

SPECIAL NEEDS TRUST FUND

A parent, spouse, or caregiver of a child person with special needs has more to consider than most. Planning for a lifetime of financial, medical, educational, and legal needs may seem daunting, but there are steps you can take to provide for and protect loved ones with special needs throughout their lifetime.

Estate planning with a dependent who has special needs is a complex process. Most people find it difficult to even contemplate their death and, as a result, planning can be an upsetting experience for families.

Protecting your loved one's financial future



If you want to leave money or property to your loved one with special needs, you must plan carefully, or you could jeopardize their ability to receive certain government program assistance, including:

- Supplemental Security Income (SSI)
- Social Security Disability (SSDI)
- Medicaid benefits
- Vocational Rehabilitation
- Subsidized Housing

As of May 2023, these benefit programs generally require unmarried recipients to own no more than \$2,000 in assets. They also place limits on income, subject to a few exceptions. (*2023 SSI Income and Resource Eligibility Table* <https://www.ssa.gov/ssi/>)

A Special Needs Trust (SNT) is essentially a mechanism to hold property – which can include real estate, finances, or other tangible items – managed by one person or entity to benefit someone with special needs (physical and/or mental disabilities). A SNT can be established whether the person with special needs has the capacity to manage their own finances or not.

- The person or entity managing the trust is called the trustee
- The person who benefits from the trust is called the beneficiary

The trustee is often a family member, financial institution, or a third party appointed by the court. The trustee has complete discretion over the trust property and will oversee spending money to help the person with special needs. The trust can last as long as necessary, generally until the beneficiary's death or until the funds run out.

A special needs trust you create and fund for your loved one with special needs is called a **Third-Party Special Needs Trust**. A trust that is funded with property that belongs to the beneficiary, or to which the beneficiary is or becomes legally entitled is called a **First Party Special Needs Trust**.

Third Party Special Needs Trusts

Third-party SNTs are usually established and funded by the parents or relatives of an individual with special needs.

A properly drafted third-party SNT allows the beneficiary with special needs to receive inheritances, gifts, or other funds but not lose eligibility for certain government programs. SNTs are designed so they may cover certain comforts and luxuries for your loved one with special needs that cannot be paid for by public assistance funds. An SNT allows funds to legally be used to improve the beneficiary's quality of life by providing for items that are not considered necessities of life, such as (***this is not an all-inclusive list***):

- A vacation with friends
- Tickets to a sports event
- A wheelchair, ramp, or chair lift
- Out of pocket medical expenses
- Home furnishings (furniture, electronics, etc)
- Music and art classes
- Educational classes
- And more

First Party Special Needs Trusts

First-party SNTs are most often used when a person with a special need inherits money or property outright or receives a court settlement.

These first party SNTs are also useful when a person without a prior disability owns assets in his or her name, later becomes disabled, and thereafter needs to qualify for public benefits that have an income or asset limitation.

What are the benefits of a Special Needs Trust?

Inheriting assets, such as a lump sum of money or property, is problematic to a person with special needs who is receiving, or will be receiving, government benefits. The inheritance can disqualify the person from receiving government assistance (listed above).

Setting up an SNT can help to avoid this issue. The trustee has total control over the management of the trust property, so government program administrators do not count SNT assets when considering eligibility for government benefits. Additionally, setting up an SNT can protect the beneficiary from being sued, as the funds in the SNT are generally not subject to any judgment.

How do I get started?

It is important to work with an attorney who is knowledgeable about estate planning for families with a loved one that has special needs. Determining how a special needs trust should be drafted to meet the needs of your family requires a thorough knowledge of public benefits, as well as applicable federal and state laws related to taxes and governing trusts and estates.



How do you fund a SNT fund?

Many different types of resources can be used to fund a Special Needs Trust:

- Family's savings
- Investments in stocks and mutual funds
- Certificates of Deposit (CDs)
- Military benefits
- Individual Retirement Accounts (IRAs)
- Real property
- Standard government benefits
- Parents and other family members and even friends can name the trust as a beneficiary in their wills
- Your life insurance policy can also name the trust as a beneficiary
- Anyone can contribute to the trust at any time
- If the trust beneficiary (the special needs individual) inherits money or other property, that can be placed in the trust as well.

Special Needs Trust Funds May Not Be Used for Basic Needs

There are strict rules regarding the wording of Special Needs Trusts that have to do with how the money may and may not be spent.

The document must state that the money cannot be used to pay for the beneficiary's basic needs, such as housing, medical treatments covered by Medicaid, food, or clothing.

Money used for those purposes is considered "income" for the intention of determining the beneficiary's eligibility to receive Supplemental Security Income (SSI) and Medicaid.

It must also state that the money cannot be used to pay for any item that is, or in the future may be, covered by SSI or Medicaid and that any expenditure that would jeopardize the beneficiary's eligibility for SSI or Medicaid are not authorized.

