

Special Needs Trusts for Estate Planning

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What Is a Special Needs Trust?

A Special Needs Trust is a special trust that holds title to property for the benefit of a child or adult who has a disability. The Special Needs Trust can be used to provide for the needs of a disabled person and supplement benefits received from various governmental assistance programs, including SSI and Medi-Cal. A trust can hold cash, real property, personal property and can be the beneficiary of life insurance policies

Who Can Establish a Special Needs Trust?

Parents (or other family members or friends) of a disabled person can establish a Special Needs Trust as part of their estate plan. The parents can "pour-over" the disabled child's share of their estate into the special needs trust and remain assured that their child will have funds available to provide for his or her needs that are not covered by government benefits, even after the parents' deaths.

What Assets Can Be Used To Fund the Trust?

Almost any type of asset can be held by the trust including cash, securities, real or personal property and life insurance proceeds. Very often, a trust has no assets until the death of the Settlor (the parents.) It is advisable to place some assets in the trust and begin using the trust immediately, but it is not required.

You can find more materials including educational videos and printable sheets on various subjects at:

www.achievingindependence.com

and click on "Educational Videos" or "Materials" to see more

*This material is for educational purposes only and is not meant as a substitute or legal counsel.

Who Will Manage the Trust Assets?

The manager of a trust is called a "trustee." The trustee can be any person over eighteen years of age, a bank, a financial planner, CPA, or a professional fiduciary. The trustee holds, administers and distributes all property allocated to the trust for the benefit of the disabled person during his or her lifetime.

Who Can Serve As Trustee?

In most circumstances when a Special Needs Trust is established by parents for the benefit of a disabled child, the parents serve as trustee until they become incapacitated or until their death. A successor trustee is selected in advance by the parents and serves according to instructions contained in the trust.

Can the Disabled Person Serve as Trustee?

No. The whole premise of a Special Needs Trust is that the disabled beneficiary cannot have access to the principal or income of the trust. The disabled person has no power or authority to direct the distribution of funds. However, the assets of the trust are to be used exclusively for the benefit of the disabled person.

Can Additions Be Made To the Trust?

Yes. Property may be added to the trust at any time by the Settlor, or any other person. Gifts may be made to the trust during the parents' lifetime, as well as by a will or living trust, life insurance policies, employee benefit plans and retirement plans.

Does Social Security Allow Special Needs Trusts?

In 1975 the Social Security Administration established rules allowing assets to be held in trust for a recipient of SSI as long as the disabled beneficiary:

- Cannot control the amount or the frequency of trust distributions; and
- Cannot revoke the trust and use the trust assets for his or her personal benefit.

The Social Security Administration's handbook Understanding SSI states:

"A trust can be set up for an SSI beneficiary."

The Dale Law Firm, PC specializes exclusively in the area of estate planning. We are members of the Wealth Counsel Estate Planning Attorneys with over 1,000 attorneys committed to excellence in all aspects of estate planning. The Wealth Counsel Estate Planning Attorney's mission is to provide their clients with the most personalized and professionally developed estate plan possible. The Dale Law Firm, PC believes that the best plan can be established with a "team" approach, working with the clients' advisors including their CPA, insurance professional or financial planner.