

# Pooled Special Needs Trusts & their Benefits for People with Disabilities and their Families

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# MEANS TESTED BENEFIT ASSET LIMITS

**\$2000 \$2000 \$2000 \$2000 \$2000 \$2000**

Ceiling for People with disabilities  
on Public Benefits

# Why do we need special needs planning?

- Beneficiaries who are on needs-based government benefits (or might be in the future)
- SSI (Supplemental Security Income/Medicaid)
- General rule: \$2,000 asset limit/**\$17,500** for IL Medicaid
- Want to keep assets out of the name of the person with a disability

# Two Types of Special Needs Trusts

- Third Party Trusts
  - Funded with someone's assets **other** than the person with the disability
- First Party Trusts
  - Funded with **the beneficiary's own assets**
  - **MUST** contain a **payback provision** to the State

There are Two types of First-Party or Self-Settled Trusts OBRA Trusts under the federal OBRA 93' law:

1. OBRA d(4)a (**individual trust**)
2. OBRA d(4)c (**pooled trust**)

# First Party SNT

Two Common Scenarios:

- Beneficiary on means tested government benefits is **scheduled to receive an unexpected windfall** like an inheritance or a SSA back payment
- Or Beneficiary on means tested government benefits is **going to receive a personal injury settlement or other type of lump sum settlement**

# Who can Establish an OBRA d(4) trust individual or pooled?

- the individual person with the disability or their POA
- a parent(s)
- a grandparent(s)
- a legal guardian(s);
- a court

# A d4a Trust distinction

## REQUIREMENTS TO QUALIFY

- Beneficiary **must be under age 65**
- Beneficiary **must** have a disability per SSA under the SSI rules
- Trust **must contain a payback provision upon the death of the beneficiary to pay the State back for Medicaid related assistance throughout their life**



# Individual d4a Trust – How it Works

- Trust is **signed by either the individual, parent, grandparent, guardian, or court**
- Trust also **signed by the acting trustee (Who?)**
- **Trustee can be anyone 18 years of age or older** who is competent, individual, bank or corporate entity or nonprofit
- Trustee has to **apply for an EIN #** specific to the individual d4a trust
- Establish bank account in the name of the trust if funding
- Once the funds are received from the inheritance or settlement, the funds should be transferred to the trust account **within the same month the funds are received**
- Attorney or Trustee of d4a trust typically **sends notice as applicable to Social Security, Medicaid/DHS, Attorney General's office**

# Finding a corporate trustee for your individual d4a trust or 3<sup>rd</sup> party SNT

Most banks/corporate trustees today, require a minimum of \$500K to one million dollars to manage an individual d4a or even a Third-Party Special Needs Trust

**One solution-**for families can be the selection of a family member as trustee

What if the disabled person has no siblings or reliable family trustee?

What happens if the beneficiary receives a small inheritance or settlement or a small structured settlement under \$100K?

