

WHAT IS A SPECIAL NEEDS TRUST?

Seemingly everyone you know is telling you that you need a special needs trust. You don't doubt it, necessarily, but you would like to know just what these trusts are and how they work. This column will attempt to explain that.

A special needs trust is a specific type of trust that can exist for disabled persons. A trust is a type of legal entity, similar to a small company or maybe a mom and pop store, owning assets and earning income, with legally recognized rights and obligations.

The person or organization which is in charge of a trust is called the trustee. The trustee operates a trust by protecting and investing its assets, and using them and their income for the purposes of the trust.

Different types of trusts exist for different purposes, and the purpose of a special needs trust is solely to maintain a fund for the needs of a disabled person. It's main distinction from other trusts is the restrictions that govern how the trust funds can be used. It is because of these restrictions that a properly drawn special needs trust will not affect a disabled person's right to public assistance benefits.

A special needs trust gives its trustee wide discretion in deciding how to distribute trust assets and income. But it does prevent a trustee from making distributions which would jeopardize eligibility for public assistance benefits. However, it often will allow a trustee to make distributions which might reduce public assistance benefits if the trustee determines that the benefits from the distributions would outweigh those reductions.

A trustee of a special needs trust can consult with the trust's beneficiary concerning distributions, but the document establishing the trust must deny the beneficiary the power to command distributions. It is because of this absence of power

that the assets of a special needs trust are, as a matter of law, deemed not to be owned by the beneficiary. It is what keeps the assets and income of the trust from being treated as those of the beneficiary, and what enables the beneficiary to remain eligible for public assistance benefits.

It is likely that right now we are assisting a loved one with personal care and financial support. We understand that what we spend money on and how we spend it can reduce our loved one's public assistance benefits, or even extinguish them. We understand our loved ones' needs for public assistance benefits to pay for basic living and medical expenses, and we also understand the need to supplement these benefits. A special needs trust continues this process after we are no longer able to do it.

There are two very crucial aspects of a special needs trust. The first is to properly establish one so it meets the legal and practical requirements which will make it effective for its purpose. The second is to appoint a trustee who has the ability to do the job.

The job of a trustee of a special needs trust is unique. The trustee must have the financial sense to obtain a maximum amount of income by investing the trust's assets while at the same time protecting them from the risk of loss. Most significantly, the trustee must understand the special needs of the beneficiary, and know how to deal effectively with this individual beneficiary. It is important that the trustee make wise decisions on how to spend trust funds so that the real needs of the beneficiary are provided for and the trust funds will last for the beneficiary's expected lifetime.

Often a family member or a trusted friend is the best selection as a trustee. But there are pitfalls, such as potential conflict with the beneficiary and possibly placing an unwanted burden on a family member or friend. Sometimes an organization like Proxy

Parents Foundation, with its experience and expertise, is the best choice to serve as trustee.

A special needs trust is a significant estate planning tool, and it is something that should be established for the majority of disabled persons. A good special needs trust will enable us to feel assured that our disabled loved ones are protected to the extent possible.

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