

## Special Needs Trusts

Special Needs Trusts, sometimes referred to as Supplemental Needs Trusts, are trust vehicles designed to protect and distribute funds in such a way that they will improve the quality of life of the trust beneficiary without causing ineligibility for public benefits, such as Medicaid. In other words, a trust established to provide for the support and health of a spouse or child would prevent eligibility for needs-based medical benefits under a government program. The terms of a Special Needs Trust, by contrast, would provide for the use of trust funds only for supplemental needs, such as travel expenses, companion care, audio-visual equipment and the like.

In the context of estate planning, the typical Special Needs Trust (SNT) is established for the benefit of a child or grandchild with a disability, and it is funded either currently or at the grantor's death with a share of the estate or proceeds of a life insurance policy. They can also be drafted into a Last Will and Testament and established upon death for the benefit of a spouse with a disability, such as Alzheimer's disease, so that medical and long-term care benefits will not be interrupted and quality of life can be preserved. As with a typical trust arrangement, the person creating the trust may specify the beneficiaries of the remaining assets in the trust upon the death of the disabled beneficiary. Careful legal analysis must be applied where asset protection is the goal for the spousal SNT under a will.

While it may seem simpler to leave an extra share of resources to a family member who will have a moral obligation to support the disabled relative, this actually creates more complexity, costs and risk, including claims against the relative (i.e., divorce, creditors). If the relative dies first, the assets would be distributed to his or her heirs. By contrast, the SNT enables the donor to create a protected entity, with a succession of trustees, to protect against such claims, including those of the government.

Special Needs Trusts may also be established to receive an inheritance or the judicial settlement of a claim, such as a medical malpractice suit filed to recover damages for the injury creating the disability. These trusts may be established by a parent, grandparent, legal guardian or the court for the disabled person, but with these so-called "self-settled" trusts, the remainder must be made available to the State to reimburse benefits paid during life.

The regulations governing SNTs are complex and unforgiving, but with proper planning, drafting, funding and administration, the Special Needs Trust can provide quality of life, dignity and comfort from financial fears to a loved one under a disability.

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