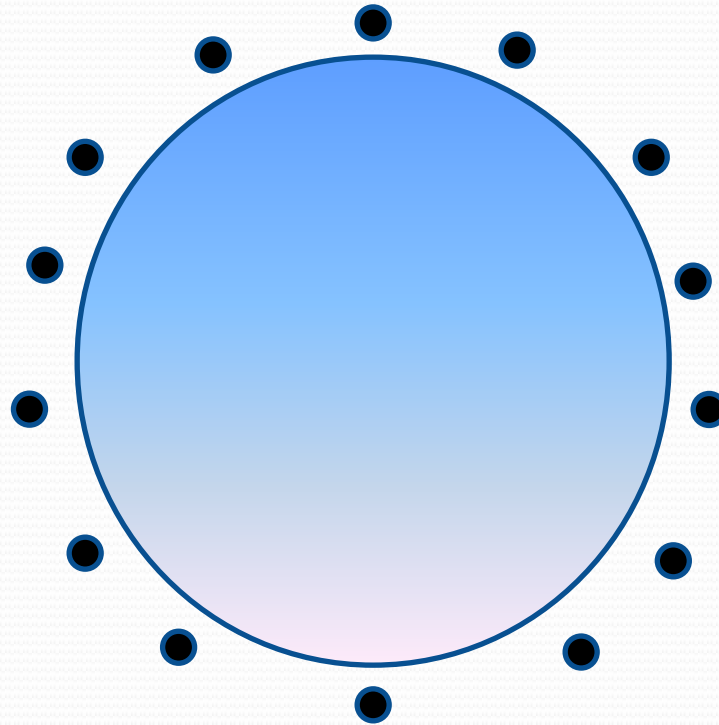
# Family Trustee

- **Often the first and easiest choice for families**, if competent they can be cost effective choice to protect financial interests of the beneficiary & family
- **Great knowledge/insight** of overall care needs of beneficiary
- **May be unfamiliar** with fiduciary duties, investing, accounting, taxes/1099s
- **Trustees and guardians and wards don't always get along**, real stresses can be placed on trustees by beneficiary or guardian who do not work well together. (Thanksgiving Dinner Syndrome)
- The family trustee **may not live in the same state as beneficiary** and **may not have the appropriate knowledge to manage** a Special Needs Trust
- **Family Trustees with fiduciary qualifications** may still need to stay up on the latest legal, SSA, Medicaid policies in managing these complex trusts
- **Critical aspect of trusteeship-** understanding public benefit rules in how they apply to disbursements made from a Special Needs Trusts.
- **Individual family trustee could pre-decease beneficiary**

# Corporate Trustee or Bank Trustee

- Qualified Fiduciary, but at times may have impersonal services
- Higher minimums (\$1 million plus)/ higher fees
- Frequent mergers and acquisitions make cause turnover
- Personnel may lack the experience when it comes to administering a Special Needs Trust
- May lack understanding of appropriate disbursements and how they may adversely affect public benefits
- May lack knowledge of special needs services, programs, housing and other available resources.

# What is an OBRA d4c Pooled Trust?



## State/Federal Law REQUIREMENTS for a POOLED TRUST

- A trust established and maintained by a **Non-Profit Association**
- Trust must contain assets of a **disabled individual** (section 1614(a)(3) of the SSA act)
- Assets must be **“pooled”** for investment, management purposes
- Must have **separate subaccounts** maintained for each beneficiary for reporting purposes
- Trust must be for the **“Sole” benefit** of the disabled person
- An OBRA pooled trust must include a **“Payback”** provision in the trust document upon death of beneficiary to reimburse any and all state(s), for medical assistance, **same as a d4a.**

# What exactly is a Pooled Trust?

- A cross between a 401K plan meets a traditional Special Needs Trust
- Combination of a trust & trustee service
- Beneficiaries/families **do not use their own Trust agreements**, but the pooled trust's proprietary **"Joinder" or "Transfer"** agreement to establish a pooled subaccount.

# What is a Pooled Trust?

## 401K Aspect of the Pooled Trust

- Pooled Trusts are a **convenient & economic way** to have trust funds administered for people with disabilities
- The assets from all sub-accounts are **“Pooled”** together, literally commingled for investment & management into **“One”** acct
- Under Federal law for management, **each subaccount** must be **maintained separately** with the pooling of the assets



# What is a Pooled Trust?

## 401K Pool Financial Mechanism

- The pooling of the assets allows for a higher investment for the subaccounts with better returns especially for smaller trusts
- Each subaccount gets a pro rata share of the trust earnings like a mutual fund or 401K plan based apply on its original principal
- A pooled trust allows for greater efficiencies in overall management for investment advisor, tax preparation, which lowers mgmt. costs

# A Trust and A Trustee Service

## THE TRUST PIECE (Legal Document)

1. A non-profit organization uses a Master Trust Agreement to establish the living Pooled Trust
2. For a person with a disability to set up a pooled trust subaccount, the nonprofit offers a simpler version of the Master trust called a **”Joinder” or “Transfer” agreement**
3. Beneficiaries/families **do not use their own Trust agreements**, but the pooled trust’s proprietary **”Joinder” or “Transfer”** agreement to establish a pooled subaccount.

