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Not really
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Sole Benefit Trusts





**There IS an
Outline that goes
with this . . .
Stay tuned**



SOLE BENEFIT TRUSTS

Biggest Advantages:

- **No transfer Sanction**
- **No Estate Recovery**



The General Scheme

42 USC § 1396p(c)(1) –

- **(c)(1) The General Rule**
- **(c)(1)(F) Annuities – Remainder Beneficiaries**
- **(c)(1)(G) Other Annuity Requirements – Including “Actuarial Soundness”**

The General Scheme

42 USC § 1396p(c)(2) Exceptions –

- **(c)(2)(A), (C), & (D) Irrelevant Here**
- **(B) Exceptions –**
 - **B1 Transfers f/b/o Spouse (Another presentation)**
 - **B2 Transfers From Spouse f/b/o Spouse (Another presentation)**
 - **B3 Transfers to trust f/b/o Disabled Child**
 - **B4 Transfers to trust f/b/o <65 Disabled**

What Means This “Sole Benefit”?

Courts ♥ Trans 64

Ergo, WE ♥ Trans 64



Love is in the air!

Trans 64 3257B.6

Meaning of “for the Sole Benefit of”

- Benefits NO One But Beneficiary
- Now or At Any Time In
The Future



At any time in the future . . .

- **POMS 01120.201F.2.a – sole benefit “for the remainder of the individual’s life”**
- **Hain: sole benefit means “no contingent or remainder beneficiaries”**

“None of this ‘to infinity and beyond’ nonsense!”



Remainder Beneficiaries?



Ostensibly to ensure “for the sole benefit of” –

**But How? The
Beneficiary *est mort* . . .
How does she benefit?**

Sixth Circuit: Nonsense!

Under Trans 64 3257 B.6



Take your choice:

Actuarially Sound

or

D4A Payback



Payback Requirement?

Hunh?



**Trying to transmogrify
a SBT into a D4A –
Totally ignores statute**

**(c)(1)(F) & (G) separate
from (B)(1)-(4)**

Actuarial Soundness



Trans 64 3258.9B:

Beneficiary “not reasonably expected to live longer” than actuarial LE

(p)(d)(6): Term “Trust” includes annuity as Secretary specifies

Zahner (Third Circuit): Nothing else out there!

Actuarial Soundness



How I do it

Two design options



**Discretionary
distributions
exceeding MRD**

**An Annuity-like
steady drip or “MRD”**



Typical SBT Design

Two Tier Design – See My Form

Assume: \$100,000 Trust; Beneficiary has 20 years

TIER I:

MRD designed to satisfy
“actuarially sound”
standard

\$5,000/year



Typical SBT Design

Two Tier Design – See My Form

Assume: \$100,000 Trust; Beneficiary has 20 years

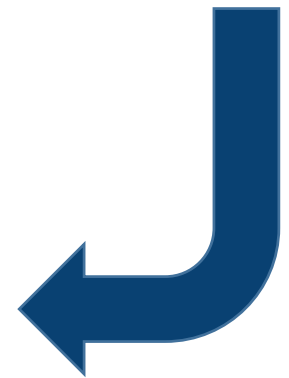
TIER II:

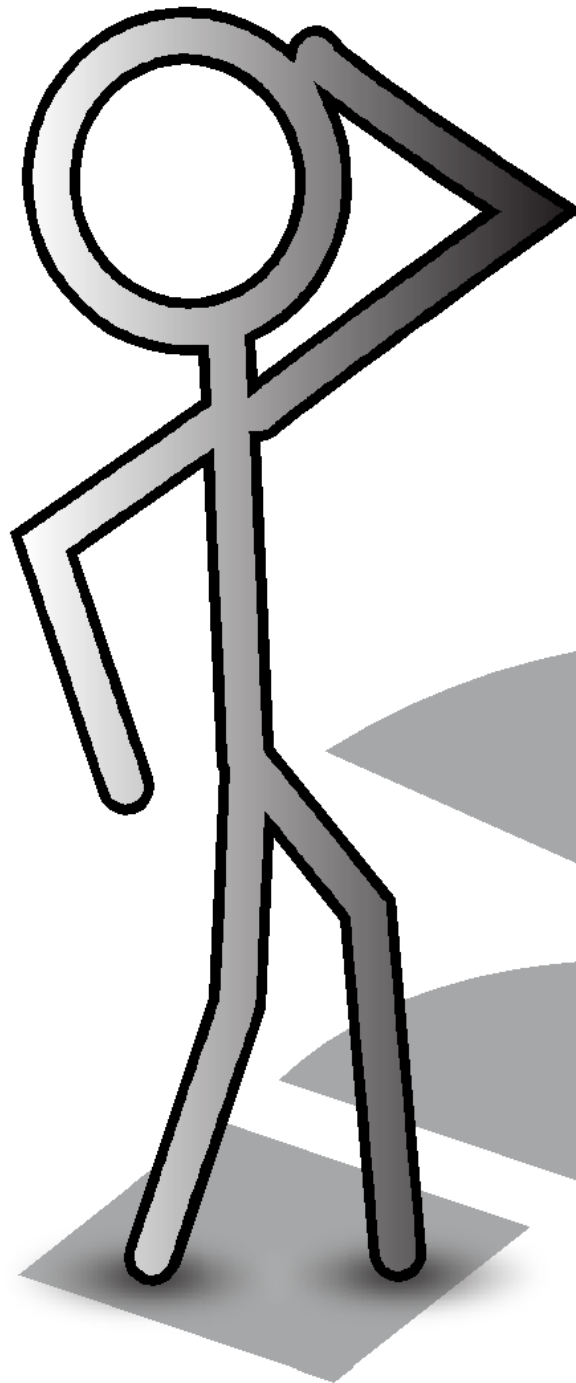
**Discretionary “Excess”
Distributions**





