

THE TANDEM TRUST APPROACH

The Best of Both Worlds in The Third Party Setting

A Tandem Trust situation is where two trusts work together, in “tandem,” to achieve a common goal. Oftentimes, this same goal can be accomplished with one trust, but, for a variety of reasons, using two trusts together sometimes can achieve the goal more efficiently, while at the same time avoiding an undesirable legal consequence or creating a desirable situation that otherwise would not be created.

The Tandem Trust concept sometimes is useful in the Special Needs Trust arena. Generally speaking, there are two types of Special Needs Trusts; trusts that are funded with money originally belonging to someone other than the beneficiary (called a “Third-Party trust”) and trusts that are funded by money that already belongs to the beneficiary (called a “Self-Settled” or “Medicaid Payback” trust). This handout will focus on Third-Party situations, where the beneficiary’s account is funded by parents, grandparents, an estate, life insurance benefits, or some other outside source.

When the Tandem Trust approach is used with an Arc Trust, there are two trusts: 1) the original trust, called a “Feeder Trust,” and 2) an Arc trust, called a “Subordinate Trust.” The Feeder Trust is a privately drafted Special Needs Trust, with all the appropriate legal language so as to be a valid Special Needs Trust. The trustee of the Feeder Trust is either given the discretion to “feed” or fund the subordinate Arc Trust among other disbursements, or is simply given authority *only* to feed or fund the subordinate Arc Trust—without having the authority to make other disbursements. This will depend on the preferences of the original donor—taking into consideration factors such as the expected skill level of the trustee of the Feeder Trust, the level of involvement that the donor wishes the trustee of the Feeder Trust to have, and other similar factors.

The majority of the trust assets will remain with the Feeder Trust, while the minority of the assets are placed into the Subordinate Trust. The duties of the trustee of the Feeder Trust will include keeping the Subordinate Trust funded at a specified minimum amount and/or feeding the Subordinate Trust at regular specified intervals.

In turn, the Subordinate Trust, administered by The Arc of Indiana Master Trust, will make all of the disbursements and handle all of the reporting requirements and other administrative responsibilities that are part and parcel to the day-to-day administration of a Special Needs Trust. This includes reporting the creation of the Subordinate Trust to all pertinent state and federal agencies, reporting all disbursements made by the Subordinate Trust to the pertinent state and

federal agencies, researching all applicable state and federal regulatory and statutory schemes governing how the Subordinate Trust can be used, supplying Medicaid Recertification letters relating to the Subordinate Trust, answering questions from state and federal agencies regarding the existence or use of the Subordinate Trust, and, if necessary, handling challenges from state and federal agencies regarding the existence or administration of the Subordinate Trust. The trustee of the Feeder Trust will remain responsible for following all pertinent laws relating to the Feeder Trust, and The Arc of Indiana Master Trust does not assume any responsibility for the administration of the Feeder Trust.

The Arc of Indiana Master Trust can handle a trust of any size. In many cases, no advantage is created by using the Tandem Trust approach. However, certain situations may call for the use of a tandem trust. These situations include, but are not necessarily limited to, the following:

1. The Donor wants to avail himself or herself to the expertise of The Arc Trust for the purposes of the day-to-day administration of the trust, but wants control over the majority of the assets to remain in the family;
2. The Donor wants to avail himself or herself to the expertise of The Arc Trust for the purposes of the day-to-day administration of the trust, but wants to pursue more aggressive or creative investment strategies; or
3. In the case of Self-Settled Medicaid Payback trusts, the beneficiary wants to mitigate as much as possible The Arc of Indiana's 50% remainder requirement (this topic is discussed in more detail in a separate Tandem Trust handout focusing on Self-Settled trusts, as well as the Arc of Indiana handout explaining in general how self-settled Medicaid Payback Trusts work).

In most cases, it will make the most sense to use one trust only—either a privately drafted Special Needs Trust, or The Arc of Indiana Master Trust. However, in some cases, an advantage can be gained by using the Tandem Trust approach. There are some conditions that apply, such as minimum funding amounts. For more information about Tandem Trusts and whether or not the Tandem Trust approach is right for you, please contact Melissa Justice, Trust Director for The Arc of Indiana.