



Planning for the Future With Special Needs Trusts

Families who have children or loved ones with special needs face unique challenges when planning for the future. They are tasked with providing financial security and maintaining the loved one's quality of life while preserving eligibility for essential public benefits such as Supplemental Security Income (SSI) and Medicaid. One of the most effective and essential tools to achieve these goals is the special needs trust (SNT).

An SNT, also referred to as a supplemental needs trust, is a legal instrument designed to hold and manage assets for the benefit of an individual with a disability without disqualifying that person from needs-based government programs. The SNT establishes a means for providing sufficient financial resources throughout the beneficiary's lifetime while creating a framework that provides accountability and protection against financial misuse or exploitation. Properly structured and administered, the SNT ensures that resources are available to enrich the beneficiary's day-to-day life, providing access to meaningful experiences, opportunities and supports that public benefits alone cannot offer.

Funds held in an SNT are intended to supplement government benefits that the beneficiary may be entitled to receive. Because the beneficiary does not own or directly control the trust assets, funds in an SNT are not considered countable resources for the purposes of determining eligibility for needs-based government benefits. The trustee of an SNT can pay for a wide range of expenses that improve the beneficiary's quality of life, such as medical and dental care not covered by insurance, therapies, housing, education and vocational training, aides and job coaches, assistive technology, transportation, recreation, vacations, caregivers, and advocates. In essence, the trust is a vehicle to provide financial resources for the beneficiary to enjoy a full and meaningful life while maintaining the beneficiary's access to essential public support.

The appointment of a capable trustee, whether a family member or professional fiduciary, helps ensure ongoing financial management and oversight. The trustee ensures that funds are used in a manner that reflects the beneficiary's needs and goals. The trustee has full discretion to administer the funds for the beneficiary's use while complying with complex federal and state regulations governing public benefits.

Two Main Types of Special Needs Trusts

There are two primary types of Special Need Trusts, and the distinction lies in whose assets are used to fund the trust. Both types serve the same fundamental purpose of preserving public benefits and providing a means of additional support for the beneficiary, but they differ in how they are created, funded and ultimately distributed.

A **third-party special needs trust** is funded with assets belonging to someone other than the individual with a disability, most often a parent or relative. The third-party SNT is established as part of a family's estate plan and can be funded either through a gift to the trust during the donor's lifetime or via inheritance by directing assets to the third-party SNT in the donor's estate plan. The funds in the third-party SNT do not legally belong to the beneficiary and therefore will not count as a resource for asset-tested benefits and are not subject to recovery by the government upon the beneficiary's death.

A stand-alone third-party SNT provides an opportunity for multiple relatives, such as grandparents or aunts and uncles, to contribute to the same trust over time. Any funds remaining in the trust at the disabled beneficiary's death can be distributed to other family members or charities, as outlined in the trust agreement. A third-party SNT is an essential tool to provide financial support for a loved one with disabilities in partnership with government support and ensures that assets are managed according to the family's wishes.

A **first-party special needs trust**, sometimes referred to as a "self-settled trust," is funded with assets that legally belong to the individual with a disability. This situation often arises when the person receives an inheritance outright rather than through a third-party SNT or receives proceeds from a personal injury settlement. In such cases, the first-party SNT provides a lawful mechanism to protect those funds, maintain eligibility for government benefits and use the assets for the individual's needs throughout their lifetime. A first-party SNT can only be established by the disabled individual (if competent), a parent, a grandparent, a legal guardian or the court, and the beneficiary must be under the age of 65 at the time the trust is funded.

A first-party SNT is for the sole benefit of the disabled individual, making it much less flexible than a third-party SNT. Most notably, a first-party SNT is required to include a provision that, upon the disabled beneficiary's death, any remaining funds will reimburse each state that provided Medicaid benefits to the beneficiary throughout their lifetime before funds can be distributed to remainder beneficiaries such as other family members or charities. Although this payback requirement makes the first-party SNT less desirable, it is often the only option available to preserve eligibility for benefits when the beneficiary owns assets.

Conclusion

Incorporating a Special Needs Trust into your family's estate plan is critical for ensuring both financial stability and long-term well-being for your loved one with a disability. Without a properly structured trust, even a modest inheritance or financial gift could inadvertently cause the loss of crucial government benefits such as healthcare and housing assistance. For families of individuals with special needs, a third-party SNT should be the cornerstone of the estate plan.

Working with an experienced special needs planning attorney ensures that the trust is tailored to your family's unique circumstances and complies with all relevant legal requirements. Through thoughtful planning and coordination, families can be assured that their loved one will continue to receive meaningful care, dignity and financial support throughout their lifetime.