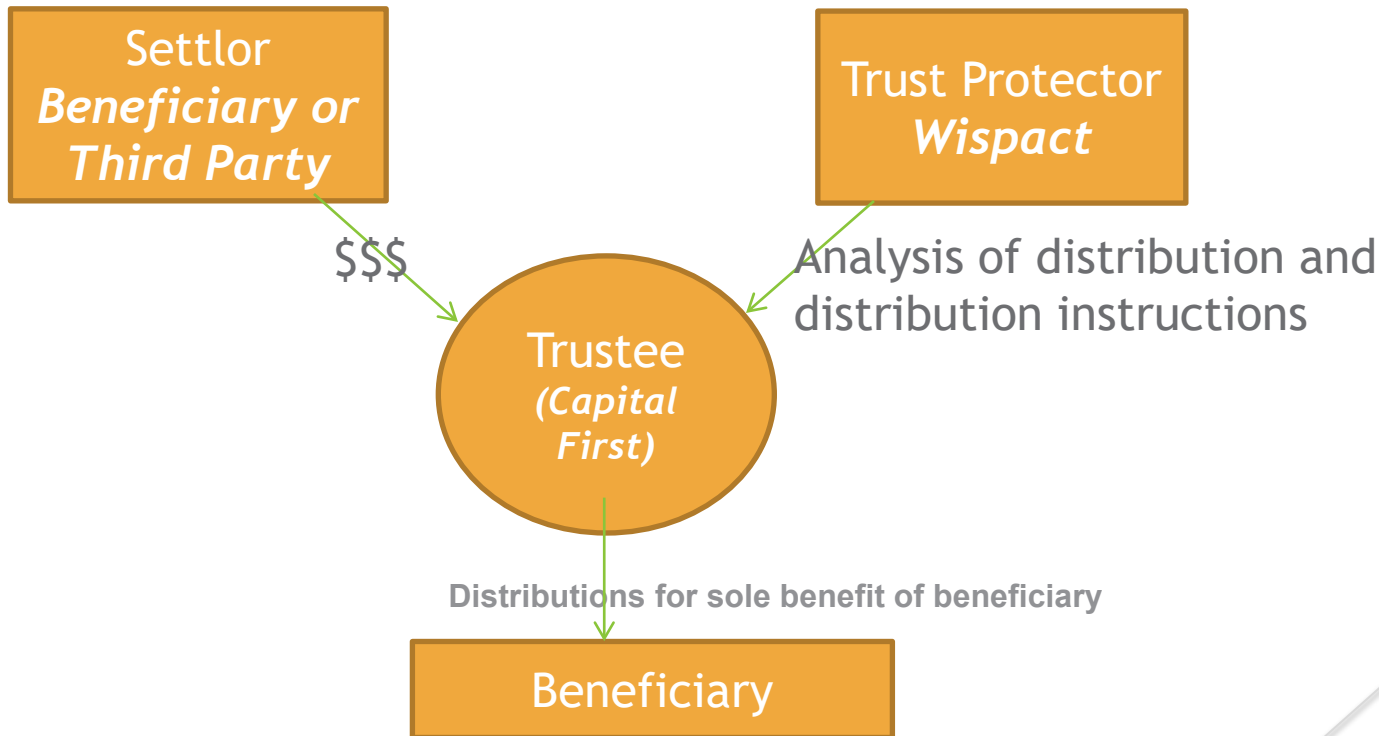
# Wispack's Mission

We enhance the well-being of people of all ages with disabilities across Wisconsin through the management of special needs trusts by promoting more choice and opportunities.

# What is a Trust?



# What is a Wispact Special Needs Trust?



# Special Needs Trusts – WHY?

Why would a person need a Wispact Special Needs Trust?

- 1) **EXEMPT:** Assets held in a Wispact Special Needs Trust are an exempt resource for Wisconsin Medicaid and SSI purposes.
  - 1) See MEH 16.6.6
  - 2) See POMS SI 01120.200
  
- 1) **NOT A DIVESTMENT:** Transferring assets to a Wispact Special Needs Trust for your own benefit is not a divestment. There are also exceptions to funding trust for a person's disabled child – *these are very individually-specific rules and they should speak with an attorney.*
  - 1) See MEH 17.13.4

# Special Needs Trust – WHY?

- ▶ Preserve excess resources while maintaining eligibility for means-tested public benefits.
- ▶ Resources held in a SNT are professionally managed and distributed per strict regulations and guidelines, however they enable an individual on means-tested public benefits to supplement their long-term needs and improve their quality of life.

