

SPECIAL NEEDS TRUSTS

Creating and implementing a well thought-out and properly drafted estate plan is important for any parent, but for a parent of a child with disabilities or special needs, it is absolutely essential. Since providing funds directly to your loved one with special needs can cause government benefits to cease, parents often wonder how they can effectively provide for their child. Luckily, there is a Pennsylvania estate planning tool specifically designed to address this exact scenario: the Special Needs Trust.

*Your Brief Guide to
Providing for Your
Loved One with
Disabilities or
Special Needs*

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Creating and implementing a well thought-out and properly drafted estate plan is important for any parent, but for a parent of a child with special needs, it is absolutely essential.

Many parents of children with special needs in Pennsylvania remain unaware of the steps necessary to ensure that their child is physically and financially cared for through adulthood.

A **Special Needs Trust**, also known as a Supplemental Needs Trust, provides for the maintenance of an individual with a disability or disabilities by complementing, rather than replacing, government benefits. You may establish a Special Needs Trust during your life or upon your death as part of your Last Will & Testament.

THE PROBLEM – Providing Funds to a Disabled Person Can Jeopardize Benefits Eligibility

The term “special needs” can include both physical disabilities as well as a wide variety of psychological, social and emotional disorders. A special needs child is often entitled to certain government benefits, including Medicaid and Supplemental Security Income (SSI).

As adults, many individuals with significant special needs obtain basic support from these programs. There are many services available through these benefit programs; however, the actual cash benefits that are available are low enough to keep the recipients living in poverty. Since these government benefit programs cover only essential expenses, many parents wish to supplement their child’s lifestyle.

Providing funds directly to a disabled person can terminate eligibility for government benefits.

This creates a potential problem. The government benefit programs are largely needs-based, meaning that benefits are available only to those whose income falls below a certain level. SSI, for example, imposes limits on both income and assets. **As a result, leaving a direct inheritance to a child with special needs can actually disqualify the child for government benefits.** Upon the child’s receipt of the inheritance, the government benefits will immediately cease, and the child will be forced to pay for 100% of his or her own medical care, room and board, and other expenses until his or her assets have been

spent down to zero. The child will re-qualify for government assistance only after he or she has completely exhausted his or her own personal assets.

Luckily, there is a solution to this problem. The federal government has purposefully created an estate planning solution so that parents of a child with disabilities or special needs can avoid this conundrum: the Special Needs Trust.

The Social Security Administration does not count the assets in a Special Needs Trust as income for purposes of determining benefits eligibility because the assets are owned by the trust rather than by the child beneficiary.

THE SOLUTION – Preserve Public Benefits While Enhancing Your Loved One’s Lifestyle

A Special Needs Trust can help you put the financial pieces of your loved one’s future together. A Special Needs Trust is a trust designed to hold assets for the benefit of a person with disabilities or special needs. Assets placed into a properly drafted Pennsylvania Special Needs Trust are not counted for purposes of determining eligibility for government benefit programs, so the beneficiary can retain eligibility for programs like Medicaid and SSI and still have funds available from the trust to provide for the beneficiary’s supplemental needs.

Funding the Trust

There are two (2) types of Special Needs Trusts. One is funded with assets that are owned by the beneficiary. This is called a self-settled trust, and it is often created with the beneficiary’s own funds resulting from a personal injury settlement or verdict. The second and more common type of Special Needs Trust is one that is created for the beneficiary by another, usually a parent or grandparent.

There are varied ways to fund a Special Needs Trust, including cash (including gifts from relatives and friends), investments, retirement plan benefits, personal property, real property and proceeds from personal injury settlements. You can also designate the trust as the beneficiary of various assets, such as employee benefits and life insurance policies.

Many parents are unaware that leaving an inheritance to a child with disabilities or other special needs will disqualify their child from government assistance.



Requirements

The individual who will be designated the beneficiary of the trust must be under the age of 65 at the time the trust is established. After the individual reaches the age of 65, the trust's exemption status continues as to assets transferred into it. Assets cannot be added after 65. Additionally, the individual must be disabled pursuant to the requirements for Social Security Disability. A Special Needs Trust should be prepared only by an experienced estate planning attorney.

Family Arrangements

Some families expect or make arrangements with their other children to care for the disabled child once the parents can no longer do so. Unfortunately, sometimes siblings and other relatives cannot or will not take on the tremendous financial burden and huge responsibility of providing care for the special needs child, particularly as they begin to have their own families to take care of. Other unforeseen circumstances can prevent siblings and other family members from properly providing for the special needs child, even despite their good intentions.

As such, funds intended for the care of a disabled child should not be given to siblings or other family members. Parents of children with disabilities or special needs should create a Last Will and Testament and a Special Needs Trust that will allow their children to live comfortably and continue to receive government benefits. A Special Needs Trust is the cornerstone for everything that is done to plan for a special needs child's future.

Summary Points

- Giving money directly to a family member with special needs may do more harm than good! This increases the personal assets of a loved one with disabilities, which may disqualify him or her from government benefits and other assistance programs.
- A Special Needs Trust is an estate planning tool designed to hold assets for the benefit of an individual with disabilities or special needs.
- The assets in a Special Needs Trust are not counted for purposes of determining eligibility for government assistance, so the beneficiary of the trust can retain eligibility for government benefit programs like Medicaid and still have funds available from the trust to provide for his or her supplemental needs.
- A Special Needs Trust may be created during your lifetime or upon your death as part of your Last Will & Testament. A Special Needs Trust should always be drafted by an experienced estate planning attorney.

The Martin Law Firm | Special Needs Trust Attorneys

The Martin Law Firm is a Pennsylvania estate planning law firm located in Blue Bell, PA. Our experienced estate planning attorneys have been assisting families in southeastern Pennsylvania with special needs planning for over 10 years. Our attorneys regularly assist our clients with the creation and maintenance of a Pennsylvania Special Needs Trust and other estate planning documents, including a Last Will & Testament, Power of Attorney and Living Will.

For a free Special Needs Trust consultation, please contact The Martin Law Firm and mention this Guide. You'll gain peace of mind and assurance that your loved ones will be provided for.

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