



Personal Support Trust
Frequently Asked Questions

Managed By

**The Foundation of The Arc of
Northern Virginia**

Fall 2016

The Foundation of The Arc of Northern Virginia
2755 Hartland Road, Suite 200
Falls Church, VA 22043

Tia Marsili, Director of Trusts

P: 703-208-1119 ext. 115

F: 703-208-0906

tmarsili@thearcofnova.org
www.thearcofnovatrust.org

Table of Contents

The Basics	1
Assets in Relation to other Benefits	4
Other Future Plans or Arrangements	6
Specifics of the Personal Support Trust	9
Funding the Account	12
Remainderment	15
Taxes and Legal	17

The Basics

1. What is a Trust?

A trust is an arrangement in which a trustee holds legal title to property for the use of a beneficiary.

2. What is the difference between a revocable and irrevocable trust?

A revocable trust is one that you can change during your lifetime. In other words, you can regain control of the trust assets or request other changes in the trust agreement. An irrevocable trust, once established, transfers all control of the trust assets to the trustee and cannot be changed. An irrevocable trust may be more advantageous from a tax standpoint.

3. Why should I consider joining The Foundation of The Arc of Northern Virginia's Personal Support Trust Program?

A major problem confronting families of persons with disabilities is being sure that the financial needs of the person are provided for adequately. Due to their flexibility as a financial planning device, trusts are a favored means of planning for financial security. Unfortunately, trusts have not always been a reasonable alternative for the average person because most trusts require large, initial property transfers. Commercial banks and trust companies do not like to accept trusts of less than a substantial amount, or if they do, they tend to charge minimum fees based on a

higher minimum amount than is actually placed in trust. In addition, commercial trust officers and administrators usually do not have a special awareness of the problems and necessary expenditures of people with disabilities.

There are three major advantages in joining the Personal Support Trusts:

1. Our Trust fees are less than are normally charged by most commercial banks and trust companies,
2. The Foundation of The Arc of Northern Virginia is familiar with the needs of individuals with disabilities, and
3. The Personal Support Trust has the advantage of being a more permanent trust arrangement than can be established through a relative or friend of the beneficiary.

3. Do the Personal Support Trusts exclude family members from involvement in making decisions?

No. We encourage active participation and advice. Family members do not, however, have to worry about learning regulations and dealing with bureaucrats. These responsibilities are ours.

4. Are there alternatives?

One alternative means of providing for the needs of a person with disabilities is to leave funds to a friend or relative in a

trust, by will or otherwise, with the request that he or she use the funds as trustee to provide for the individual. If family relationships are close, this may be a desirable alternative. Such an arrangement, unfortunately, has the disadvantage of uncertainty. The friend or relative may die before the person with a disability or may not be capable of carrying out your request, thus defeating the goal of financial security you had hoped to achieve.

Assets in Relation to other Benefits

- 5. What guarantee is there that some government agency will not challenge in court my child's eligibility for public benefits by virtue of his participation in the Personal Support Trusts?**

Our trust documents are consistent with favorable Congressional action. We also spent a year reviewing and analyzing 22 programs across the country which operates trust programs for people with disabilities. Our trust documents represent the best thinking of those programs, none of which have been challenged by any court.

Also, in August, 1993, Congress passed legislation allowing persons who have a disability to fund their own trust without interfering with Medicaid. Congress was recognizing the value of trusts like our Personal Support *Self-funded* Pooled Trust.

6. Can the Personal Support Trusts be revised if a court rules (or may rule) against them?

Yes. The Board of Directors of The Foundation of The Arc of Northern Virginia can amend the Personal Support *Family-funded* Trust. However, the Board is expressly prohibited from:

- a. Altering the purpose or objective of the family-funded trust.
- b. Making gifts revocable that are otherwise irrevocable.
- c. Changing the duties of the trustee without the trustee's consent.

The Personal Support *Self-funded* Trust is totally dependent upon actions of Congress and restricted by the law establishing it in 1993. It is incumbent upon the legislative advocacy efforts of The Arc and other disability organizations to monitor and inform our Congressional representatives about the value of this trust.

7. Is it possible for the Personal Support Trusts to change trustees?

The Foundation of The Arc of Northern Virginia has the flexibility to change the trustee if desirable. The trustee may also resign at its option.

