



## **Special Needs Planning for Special Children**

Many people familiar with trusts obtain their knowledge from learning how Revocable Living Trusts helps avoid probate. Avoiding probate is a worthwhile estate planning goal and a trust is a great tool to achieve it. Another worthwhile goal is the protection of property for disabled children, including minor and adult children. For this goal, the **Special Needs Trust** is used.

A trust is an arrangement where money is deposited into a fund for the benefit of another. The identity of that person and rules for how that money can be used are set forth in the trust provisions. The person identified to benefit from the trust is the beneficiary. Although it may sound complicated, a **Special Needs Trust** is merely a trust established for the benefit of someone with special needs.

A person with special needs is typically a person who partially or totally disabled. Our governments have seen fit to establish programs to assist those less fortunate, and many programs specifically target the disabled. Programs provide to disabled persons income (SSI), health care (Medicaid), food stamps, and housing. However, to qualify for these programs the disabled person cannot own or control certain amounts of assets. A trust can hold assets, and it is NOT considered a disabled person. Thus, it is a great tool to hold assets for the disabled person. There is nothing illegal about **Special Needs Trust**. In fact the state has regulations on how they can, or must, be created. As long as rules are followed, the Trust will be recognized as a valid legal tool to benefit the disabled.

Special needs trusts generally fall into three categories:

(1) third-party trusts that one person, typically a parent or grandparent, creates for the benefit of a child or grandchild; and

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(2) “pay-back” or “(d)(4)(A)” trusts funded with the disabled beneficiary’s own funds but created by a parent, grandparent, court or guardian; and

(3) pooled disability trusts run by a non-profit organization.

Each type of trust has its own benefits and drawbacks (which are a bit beyond the scope of this article).

An important issue to resolve when creating the SNT is choosing the appropriate Trustee. A Trustee will take on certain responsibilities, including investments, paying bills and taxes and keeping records. The Trustee of a SNT must also understand how distributions may affect the beneficiary’s continued eligibility for public benefits of the type mentioned above. The most frequent candidate for selection as Trustee is a family member. A family member will often understand the beneficiary’s special needs and know well the important people in the beneficiary’s life. But family members do not necessarily have the skill, time and dedication to serve as Trustee. A professional Trustee is an option. This could be a bank, law firm or trust company with the skill and experience needed. But professional Trustees charge for their services and many parents feel uncomfortable with the idea of an outsider managing a loved one’s trust.

Creating the SNT can be fundamental to a child’s wellbeing for years to come. It ought to be considered for any person thinking of their estate plan and who wants to create a level of financial security for a disabled person in the family.

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