# Who is eligible to create a Wispact Special Needs Trust?

- ▶ Qualifications: Any Wisconsin resident with a disability can create a Wispact Special Needs Trust.
  - ▶ **NOTE:** Wispact requires that every trust application is submitted through the assistance of a Wisconsin licensed attorney. Most elder law and special needs planning attorneys are familiar with Wispact trusts and the trust creation process.
- ▶ Even if you are over age 65 you must have a **disability determination** in order for the funds in your Wispact Trust to be considered exempt.

# Someone over age 65 needs a Disability Determination??

▶ **YES!!!**

MA Eligibility (generally):

- 1) Non-Financial: EBD (Elderly, Blind or Disabled); Elderly = +65.
- 2) Financial: Assets under \$2,000

## What about the assets in the Wispact Trust??

In order to exempt the SNT from the **FINANCIAL** component of eligibility, the person needs to be determined disabled. Though they may be +65, they still need the formal Disability Determination, typically achieved by filing a MADA application and writing “Wispact” at the top.



# What clients might need a Wispact Special Needs Trust?

- ▶ Creating and funding a Special Needs Trust is an option for anyone who needs to do a “spend down” if they suddenly need to qualify for means-tested benefits, or if they are currently enrolled in means-tested benefits and they come into a windfall.
  - ▶ Individuals on MA and/or SSI that receive a personal injury settlement, sell their property, receive an inheritance, receive a divorce settlement, cash in a life insurance or retirement account, among other situations.
  - ▶ **Why can a SNT be a good option?** Rather than quickly, and perhaps wastefully, spending down in the month in which they receive the settlement, preserving funds in a Wispact Special Needs Trust allows the person to save the funds to pay for ongoing long term needs.

# What can go into a Wispact Trust?

- ▶ Generally, only cash is accepted into a Wispact Trust.
- ▶ Sometimes the Trustee may make exceptions for non-cash, “unique”, assets – however this is a formal request procedure completed with their attorney and is decided on a case-by-case basis and only under very specific situations.

# What does Wispact do?

- ▶ Wispact , Inc. is a 501(c)(3) non-profit organization that manages more than 4,500 individual special needs trust sub-accounts. Wispact was started in 2003, through a joint effort of Wisconsin's elder law community and several disability advocacy groups. We have a Board of Directors consisting of elder law and special needs planning attorneys and advocates, financial professionals, and members of the special needs advocacy community.
- ▶ Wispact processes new trust applications and if approved sets up a new trust account with our Trustee, Capital First.
- ▶ Each Wispact Beneficiary is assigned a "Beneficiary Specialist" who is their main point of contact to request distributions and answer other questions related to their Trust.
- ▶ Wispact staff can provide basic information to consumers about Wispact operations and SNTs in general.



# Distributions from the Trust

- ▶ A Beneficiary or their legal representative can contact Wispact and make a “Request for Distribution”
- ▶ Wispact Beneficiary Specialists review each distribution request and analyze whether there are any regulatory or other problems with the request.
- ▶ Primary Distribution Rules:
  - 1) The “Sole Benefit Rule”
    - All distributions must be for the Beneficiary’s ‘sole benefit’ only
  - 2) In Kind Support and Maintenance violations?
    - SSI recipients (generally) cannot receive distributions that pay for food or shelter expenses.
  - 3) Is the distribution prudent?
  - 4) Does the distribution violate any other trust or benefit rule?

# What can you use funds in a Wispact Special Needs Trust For?

## Common Distributions:

- 1) Dental expenses not otherwise covered
- 2) Private room differential
- 3) Health and beauty expenses
- 4) Entertainment (books/movies/cable TV)
- 5) Travel (possibly also a travel companion)
- 6) Healthcare and prescription medication co-pays
- 7) Private caregiver

# How are bills paid?

- ▶ We cannot ever give a Beneficiary cash!
- ▶ We require receipts for all RFDs!
- ▶ How do people typically get things paid for?
  - ▶ Automatic recurring payments sent to Wispact – note Wispact will not review the bill (*e.g. it is convenient to send your cable bill directly to Wispact to pay each month, but it is the beneficiary's responsibility to review their bill – we won't call to ask if they really watched 3 movies that month.*)
  - ▶ Direct payments to vendors;
  - ▶ Reimbursements to Trust Agents;
  - ▶ Credit card payments.

