

The Role of a Special Needs Trust in The Planning Process for a Loved One With Special Needs

An integral step in the planning process is to ensure that your family member is financially secure, especially when you are no longer there to be an advocate, and to maximize all resources available to him/her. This financial stability could be achieved through a Special Needs Trust.

A Special Needs Trust is created for the benefit of a dependent with a special need or disability. This trust has several functions, two of which are paramount:

- A properly prepared Special Needs Trust can preserve the beneficiary's eligibility for public benefits such as Social Security, Medicaid, housing and other government funded programs.
- A Special Needs Trustee can manage funds for your loved one who is not able to accumulate or manage his/her own funds due to a disability.

Funding the Trust

In addition to creating the trust document, proper funding is essential. Your personal and family situation may dictate certain approaches.

- First, you can fund the trust during your life with personal assets.
- Second, you can fund it at your death with your estate assets.
- Third, you can fund it at your death with life insurance proceeds.

Life insurance can be useful for funding under certain circumstances. During your life, you may be able to address financial needs as they arise. At your death, the Special Needs Trustee can take over, but he/she will need you to plan properly to provide the financial resources needed to fund the trust. Since your death will create the need, the use of life insurance can make a great deal of sense. A policy can be owned by the trust itself or by the parent with the Special Needs Trust as the beneficiary. Either single-life or survivorship insurance can be used. Where appropriate, the annual gift tax exclusion can be applied against the annual premium.

Points to Consider

When planning the financial well-being of a loved one with disabilities, it is important to:

- Consider whether or not your current plan is appropriate for both your current situation and your future needs.
- Think about how you will fund the trust.
- Examine the overall impact of your plan on your estate, and any effect on potential eligibility for federal aid and taxes.



redefining / standards®

- Seek help from a Special Needs Family Planning professional and develop a plan based on your family's specific situation.
- Thoughtfully consider the choice of trustee, guardian and conservator.

Team of Professionals

Special needs planning can be complex, so it is important to understand the team of professionals you should work with for proper planning. This team should include a:

- **Financial Professional:** Responsible for ensuring that the Special Needs Trust is funded with the proper assets and that those assets are managed.
- **Trustee(s):** Consult(s) with both the lawyer and financial professional on how to best implement your wishes when you create the trust so as to distribute the assets in the special needs child's best interest.
- **Lawyer:** Responsible for forming the most appropriate type of Special Needs Trust and making sure that it is properly drafted.

Where to Start

Every parent is concerned about their child's health, well-being and future financial security. For the parents of a child with special needs, these concerns are magnified, especially if the child may need continued special care and support well into adulthood. To insure a safe and happy future for the special needs child it is essential that parents engage in a planning process so that both the needs of the child and other family members are met.

Over the last two decades, estate planning techniques have changed, based on emerging federal and state legislation, and shifting threshold levels of taxation and net worth. Today many people think that estate planning is primarily for the wealthy. But if you are a parent with a child who has special needs, it is imperative that you have a plan in place, regardless of the size or value of your estate.

Usually, parents are the primary caregivers of a child with special needs. But if one or both parents die or become disabled, other family members may be thrust into the role of primary caregiver —whether they're ready for it or not. Consider the following questions:

- If something happens to the parents who will become the new primary caregiver?
- Is that person prepared to provide emotional support and actual physical care? Are there financial resources or financial assistance available?
- Should the new caregiver be made the child's guardian? Guardian of the child's property?

Checklist for Special Needs Trust Planning

- **Become familiar with all possible federal government benefit programs.** Programs that are available to special needs children include Medicare, Medicaid, Social Security Income and Social Security Disability Insurance. Also research any state aid programs.
- **Find an attorney that specializes in special needs planning.** The will and the special needs trust should be created by an estate planning attorney with in depth knowledge of all controlling state laws where the special needs child resides. Carefully select a trustee or trustees for the special needs trust. This individual should have knowledge of government benefit programs and the effect that trust distributions will have on the child's government benefits. Parents should assist the caregiver and the trustee of the special needs trust by leaving a letter of intent with information concerning the daily life and healthcare needs as well as other critical information.
- **Create estate planning documents.** The parents should create estate planning documents, a will and a special needs trust. The will should identify potential caregivers to continue to provide care for the special needs child after the death of the parents.
- **Review existing estate planning documents.** If the parents create or already have a revocable living trust or general durable power of attorney for financial affairs, these instruments should include special provisions that permit the trustee or agent to make discretionary non-support distributions to or for the benefit of the special needs child during the parents own period of incapacity.
- **Consider funding options for the special needs trust.** In addition to other assets, special needs trust owned cash value life insurance on the parent's lives should be considered as a cost effective way to ensure that the special needs child receives the care that he or she needs.
- **Plan for the distribution of parental assets from the estate.** First consideration must be given to how the assets are allocated among all the children, examining potential death taxes and income taxes. In addition, all the beneficiary designations should be reviewed to ensure that no funds or resources pass directly to the special needs child. The special needs child should receive his or her inheritance via a third party created and funded special needs trust.
- **Ask relatives to review his or her estate plans.** All relatives to the special needs child, especially grandparents, should have their estate plans reviewed to ensure that the special needs child does not receive any inheritance or gifts directly that could potential disqualify the child from governmental benefit programs. Any inheritance or bequest should be directed to the special needs trust.
- **Have the special needs child complete an estate plan.** If the adult special needs child is competent, the child should also execute an estate plan.