

Estate Planning

Special Needs Trust

WHAT?

Families who want to make additional money available for their child's future should consider using a carefully worded legal instrument called a special Needs Trust. Parents, grandparents, siblings, relatives and friends can leave money directly to the Trust to make the person's life more meaningful. A special Needs Trust will not make the child ineligible for benefits if the attorney uses the proper wording. The money in the Trust can be available to supplement what the government provides, to step in when there are emergencies or to take over completely if there are government cutbacks or termination of services.

FOR WHOM?

Parents of a child with a disability.

WHEN?

A family should consider developing A Special Needs Trust even if only a modest estate is involved. If the Trust is written as part of a person's will, it is called a testamentary trust and it becomes effective upon the death of the person who sets up the Trust. If the Trust is written as a separate document from a will, it is called an inter vivos Special Needs Trust. People can begin to fund it while they are alive and it can be used while the parents are living.

Just as saving for a child's college expenses should begin at an early age, so should plans for a trust that is to be used to supplement government benefits or other agency assistance. A special Needs Trust should be developed as one plans for the child's future.

WHY?

The purposes of a Special Needs Trust are:

- To leave funds to benefit a person who cannot, or needs assistance to manage funds.
- To leave funds to a person that will supplement her/his government support or other agency assistance.
- To avoid spend down requirements whereby the government or other agency require the person to spend their own assets prior to applying for government or other agency support or will seek to recover costs for services it provides.
- To leave the person funds without disqualifying him /her from benefits.
- To give the trustee maximum flexibility in financial decision-making.

HOW?

A properly drafted Special Needs Trust will provide additional opportunities for the individual with a disability without making him/her ineligible for government benefits or exposing the assets to collection by state agencies who have provided services to the individual. The person who creates the Trust decides who the trustee will be and sets guidelines by which the Trust will be held and managed.

The Special Needs Trust is normally written with the terms supplemental and discretionary, which means that the Trustee (the person that is appointed to oversee the money) will use it only if it will not replace any benefits or services provided by the government.

In the development of a Trust for a beneficiary with a disability it is very important to insure that the state and federal benefits the individual is receiving are not jeopardized. The size of the Trust should be calculated in advance. Government programs should be reviewed and the cost for supplementary items and personal needs should be analyzed so that one can make sure adequate reserves will always be available. Factors to consider when establishing a Special Needs Trust with an attorney are:

- Experience of the attorney in drafting a Special Needs Trust.
- Do not use standardized trust forms.
- Discuss the advantages of using an inter vivos Special Needs Trust document versus a testamentary trust.
- Talk about how the Trust will be funded and who might contribute to the Trust.
- Be very specific about the purpose of the Trust and the limitation of the powers and duties of the trustee. Specify that the Trust is to be used to supplement not supplant government benefits and that it is not considered as an income stream.
- Discuss a spendthrift clause that protects the Trust against creditors.
- The greater control a beneficiary has over the use of trust assets the greater the possibility that those assets will be considered to belong to the beneficiary and could jeopardize state and federal benefits.
- Be very careful in selecting the trustee to insure s/he or the institution is able to manage funds responsibly and understands the particular needs of the beneficiary. Co-trustees such as a family member who understands the needs of the person with a disability along with an institution that has experience and legal expertise in managing a Trust may be appointed.
- Identify local, state and federal programs and services available to a child with a disability and eligibility requirements that are based on the family's or individual's financial resources.
- Know under what circumstances benefits, services and eligibility may be lost or become chargeable due to inheritance.
- Discuss a self-termination clause which will dissolve the trust if laws or circumstances change that threaten the trust. Determine who will inherit remaining money in the Trust when the child dies.
- Insure that the Trust never is funded with money that belongs to the child.

Families should consult their lawyer for specifics and assistance when establishing a Special Needs Trust. In addition, there are lawyers in the Iowa City and Cedar Rapids area who specialize in creating a Special Needs Trust.

Adapted from –Transition Topics, Lake County, Illinois, Planning for the Future of Your Child With a Disability, Iowa Department of Education and Drake University and information prepared by Frank A. Varvaris, 115-3rd Street SE, Cedar Rapids, IA 52401.

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