SPECIAL NEEDS TRUSTS

Leaving a legacy for your family.

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Special needs

Many families include a person with special needs. In fact, 2.8 million of the 53.9 million school-aged children in America (5.2%) were reported to have a disability in 2010.[1] Raising a special needs child can be challenging and rewarding, but also comes with immense responsibility.

An important consideration for a parent or caregiver is making sure the special needs child is taken care of. The life expectancy is often unaffected or mildly affected by the disability and in some cases the child will outlive his or her parents and caregivers, but still not be in a position to care for himself or herself. Naming a special needs child as a direct beneficiary or gift recipient may result in a disqualification of a person with special needs from some government benefits. Under current law, to continue to receive federal aid, dependents with special needs cannot have more than $2,000 in total assets in their name (cash, investments, art, jewelry).[2]

A special needs trust may be an effective way to provide long-term security and quality of life for an individual with special needs.

Some types of special needs trusts

Third-party settled trust

This is the most common type of trust. It is designed to qualify the individual for government assistance while providing for quality of life (travel, a specially-equipped van, home health care or companions, etc.). This will be the trust that is most often used by the parent of a disabled child to continue to provide for his or her needs throughout his or her lifetime.

Self-settled trust

- This is a trust created by the disabled person with his or her own funds, allowing him or her to personally disperse the funds. If, however, the disabled person also takes government assistance, the assistance must be repaid with assets left in the trust after the disabled person has died.

The needs of a disabled beneficiary can change more frequently and unexpectedly than those of ordinary beneficiaries, depending on the chronic and permanent nature of the disability. Thus, a trust for a disabled person may require periodic evaluations of the beneficiary's care, needs, and adequacy of funding.

How the trust works

A properly drafted special needs trust will require that the trustee is obligated to make distributions to the disabled beneficiary. You may wish to consult with legal and tax professionals familiar with the laws of your state to help ensure any trust document is properly drafted to ensure it reflects your intent to provide for the disabled beneficiary. The trustee holds and distributes assets at his or her discretion, which should protect the beneficiary's eligibility for government benefits, while at the same time providing the beneficiary with access to the assets held in the trust for his or her benefit. Even though access to assets within the trust is restricted, the trust can still benefit the individual and pay for important expenses such as transportation, home health aides, education, rehabilitation, computer equipment, and medical and dental care that are not covered by private policies, Medicare or Medicaid.

Parents of a special needs individual are often concerned with what will happen to their child if that child outlives them. Planning for the future can be overwhelming as a family tries to balance current needs and financial constraints with concern for the future care of the child. Many families with special needs children consider that the trust purchase life insurance on the life of one or both parents. This strategy allows parents or caregivers to budget an amount today to provide a leveraged death benefit to care for that child, and may ease their concerns for their child's long-term needs.

[1] School-Aged Children with Disabilities in U.S. Metropolitan Statistical Areas 2010, US Census Bureau, November 2011 Report.

[2] Social Security Supplemental Security Income (SSI) SSA Publication No. 05-11000 August 2017.

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