SSDIB
BENNIE





**What about
an SSI
beneficiary?**

This little puppy has NO transfer sanction!

Eee-haa!

This nasty lil' monkey has NO payback!

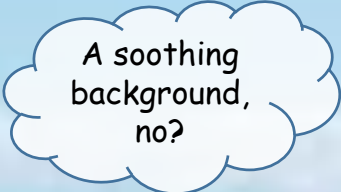
SSI-SBT

Not to mention keep SSI Benefits

The SSI Challenge – Keeping the Beneficiary Qualified

You Must Understand SSI Income Rules

- **First \$20 income from all sources is disregarded**
- **First \$65 of earned income and $\frac{1}{2}$ of all earned income over \$65 is disregarded**
- **We will say nothing more of income exclusions**



A soothing background, no?

The SSI Challenge – Keeping the Beneficiary Qualified

You Must Understand SSI Income Rules

- **Cash paid from trust is unearned income**
- **In-kind distribution (other than food & shelter) is income if not excluded resource next month**

The SSI Challenge – Keeping the Beneficiary Qualified

You Must Understand SSI Income Rules

- **In-kind Support and Maintenance (ISM)**
 - **Food and Shelter related**
 - **Special rules**
- **If not one of the foregoing: NOT income**

Cute puppies always work
with tough info

The SSI Challenge – Keeping the Beneficiary Qualified

ISM Special Rules

- **VTR Rule**
 - **Doesn't apply to trusts**
 - **ASSUMED \$250 Income**

The SSI Challenge – Keeping the Beneficiary Qualified

ISM Special Rules

- **PMV Rule**
 - **Applies to trusts**
 - **PRESUMED \$250 Income**

Kittens work, too

The SSI Challenge – Keeping the Beneficiary Qualified

ISM Special Rules

- **The Take Away**
 - **If Beneficiary receives MORE than \$250 SSI**
 - **If Beneficiary receives LESS than \$250 SSI**

The SSI Challenge – Keeping the Beneficiary Qualified

Two Tier Design – See My Form

Assume: \$100,000 Trust; Beneficiary has 20 years

TIER I:



MRD designed to satisfy
“actuarially sound”
standard

\$5,000/year

The SSI Challenge – Keeping the Beneficiary Qualified

Two Tier Design – See My Form

Assume: \$100,000 Trust; Beneficiary has 20 years

TIER II:

**Discretionary “Excess”
Distributions**



The SSI Challenge – Keeping the Beneficiary Qualified

Two Tier Design – See My Form

Assume: \$100,000 Trust; Beneficiary has 20 years



BOTH Tiers:

- 1. Distributions that are NOT SSI income**
- 2. Distributions that are ISM that will not harm SSI**
- 3. ONLY THEN: Excess**



The SSI Challenge – Keeping the Beneficiary Qualified

- SBT, properly drafted, NOT a resource to beneficiary
- Unless beneficiary has right to
 - Revoke or terminate
 - Direct use for support or maintenance

Then NOT a resource. POMS SI 01120.200 D.1.-2.

HOT TIP: Present value of right to periodic payments could be a resource **ABSENT A VALID SPENDTHRIFT CLAUSE.**





**Ya want to reach Bob?
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