

Special Needs Trust

A special needs trust, sometimes called a “supplemental needs trust”, makes it possible to appoint a trustee to hold property for the benefit of your disabled child after you’re gone. A special needs trust provides for the needs of a disabled person without disqualifying him or her from benefits received from government programs such as Social Security and Medicaid.

Government Benefit Requirements

In order to qualify for the Social Security Administration’s Supplemental Security Income Benefits” (“SSI”), a disabled adult can’t hold more than \$2,000 in assets, excluding a car and a home. SSI benefits, which average about \$400 per month, must be spent on food, clothing and shelter expenses.

Eligibility for SSI makes a disabled person eligible for food stamps and Medicaid, which pays medical expenses, nursing home care and mental health services. Medicaid eligibility also makes a disabled person eligible for many local community services, as well.

As these benefits add greatly to a disabled person’s ability to care for him or herself, you wouldn’t want to give your disabled child property that would disqualify him or her from receiving these benefits.

Bequeathing To Other Family Members

While it might seem like a good idea simply to leave a set amount of money to your disabled child’s sibling or other close relative, with the understanding that the money will be spent on the disabled child, this often backfires:

The money can fall prey to judgments or divorce settlements against the relative, or can be lost in bankruptcy

The relative can’t be legally forced to use the money to benefit the disabled person

The relative to whom the money is left may be taxed at a higher rate than the disabled child or a trust

Should the relative die before the disabled child, the money would go to his or her heirs.

A special needs trust avoids these potential problems without putting an emotional strain on family relations. Monthly SSI benefits can be spent on food, clothing and shelter. The special needs trust money can then go toward little extras that make your disabled child’s life more rewarding, such as:

Summer camp

Airline tickets for travel

Electronic video games

Vitamins and grooming supplies

Special needs trust money can also be spent for final funeral and burial expenses.

Picking a Trustee

The trustee for a special needs trust for your disabled child could be:

A trusted family member who’s close to your child

A bank or other financial institution, who will take a percentage of the trust assets for administering the trust

A “pooled account trust” administrator (usually a financial professional), with anything left over after your child dies going to other disabled people

A committee, with a financial planner and one or more family members working together as a team

A family friend such as special needs teacher close to the child, or your family’s minister

Special Needs Trust Language

To be effective, a special needs trust document:

Should be titled an "Irrevocable Special Needs Trust f/b/o Your Child's Name"

Must have language that makes it impossible for your disabled child to demand that the trust funds be distributed

Must give the trustee full discretion to spend the trust assets as he or she sees fit

Must make it clear that the trust isn't intended to be a basic support trust, but that the money is intended to be used solely to supplement benefits that are otherwise available to your child

Should specify that the trust is to be administered so that eligibility for public government assistance isn't jeopardized

Funding A Special Needs Trust

A special needs trust can be funded through a will or gifts from relatives and friends made directly to the trust instead of to your disabled child. Many special needs trusts are funded through "survivorship" or "second-to-die" life insurance policies that cover both parents and pay out on the death of the second parent.

When your disabled child is to receive an inheritance or money from a lawsuit, it's a good idea to set it up ahead of time in what's called a "self-settled trust," to avoid losing Medicaid eligibility. A parent, grandparent, legal guardian or court can establish the trust, with any money left after your child's death going to the state.

Letter of Intent

One way to be clear about what you intend for your disabled child's future is to make a "Letter Of Intent" to be given to his or her trustee at the time of your death. This document gives family members and others the benefit of your knowledge about your child's capabilities, needs and fears, and can be updated periodically.

A letter of intent can include:

Biographical info

Financial details

Medical history and needs

Social contacts

Any negative influences you'd like to guard against

Personality traits

Skills, hobbies and physical abilities

Goals your child is working toward

With a little planning, you can make your disabled child's future potentially much brighter.

Source: <http://www.family-friendly-fun.com/special-needs-trust/index.htm> (9/06)