# What is a Pooled Trust?

## Who is Trustee?

- A Pooled Trust **must** be under federal law managed by a **non-profit association**
- The nonprofit must maintain full authority and control over its custody bank/investment advisors, no Co-Trusteeship allowed in terms of equal authority over the pool

# A Trust and A Trustee Service

- The nonprofit is held to a fiduciary standard in managing a pooled trust
- The nonprofit administers the day- to- day operations through a staff made up of an Executive Director and a Trust Administrator(s) in handling the opening, closing and daily requests for distribution of the trust subaccounts.

# What is a Pooled Trust?

- Pooled trust can vary greatly in size
- Some Pooled trust organizations are connected to disability related groups, e.g. ARC/Ray Graham Association
- Pooled trusts typically work with a bank agent and/or investment advisor

# The d4c Pooled Trust

## REQUIREMENTS TO QUALIFY

- Beneficiary can be of any age under federal law, **(SMART ACT Exception in Illinois)**
- Beneficiary **must** have a disability per SSA rules
- Trust **must contain a payback provision to the State for medical assistance** (Medicaid) benefits paid on behalf of the beneficiary

# The d4c Pooled Trust

## IL MEDICAID REQUIREMENTS TO QUALIFY

- Beneficiary's 65 years or older cannot set up a Pooled Trust without a transfer penalty
- **The Exception** is a Public Guardian or the Office of State Guardian can set up a pooled trust for someone 65 or older without penalty
- If the trust contains proceeds from a personal injury settlement, any Illinois Department of Healthcare or Family Services (Medicaid) charge must be satisfied in order for the transfer to the trust to be treated as a transfer for fair market value.

# d4c Trust – How it Works

- Joinder agreement is signed by the individual, parent, grandparent, guardian, or court
- Trust also signed by the acting Director of a Non-Profit who manages pooled trust or a board officer
- EIN # is already established for the entire pooled vs. individual trust
- Nonprofit has an existing custody bank and investment advisor in holding the assets & handling the investments
- Once the funds are received from the inheritance or settlement, the funds should be transferred to the trust account **within the same month the funds are received**
- The nonprofit Trustee then sends notice to Social Security, Medicaid/DHS, Attorney General's office for reporting the new trust



# Termination of a d4c pooled trust

- Trustee must recognize payment to the state as first lienholder, Medicaid costs throughout the life of the beneficiary
- Trustee is allowed to pay for final trustee fees & administrative costs & trust taxes
- Trustee cannot pay for funeral expenses on death of the beneficiary unless\*:

# Termination of a d4c pooled trust

- The balance owed to the state for Medicaid is less than what is remaining in the trust or
- Unless a Prepaid funeral plan or insurance policy has been pre-arranged prior to the beneficiary's death
- After full payback to the state the nonprofit under federal law is allowed to retained funds before remainder beneficiaries

# Retained funds of a d4c pooled trust

- Federal law allows a nonprofit managing a pooled trust to retain up to 100% of the final remaining balance of a d4c payback trust subaccount prior to payback to the state for Medicaid costs, **not in Illinois**
- In Illinois, the state does not allow the nonprofit of a pooled trust to retain any funds until the state is fully satisfied with its lien, then **a pooled trust can retain funds for charitable purposes.**

# Charitable Funds

**Does the Pooled Special Needs Trust retain funds?**

- None
- 100% (X- not in Illinois)
- Somewhere in between

# Charitable Retained Funds

**How are the charitable funds utilized?**

- To keep fees low in their organization
- To provide additional services, e.g.  
Case Mgmt. Rep. Payee or  
Guardianship
- To benefit the community
- To benefit all the beneficiaries of the  
pooled trust

