



PLANNING WITH SPECIAL NEEDS TRUSTS

There is little argument that the number of individuals with disabilities continues to increase. Chances are there is someone in your family who will need long-term help managing personal care and/or finances. At the same time that the need for support services is increasing, government and non-government programs are being reduced and even eliminated. Careful planning is necessary to supplement government benefits that are worth preserving, flexible enough to adjust to changes in future benefits, will preserve and expand assets, will make sure the special needs person receives proper care, and may even save taxes.

Special needs planning is not "poverty planning." It is unnecessary to disinherit a special needs person and planning that is not designed with the person's special needs in mind will probably render the child ineligible for essential government benefits. A properly designed Special Needs Trust will promote the special needs person's comfort and happiness without sacrificing eligibility.

What is a Special Needs Trust?

A Special Needs Trust is a Trust designed to receive and manage assets for a person with a disability, while maintaining eligibility for governmental benefits. The Trustee will have full control and discretion over distributions. The distributions from the Trust are to "supplement" government benefits and provide for "special needs" that enhance quality of life. "Special needs" can include medical and dental expenses, annual check-ups, desirable equipment (such as, a specially equipped van), training and education, insurance, transportation, and essential dietary needs. It may also include spending money, electronic equipment, computers, vacations, movies, payments for a companion, and other quality-of-life enhancing expenses.

Funding and Managing the Trust Assets

When planning for a person with special needs, it is critical that there are sufficient assets available throughout his/her lifetime. Life insurance on the life of a parent is often used to fund these trusts. Careful investment of the trust assets is critical, since loss of these assets could be catastrophic for the beneficiary. The assets will need to earn/grow enough to provide for or supplement the beneficiary's care. Trust income can be distributed in such a way that it is taxable to the beneficiary (the beneficiary will typically be in a lower tax bracket than the trust itself), but without unintentionally jeopardizing public benefits.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this document was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax adviser based on the taxpayer's particular circumstances.

Contributions from Others

A key benefit of a Special Needs Trust is that family and friends can make gifts to the Trust. These family members and friends can name the Special Needs Trust as the beneficiary of their own assets in their Trust or Will, and they can also name the Special Needs Trust as a beneficiary of life insurance or retirement benefits.

Don't Rely on Siblings

Relying on your other children to provide for a child with special needs from their inheritances is not a solution that will protect the special needs child. If the inheriting sibling divorces or loses a lawsuit, they may lose a portion of that inheritance. What if the sibling dies or becomes incapacitated while the child with special needs is still living? Siblings of a child with special needs often feel a great responsibility for that child. Providing clear instructions and a helpful structure, lessens the burden and supports a loving and involved relationship.

Protection from Predators

Funding a special needs trust by Will rather than by Trust becomes a matter of public record. Predators are attracted to vulnerable beneficiaries, such as the young and those with limited capacities. When you plan with Trusts rather than a Will, you decide who has access to the information about your child's inheritance.

It Takes a Team

Proper funding, implementation and periodic review of the Special Needs Trust are critical because it may have to last a lifetime and often cannot be replaced. The ideal trustee would: act in the best interest of the disabled beneficiary; understand public benefits and keep up with changes in the law; wisely invest; understand taxes; keep perfect books; provide advocacy and prevent abuse; and be immortal. Since no one person can meet all of these requirements, often the most effective solution is to divide the responsibilities into areas and have a team of professionals work together.

Because none of us knows when we may die or become incapacitated, it is important to plan for a beneficiary with special needs now. Unlike other beneficiaries, a child with special needs may never be able to compensate for a failure to plan. A minor without special needs can obtain more resources as he/she reaches adulthood, but a child with special needs may never have that ability.

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