

Special Needs Trusts Explained

By Karen S. Timko, CELA
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The basic concept of a trust is to create a document providing terms under which property, usually money, is held for a person's benefit. The Trustee of a trust administers the trust property and makes distributions to the beneficiaries identified in the trust document. Special Needs Trusts are trusts created to hold property for the benefit of a disabled person. The terms of the Special Needs Trust permit the trust property to be held for the benefit of the disabled person without adversely affecting the beneficiary's initial or continued eligibility for needs-based government benefits such as SSI or Medicaid benefits covering long term care delivered in the home, community or in a facility setting. The property held in trust is therefore preserved from spend-down requirements in order for the disabled person to qualify for needs-based government benefits and the trust property may be spent for the disabled person's benefit. The Trustee, in the Trustee's sole discretion, may make distributions of trust property for many reasons including but not limited to purchasing a home or motor vehicle, paying for medical treatments that Medicaid will not cover, recreational or social outings, or for other goods and services that will enrich the beneficiary's life.

There are two basic types of Special Needs Trusts. The types of trusts are distinguished by the source of the trust property that will fund the trust. First, a Third Party Special Needs Trust (often referred to as a Supplemental Needs Trust) is one created by anyone other than the disabled beneficiary. The creator of the trust is called the Grantor or Settlor. This person may transfer property to the trust. The Trustee of the trust may also accept property from others to be held in the trust. The property is held for the benefit of the disabled beneficiary during the disabled beneficiary's lifetime. Upon the death of the beneficiary, the trust terms dictate who will receive any remaining trust balance.

The second type of Special Needs Trust is a First Party or Self-Settled Special Needs Trust. This trust holds property belonging to the disabled person. Sometimes a disabled person will receive a gift, inheritance or a personal injury settlement that will render the disabled person ineligible for benefits unless the funds are transferred to a Special Needs Trust. In this case, transferring the property to the trust allows the disabled person to qualify for needs-based government benefits. The property is administered by the Trustee for the benefit of the disabled person. However, there are additional restrictions to the creation and administration of such a trust. This type of Special Needs Trust cannot be established by the disabled person. It must be created by the parent, grandparent or guardian of the disabled person. If none of these individuals are available, a Court can establish the trust. Also, this type of trust may not be prepared for a disabled person who is over the age of 65 years. Finally, upon the death of the

beneficiary, Medicaid must first be reimbursed for the cost of the long term care benefits received by the disabled person before any distributions can be made to another beneficiary.

Another type of First Party Special Needs Trust is a Pooled Trust. Under this type of trust, a nonprofit organization holds and administers the disabled person's property in a trust that pools the property of all pooled trusts it administers for investment purposes. A separate subaccount is maintained to identify each disabled person's trust property. The corporate Trustee makes distributions for the benefit of the disabled person. Upon the death of the disabled person, any remaining balance of the trust account is held to benefit other beneficiaries of the pooled trust.

The Special Needs Trust continues to be the most important planning tool to hold property that may be used to enrich the life of disabled persons without adversely affecting their eligibility for needs-based government benefits. This trust must meet very specific legal standards to effect the purpose of the trust and the best interests of the disabled person. Therefore, it is critical that an attorney with expertise in Elder Law be consulted before undertaking special needs planning.