# Charitable Funds

**How does Life's Plan inc. use their charitable funds?**

- Micro-Enterprise Grants
- Self Sufficiency Grants for nonprofits
- <https://lifesplaninc.org/lifes-plan-trust-options/mini-grants/>

**Micro-enterprise grant enclosed with pooled trust material**

# What About 3<sup>rd</sup> Party Pooled Trusts?

## **Families are often unaware of 3<sup>rd</sup> Party Pooled Special Needs Trusts**


Similar Set up to a Self Funded OBRA Pooled Trust with “Joinder” or “Transfer” Agreement, but No “Payback” Provisions on death

Termination of trust can go to a charity or designation to others by choice the Grantor like an individual third party trust

Nonprofit has 100% discretion over trust

Great tool to establish Testamentary Trusts for families/ single parents with limited assets thru a Simple Will or IRA plan

Accelerate LTC Medicaid for Grantor in transferring their assets in to a 3<sup>rd</sup> Party Pooled Trust subaccount or 3<sup>rd</sup> Party SNT for a child/grandchild

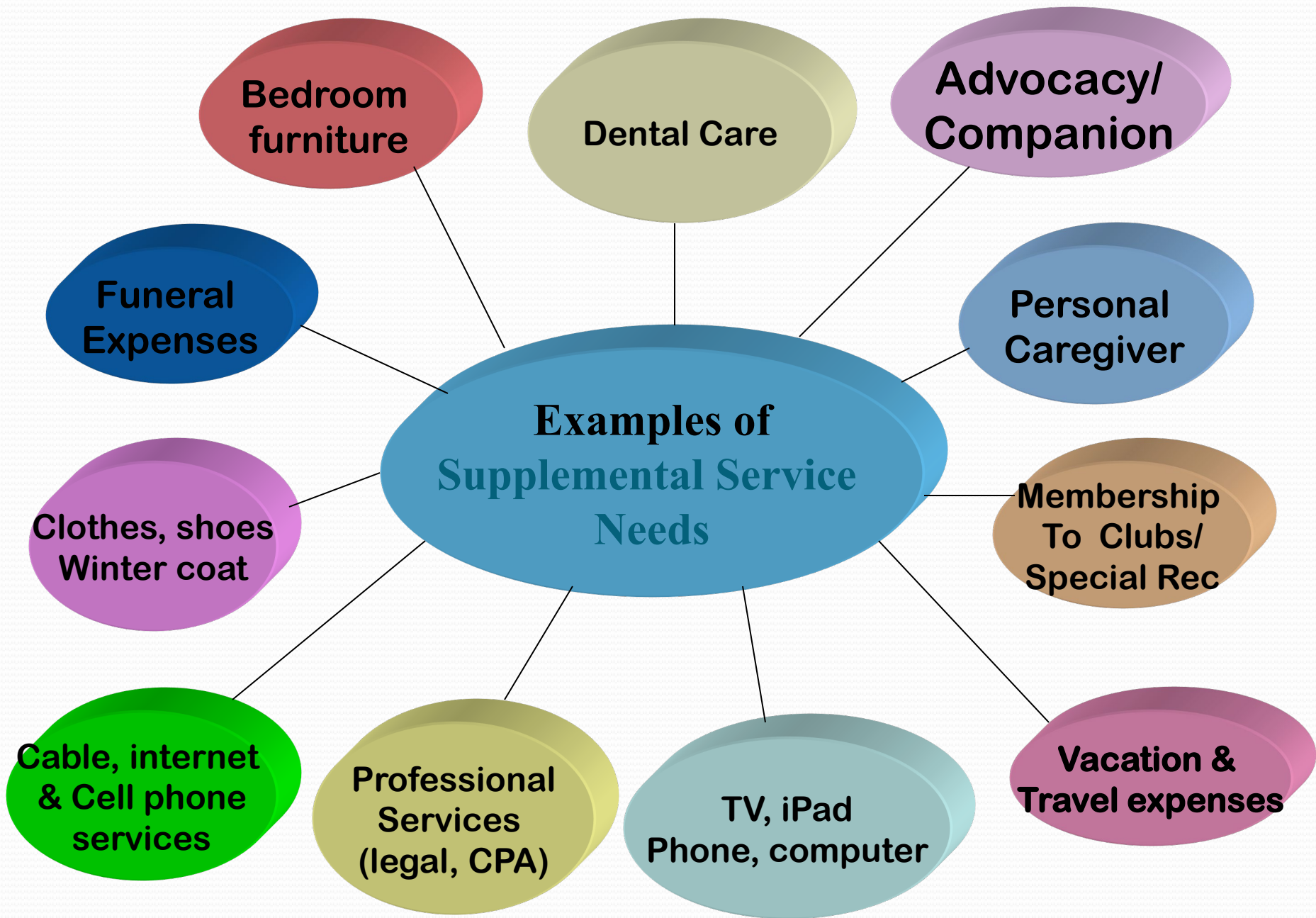


Trust Administration  
balancing the “I  
wants....” with a  
budgeting a Special  
Needs Trust



## To Spend or Not To Spend?

- **Like spendthrift trusts**, money from a pooled trust is not directly distributed to beneficiary in cash or for reimbursement, but paid out **to third parties** such as vendors or guardian for goods and services.
- Money from a SNT typically **cannot pay for primary support** needs such as **food, rent or utilities** (Specific to SSI claimants)
- Beneficiary/Grantor is re-titling ownership of assets over to the apply nonprofit to deposit into the pooled trust releasing control of those assets to preserve their government benefits. **Trust does not own, but has full discretionary authority over pooled assets**