# What can't you use Trust funds for?

- ▶ Common confusing SNT rules:
  - ▶ The Trust cannot buy gifts, even at Christmas!
  - ▶ The Trust can only pay the Beneficiary's pro-rata share of household expenses.
    - ▶ If 4 people live in the house we can only pay for  $\frac{1}{4}$  of the electricity bill.
  - ▶ If the person is on SSI, we generally cannot pay for food or shelter expenses as this is considered in-kind-support and maintenance and will reduce their SSI dollar for dollar, maxed out at  $\frac{1}{3}$  of the FBR.

# What happens to the funds in the Trust when the person dies?

## It depends on the type of Trust a person has:

### 1) Wispact Trust I

- When a Beneficiary passes away our Trustee notifies the Wisconsin Estate Recovery Program. If the person has an Estate Recovery Payback Claim against them, then how the trust is paid out depends on two factors – what is left in their trust and what is owed to Estate Recovery.
  - If what is left in the trust is insufficient to payback Estate Recovery, then the funds are retained by the Wispact charitable fund for the benefit of other Wispact beneficiaries.
  - If what is left in the trust is more than the payback amount, then the ER claim is paid and the remainder is paid to the Trust Creator's heir choice.



# Payout upon death cont.

## 2) Wispact Trust II – Third Party Trust.

As the assets were never the Beneficiary's during their lifetime, they are not subject to Estate Recovery Payback and are paid out as dictated by the Creator's Trust document.

# Wispect's Charitable Fund

- ▶ Wispect beneficiaries can apply for charitable grants to cover any needs that their trust may not be able to cover for them or the purchase of which would greatly deplete their trust.
  - ▶ Common examples:
    - ▶ Advocacy – grants are available to hire an attorney/ other advocate to fight an overpayment, an eviction, bankruptcy, etc.
      - ▶ One particularly popular advocacy grant is our Creation Subsidy Program, where smaller trusts can have their legal fees offset at the time of trust creation and their set-up fee reimbursed.
    - ▶ Dental – grants are available to pay for dental work that their trust cannot cover.
    - ▶ Transportation – grants are available to pay for needed transportation expenses, e.g. bus passes.
    - ▶ Therapies / health care expenses not otherwise covered
    - ▶ Financial Literacy – e.g. assistance with budgeting

# Using SNTS with ABLE Accounts

- ▶ ABLE Accounts are an additional option from Special Needs Trusts
- ▶ They have some advantages and some disadvantages which may make using them in combination the best option.

# ABLE Account Advantages

- ▶ ABLE Accounts are self-administered or by an agent under a valid POA, parent, or conservator/guardian
- ▶ If you receive SSI, restrictions on the use of SNT proceeds are not the same with an ABLE Account which allows for housing expenses. SSA says that distributions from an ABLE account are not income if they are used for those expenses in the same calendar month.
- ▶ Any one can contribute to the account even if it is established by the individuals themselves.

# ABLE Account Disadvantages

- ▶ ABLE Accounts limit eligibility requiring that the individual be determined disabled prior to age 26.
- ▶ ABLE Accounts are limited in regard to what can be contributed.
- ▶ In 2018, the contribution limit is \$15,000.00 per year.
- ▶ For SSI recipients an ABLE account with a balance in excess of \$100,000.00 will count toward the \$2,000.00 resource limit; however, after spend down, the SSI recipient can go back on benefits without having to reapply.
- ▶ There are lifetime contribution restrictions which can vary from state to state, approx. \$250K to \$450K
- ▶ All proceeds are subject to Medicaid payback regardless of whether the proceeds are self-funded or third party.

# In Conclusion...

- ▶ Wisconsin is a national leader in the field of Special Needs Trust administration.
- ▶ A Wispact Trust can be a great alternative for your clients to a wasteful spenddown.
- ▶ Supplementing a person's long-term needs makes a person healthier and is a true cost-savings to our public benefits programs.

# Wispect Information

- ▶ Phone: 608-268-6006
- ▶ Website: [www.wispect.org](http://www.wispect.org)

Any questions?