Allowable Purchases Using Trust Funds

The money in the SNT fund can be used for the following (*this is not an all-inclusive list*):

- To purchase a home (which can then be rented to the beneficiary)
- The trust can pay for ordinary or special furniture
- Medical and health costs not covered by Medicaid such as:
 - Experimental and alternative medical treatments
 - Massage therapy
 - Vitamins
 - Certain durable medical equipment and special aids
- It can pay for vacations
- Summer camp
- Trips
- Travel companions
- It can be used to buy sporting equipment
- Fund hobbies
- The trust can pay for computers
- Haircuts
- Tickets to a sports event
- Cameras
- The special needs individual can buy bowling shoes, but not regular shoes
 - Regular shoes are considered "clothing" and is paid for by SSI
- The trust can also be used to pay for emergency legal costs if the beneficiary is:
 - Sued
 - Charged with a crime
 - Needs an advocate to deal with government or medical red tape
 - It can also pay for the beneficiary's funeral and burial expenses



10 MISTAKES TO AVOID WHEN PLANNING FOR A LOVED ONE WITH SPECIAL NEEDS.

1. Doing nothing

The most popular estate plan in the United States is doing nothing. While not a good idea for anyone, it is particularly troubling when there is a loved one with special needs.

If someone does nothing and then dies or becomes incapacitated, his or her estate is managed under the rules set forth in his or her state's probate code. Generally, the state probate code does not protect a loved one with special needs. *Doing nothing is not an option.*

2. Disinheriting your loved one

Many families who have a loved one with special needs rely on SSI, Medicaid, or other government benefits to provide food and shelter. To protect these benefits, you may have been advised to disinherit your loved one with special needs. If there are no assets set aside, your loved one will depend on public benefits.

Public benefits rarely provide more than welfare-level care. Having a well drafted third-party special needs trust provides legal protection for your loved one's inheritance that can be used to supplement their public benefits.

3. Leaving assets to someone else to care for your loved one

This plan is fraught with landmines:

- Even well-intentioned siblings have their own lives and may focus on their own financial concerns rather than the loved one's
- What happens when the person who received the funds divorces and the assets are split with a spouse who has no interest in protecting the loved one with special needs?
- What if the person charged with care dies first, or if they become incapacitated themselves?
- What if the person charged with care is sued, has significant debt or creditor problems and resorts to using funds intended for the loved one with special needs?

A third-party special needs trust protects everyone. The trust leaves clear and legally binding instructions and protects the assets you've set aside for your loved one's care.

4. Using a one-size-fits-all special needs trust

Some special needs trusts are unnecessarily inflexible and generic. The trust may preserve government benefits, but many of these bare-bones trusts prevent distributions that may be in the best interest of the person with special needs and improve his or her quality of life.

Some special needs trusts are “irrevocable” upon signing. While this is sometimes appropriate, most people prefer a revocable trust to retain the right to improve and change the trust as the years pass.

A special needs trust should be flexible and personalized to your family’s needs.

5. Failing to plan for more than public benefits

The main issue with one-size-fits-all special needs trusts is that the only goal is preserving public benefits. *While preserving public benefits is important, it should not be the only goal.*

The special needs trust should be designed to enhance your loved one’s quality of life in all aspects. This can include (among other things):

- Life-long financial planning
- Where they will live
- Who will provide advocacy and developing a plan for proper caregiving

Special needs planning is not about the document; it is about making sure your loved one with special needs has the legal protections necessary to enjoy a comfortable quality of life when you are no longer there.

6. Not using a professional who focuses on special needs planning

Many plans fail because the professional who created the plan did not understand the unique needs of persons with special needs.

An attorney who understands how to plan for people with special needs can save the family significant money and worry.

7. Failing to include others in the planning

A benefit of creating a special needs trust that is immediately effective is that your extended family and friends can also make gifts or leave inheritances to the trust you create. This will reduce the cost to the family in trying to set up different plans for different situations.

A letter to other family members explaining that you have created a trust that will protect your loved one’s benefits, enhance their life, and preserve assets should provide instructions on how to properly name the trust as a beneficiary.

8. Choosing the wrong management team

When you or your spouse can no longer serve as trustees, the choice of who is responsible for managing your loved one's assets can be challenging. If the wrong person is put in charge, or the right person dies and there is no plan for succession, the entire special needs plan can fall apart.

Creating a team of professionals and family members is generally recommended. The professional trustee will be responsible for keeping apprised of the public benefit rules, managing the day-to-day finances, providing disbursements, maintaining records, and preparing accountings, while the family makes sure the trustee is doing what the trustee is supposed to do.

9. Failing to protect your loved one from predators

All too often, people with special needs fall victim to predators. This can be a financial scam where the predator takes over their assets or a trick that deprives them of much-needed care. Predators are particularly attracted to vulnerable beneficiaries, such as the young and those with limited self-protective capacities.

With a trust, you limit access to the information about your loved one's money. It provides further protection because the person with special needs cannot direct where assets go.

10. Failure to properly “fund” and maintain the plan

A special needs plan must have assets to make the plan work. This is an excellent time to bring together your financial planner and special needs planning attorney to assist in creating a lifetime plan.

The financial advisor can create sample future scenarios that show how much is needed to fund a plan and then present different ways to accomplish this goal. Sometimes, this means adding a life insurance policy and naming the trust as beneficiary. Or you can also use existing assets. There are many options available.

The attorney can then prepare the documents to cover the needs of the loved one. The plan should be reviewed every three to five years to make sure it continues to meet the loved one's needs. By doing so, you can create an effective special needs plan that will last a lifetime.

The information you obtain in this guide is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation.

The information came from a brochure titled: Planning for your special needs child. A guide to Special Needs Trust (Abrahams Kaslow & Cassman LLP)