- OBRA '93 Trusts must be disbursed for **“sole”** benefit of beneficiary/**Third Party Trust with LTC Grantor Applies**



# Allowable Types of Supplemental Disbursements

## “I Wants to Buy”

- Personal items, shampoo, deodorant, toothbrush
- Phone service
- Cable/internet services or upgrades
- Clothes
- Goods and Services, linens, towels
- iPad, games, books, periodicals
- Assistive Technology
- Dental Care
- Wheelchair
- Eyeglasses and exam
- Homeopathic, alternative medicine
- Educational costs
- Additional Care Management (Professional/ Family Member)



# The Big NO NOs of Trust Management

- Cash paid directly to the beneficiary
- No Food & Shelter costs  
(SSI Beneficiaries Only)
- Paying for Services already paid for by Medicaid
- Payments to others without sufficient documentation
- Payments to residual beneficiaries



- Payments on 3<sup>rd</sup> party debts
- Disbursements not serving the best interests of beneficiary (“Sole” benefit rule).

# Great alternative for Trustees of Special Needs Trusts

- **True Link Debit Cards** to provide easy access to purchases (no food/rent for SSI beneficiaries)

- **ABLE accounts** can be utilized by Trustee to offer beneficiary access to trust with added benefits for rent/food

- **Online purchasing** for Trustee thru Amazon, Walmart or Best Buy and other online vending provides flexibility to trustee to make purchases online for easy to delivery anywhere for beneficiary



- Payments to **3<sup>rd</sup> parties/guardians** is effective use of disbursing trust funds.