Other Future Plans or Arrangements

8. I already have a trust established for my loved one who is disabled, with a family member or friend serving as trustee. Why should I consider switching to a Personal Support Trust?

One reason is continuity. People want continuity. They want the trust they create to last the beneficiary's entire lifetime. When another individual serves as trustee, continuity depends on that other individual. Will the individual without a disability move, die, or for any other reason be unable to keep administering the trust? The Personal Support Trusts are managed by a corporate entity. They do not depend on an individual, so continuity is more likely.

A second reason is The Foundation of The Arc of Northern Virginia's management abilities. There is a long history of developing programs for persons with disabilities. It has been a reliable organization for over forty-five years and has the expertise to manage this trust program.

If a family member or friend serves as trustee, his or her most challenging responsibility may be learning and staying current with regulations, and making reports to agencies such as the Social Security Administration, Department of Medical Assistance Services, Department of Rehabilitative Services, and the Department of Mental Health, Mental Retardation, and Substance Abuse Services. To be eligible for certain benefits from these agencies, your loved one with a disability is allowed minimal income and assets. Every time the trust is used, income or assets might be

created. The individual who administers the trust must report each expenditure to these agencies. The agencies then determine, based on their regulations, if the trust has created income or assets. If it has, and if the amount created exceeds the maximum allowed, eligibility is endangered. Not surprisingly, no two agencies' regulations are identical. Thus, the more benefits received the more regulations to learn. The Personal Support Trust Program currently has many clients whose benefits must be protected; staff work daily with the reporting requirements these benefits carry.

9. If I already have a trust for my loved one who is disabled and want to keep it, can I also use the Personal Support Trusts?

Yes. You may want our expertise but also want family members to control the bulk of trust assets.

10. I already have a trust for my loved one who is disabled, with a bank serving as trustee. Why should I consider switching?

The Personal Support Trusts use a Trustee. For many families the combined expertise provided by The Arc and the Trustee will be highly attractive.

Many banks are reluctant to administer trusts under \$250,000. Using the Personal Support Trusts, families who do not have these resources can still gain the experience and professional management of a major financial institution.

The fee charged by the Personal Support Trusts is generally less than that charged by banks for an individually managed trust.

A bank trust department might be compelled to terminate a trust if the trust's principal or income is insufficient to justify the annual fee. This is something the Personal Support Trusts will not do. We continue administering the trust account so long as any funds remain.

Few bank trust departments know the regulations for Medicaid, Supplemental Security Income (SSI), etc.

Why? Because benefits like Medicaid and SSI are for low-income people, and bank trust departments generally do not deal with low-income people. The Arc has a thorough knowledge of the regulations.

NOTE: If you intend using a bank as trustee, determine if the bank has the expertise - or is fully prepared to develop such expertise - and at no additional cost to you. Get the bank's commitment to do so in writing. Make sure you and the bank agree on its liability. Make sure that the bank can discharge its responsibilities as you intend. Ask a lot of questions, and get the answers in writing.

When a family sets up a trust for a person with a disability, they frequently want more than professional management and expertise. They want insight into meeting the individual's personal needs. Few local banks have this insight. The Arc of Northern Virginia and its Foundation are nonprofit organizations interested in improving opportunities

for people with disabilities. Because of our overall mission, we may have greater sensitivity and knowledge to what families want.

Specifics of the Personal Support Trust

11. What is the difference between the two Personal Support Trusts?

One main difference is where the assets originate: the family or other relative (family-funded), or the individual with a disability (self-funded).

The other difference is how any remaining funds are disbursed upon termination of the trust. The *family-funded* Trust can leave remainderments to anyone or any entity they identify in the Joinder Agreement. The *self-funded* Trust has a payback requirement to Medicaid for all funds "not retained by the trust", i.e. not left to the non-profit organization administering the trust.

12. What do you mean when you say the Personal Support Trusts are a "pooled" trust?

Each beneficiary has his own separate sub-account. For purposes of fees and investments, however, the money you leave for your loved one is combined (pooled) with the money left by other donors. This makes delivery of professional money management and fiduciary services feasible for relatively small trusts. For more information on

the Trustee's investments, call the Personal Support Trusts for a brochure.

