

POLICY RE: SPECIAL NEEDS TRUSTS (SNT's) AND INCOME CAP TRUSTS (ICT's)

1. Pursuant to ORS 125, the court may authorize either a conservator or a special limited conservator, to create a trust, including a Special Needs Trust. ORS 125.440(2), 125.650(4), (5). In addition, the court may create the trust without the appointment of a conservator pursuant to ORS 125.650 (1) and (5).
 - a. If a protective proceeding already exists, the fiduciary or other interested person may petition for creation of the trust within the protective proceeding. A new file is not required.
 - b. If there is no protective proceeding, a new file is required: i.e., The court will not authorize creation of an SNT as a distribution vehicle in a decedent's estate or personal injury case.
 - c. If there is no protective proceeding and the respondent is not incapacitated or financially incapable the court may, under ORS 125.650 create a SNT when the trust is required to be created by a court for the respondent to retain or qualify for public benefits. Under such circumstances a new file and filing fee are required. Upon the creation of such a trust the court may terminate the proceeding and no continuing oversight shall be required.
2. A new petition to create a SNT is a Chapter 125 proceeding and Chapter 125 filing fees apply unless the petition is filed within an existing protective proceeding pursuant to paragraph 1.a..
3. All petitioners must comply with the notice provisions of Chapter 125. Pursuant to ORS 125.060 (2) (m), the court shall require notice to any relevant benefit-paying agency: e.g. DHS and/or Social Security.
4. If the amount of the estate of a protected person consists of personal property having a value of more than Ten Thousand Dollars (\$10,000.00), the court will require a conservatorship with the protections provided by the ORS 125.400 to 125.540.
 - a. In SNT's, Neither the Trustee nor the Trustee's attorney will be paid without court approval provided at the time of annual accountings in UTCR 9.160 form.
 - i. The conservator is allowed, by prior motion and order, to pay monthly fees, not to exceed a Six Hundred Dollars (\$600.00) per year.

ii. All payments for pre-approved fees shall be included in the annual accounting in UTCR 9.160 form.

b. ICT's do not require court approval for payment of trustee fees, since they only deal with the distribution of income of the Protected Person. Attorneys shall not be paid from the monthly income of the Protected Person in an ICT so that there's no approval of attorney fees necessary. In other words, attorneys have to be paid from resources (anything not considered income).

5. The court will require a complete copy of the trust attached to the order as an exhibit. The order should specify that the trust is approved in the form set forth in the appropriately designated exhibit.
6. With regard to all trusts ordered by this court, modification or termination shall be in accordance with ORS 130.150 (UTC 401) through ORS 130.230 (UTC 417), ORS 130.235, and 130.240.