- **Credit card of beneficiary or guardian** can be used to reimburse for appropriate disbursements



Finding a Trustee is one of the most important things you must consider when setting up a Special Needs Trust

Often times, the Pooled Trust may be your best option either to administer a pooled trust or an individual Special Needs Trust for a person with a disability

# Benefits using a Non-profit Agency vs a family Trustee

- Invincibility Factor- serving beneficiaries thru their lives in perpetuity
- Serves all Asset Size Trusts, small and large, No Caps on trust sizes
- Competent experienced nonprofit entity to manage Special Needs Trusts as a Fiduciary
- Strong corporate controls to oversee trusts versus individual trustee
- No natural Conflicts of Interest, impartial trustee



# When the Pooled Trust is the best option?

- The Set up of a trust is time sensitive
  - The pooled trust is already approved by SSA and Medicaid
  - The disability determination process is simplified
- There are no family members available or qualified to manage
- The asset size makes sense to using the Pooled Trust
  - The average pooled trust size is \$50K
  - Trusts less than \$300K makes good sense
- The set up and management fees are typically less expensive
- The beneficiary would have a difficult time working with a Family Member Trustee



# When the Pooled Trust is the best option?

- The beneficiary needs case management & additional resources/access to community supports that a PSNT can provide
- Many nonprofit organizations also serve as trustee of individual (d4a & Third Party) trusts in addition to pooled trust management
- Some pooled trust organizations offer ancillary services to support professional or family member trustees (e.g. Fee for service case management to consult, serve as distribution trustee or manager

# Examples for When to use Pooled Trust

- Indigent person, ward of state on public aid with assets over resource limit (\$2000)
- Small assets involved (\$10K-50K), unless ABLE eligible <\$18K
- Mistaken Inheritances (Whoops!!) Planning in CRISIS!!
- Small settlements or Structured Settlements
- Pending Medicaid Spend Down Situation over resource limit
- Attorneys are unwilling to take case
- No Family Estate plan or just a simple will, no SNT
- Individual with disabilities is competent can set up their own pooled trust subaccount

# When best to use a Pooled Trust

- Structured Settlements, small or large
- Pending Medicaid Spend Down Situation over resource limit
- Child Support Payments from divorce,
- No Attorneys willing to take case because too small or complex
- No Family Estate plan or just a simple will, no SNT
- Individual with disabilities is competent can set up their own pooled trust subaccount

## The Disadvantages using a Pooled Trust?

- A Pooled Trust is run by a Non-Profit has 100% discretion and control over trust, no Co-Trustee arrangements
- Investment options are limited to the investment policy of the Non-Profit, very aggressive or very conservative strategy likely not offered
- Inexperienced or newer non-profit may have risks to sustainability, no retained funds allowed in IL
- Portability can be an issue if leaving Illinois to another state
- You want to find a Pooled Trust Program with a proven track record

# Reference Material:

## **Alliance of Pooled Trusts Called “APT”**

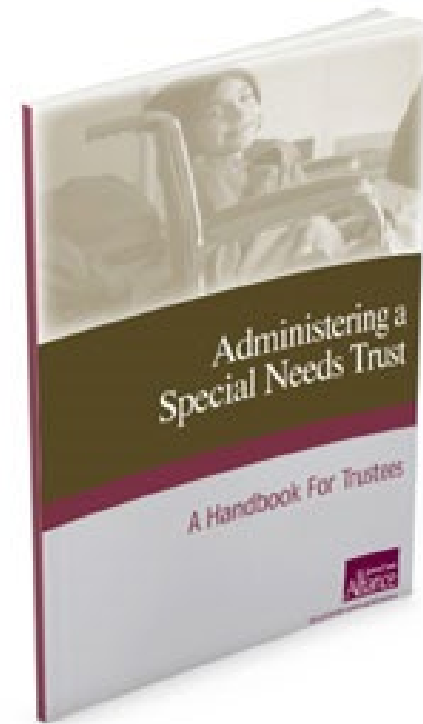
Alliance of Pooled Trusts (APT) is the first coalition in the United States dedicated to uniting Pooled Trust providers in establishing best practices for the industry. APT serves as a resource for its members and promotes high-quality pooled trust administration for the special needs community.

<https://aptrusts.org/>

# Where to find a Pooled Trust Organization:

## Directory of Pooled Trusts

<https://specialneedsanswers.com/pooled-trust>





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