13. What is the Joinder Agreement?

The Personal Support Trusts are two basic documents (master trusts) which govern the operation of every trust. A family or individual "joins" one of these trusts by executing a Joinder Agreement which sets forth the particular provisions of the trust established for the particular beneficiary (remainderment provisions, fees, primary representatives/ guardians for the beneficiary, how the trust will be funded).

14. Why do I Need a Trust Plan?

This is the document that is developed with the family and beneficiary that specifies what services are needed, who will provide these services, and how much money is projected to be required to fund the requested services.

15. Who provides the services identified in the Trust Plan?

You must identify those services and the individuals or entities who are responsible for obtaining them in the Trust Plan. Remember, Personal Support Trusts services are financial services, they purchase (not provide) goods and services on behalf of your child.

16. How are requests for disbursements made?

Requests will be easy to make. Requests can be made in writing, through the mail or fax. They are made by designated family members or professionals who work closely with your loved one (the primary representatives). A short form is available that includes all the information we need to process the request.

17. What are the fees?

There is a one-time Enrollment Fee of \$1050 due when a family or individual commits to the development of a Trust Plan. The enrollment fee covers the cost of the Trust Plan, consultation with Trust staff, the specially designed discretionary trust documents. If a second trust is written for the same Beneficiary or his/her sibling, the second trust's enrollment fee is \$525.

For unfunded trusts there is an Annual Renewal Fee of \$65 which covers updates of the Trust Plan. The annual renewal fee is set by the Foundation Board of Directors and may change each year. The Renewal Fee ceases when the trust is funded.

The Administration Fee is an annual fee due quarterly for Trusts that are funded and distributions authorized. It covers the costs of disbursing funds on behalf of the beneficiary; record-keeping for each sub-account; and reporting to Medicaid, SSI, and the primary representative(s). There are also other general services to beneficiaries which are not directly chargeable to a

particular trust account. For administrative fees and other fees see current fee schedules.

Upon dissolution of the Trust arrangement (generally at the death of the beneficiary), the Termination Fee of \$250 covers closing out the account, obtaining death certificates, notification of Medicaid, SSI, and other benefit programs, contacting the remainder beneficiaries, and whatever else is required.

Additional fees may be charged from the bank. See banks current fee schedule.

Funding the Account

18. How many people can serve as Grantors?

There may be one or multiple donors to a beneficiary's account. Typically, if both parents are alive, both will be listed as Donors.

Multiple Donors might also include other family members, such as grandparents and siblings.

19. How much should I leave?

No single answer can be given to this question. Every family's situation is unique. We can, however, provide examples of what a trust, funded at a specific level, might provide.

20. Does the amount I leave determine how much will be spent each year for my loved one?

The amount you leave provides the trustee with a guide. We use the trust plan created by the grantors along with collaboration with the representatives to determine the disbursements from the account.

21. What if I enroll, but learn later that I don't have enough money to actually fund the trust? Do I bear legal liability to contribute to the trust?

No. Your enrollment lets you use the Trust if you want, but does not obligate you to do so. Some parents may enroll as a hedge against other plans not working out. Of course, if you do not leave money, then there will be no money to distribute.

NOTE: If you need nursing home care for yourself, you may be able to fund a child's trust without negative consequences to you. For more information about this, contact the Personal Support Trusts.

22. When must the beneficiary's account be funded?

The trust account does not need to be funded in advance. In most instances, it will be funded at the death of the second parent. Many times, it will be funded through your will or through life insurance specifically designated for this purpose.

23. What if I want to fund the Personal Support Family-funded Trust in advance?

If you want to fund the account in advance, you can do so. One reason might be to assure that money you leave will be available for your loved one. Some families worry that a catastrophic illness or similar situation may wipe out their entire savings. They worry that they may need nursing home care for themselves and have nothing left to leave for their loved one's trust.

If you fund the Personal Support *Family-funded* Trust while you are still alive, you are making an investment in the future of your loved one. Any money that is placed in the Trust is invested by the Trustee so that it will have an opportunity to grow. Even if your family member is using trust disbursements to pay for current expenses, the account balance will continue to accrue interest and/or dividends.

24. I want to fund the account at my death, but what if I am not enrolled?

To fund a trust, you must be enrolled. If you are the last surviving parent and you instruct someone to enroll at your death, there may be additional fees accrued to do so.

When you enroll in the Personal Support *Family-funded* Trust, we start a file on your loved one. We update this file and revise the Trust Plan. We do this because your loved one's situation and what you want for him or her will change over time. We want our information to reflect these changes. If you aren't enrolled, then we aren't getting

routine updates on important information that affects the future.

25. After I enroll, what happens if I let my enrollment expire?

To take advantage of the Personal Support *Family-funded* Trust, you must remain enrolled. This means that you must pay the Annual Renewal Fee. If you cease paying this fee, the trustee will be unable to accept any funds you leave for your loved one.

If, for some reason, you cease paying the renewal fee and then want to reenroll, you can do so, but at that current enrollment and renewal fees.

If, for any reason, you terminate your enrollment, no refunds of Enrollment or Renewal Fees will be made.

Remainderment

26. When the beneficiary dies, what happens to money remaining in her account?

There is no guarantee that any money will remain. In fact, our intent is to spend the entire amount during her actuarial lifetime. If the beneficiary lives to actuarial life expectancy, their trust should be completely depleted.

However, if there is money left over, the trust shall distribute all remaining funds to the final remainder beneficiaries as identified in the Joinder Agreement by the Grantor.

27. Don't the Personal Support Trusts require that a percentage of any remainder in the trust stay with them?

No. You can, however, voluntarily leave a remainder percentage to the trusts. A remainder percentage left to the Personal Support Trusts will be used for the benefit of other beneficiaries in the trust program.

28. If the beneficiary lives longer than life expectancy and nothing is left in his account, what happens?

The goal of the Personal Support Trust program is to continue some level of disbursement for your son, even if the account is completely depleted. However, there is no guarantee that this goal will be met.

To realize this goal, we need another source of revenue. This source is the remainder shares we hope Grantors voluntarily leave to the Trust program. This money can be used to continue disbursements for your loved one.

29. Will the beneficiary be eligible for this extra money even if I choose against including the Trust program as a remainderant?

Yes, but remember, discretionary disbursements are made only if we have the revenue to do so. Only by Grantors voluntarily contributing will we have this revenue.

Taxes/ Legal

30. What effect does participation in the Personal Support Trust have on estate, gift, and death taxes?

For most families, participation should have little effect on their taxes because the amount of money in their estate will be below that subject to substantial taxation. Families need to consult directly with their own attorneys or tax advisors.

31. If I fund the trust while I am alive, can I take this as a tax deduction?

No. Contributions to the Personal Support Trusts are not deductible as charitable gifts, or otherwise. The Internal Revenue Code treats these funds as being of direct benefit to your child and not disinterested general charity.

32. What does it mean when you say that the Trusts are discretionary?

Disbursement decisions are at the trustee's discretion, with advice and consultation from the Personal Support Trust program staff. If the trustee did not have discretion, a court of law might rule that the trust account is a resource available to him. As such, the account could be used in place of public benefits, rather than as a supplement to them.

33. What does it mean when you say that the Trusts are for "nonsupport" purposes?

The trustee is specifically prohibited from paying for basic maintenance and support when these costs can be provided by other sources. In some states, courts have ruled that if the document creating a trust allows the trust to be used for basic maintenance and support, then the trust is a "support" trust and can be used to reimburse creditors who provide basic maintenance and support services. By specifically prohibiting basic maintenance and support, we focus on the Trusts' primary purpose, which is to supplement public benefit programs.

34. Are the Personal Support Trusts intended to terminate in the future?

No. The Trusts intend to last in perpetuity. The Arc of Northern Virginia is a non-profit organization working on behalf of individuals with disabilities for over 45 years. It is committed to the trusts' continuation. If by some chance The Arc could not continue, funds in your sub-account would be distributed to the individuals and organizations (excluding the Personal Support Trusts program) that you have named as remainderment for when he or she dies.

35. Are there potential areas of conflict of interest with the Personal Support Trusts?

The Foundation and The Arc of Northern Virginia recognized early on that conflicts of interest could arise around remainderments. We thus have not made it a requirement that a portion of any remaining funds be left to the Personal

Support Trusts program. Families also need to be aware that the relatives they designate as primary representatives to direct disbursements on behalf of the beneficiary may also be remainderment beneficiaries.

* * * *

Notes

Notes

Notes