

Planning For a Family Member with Special Needs

Part III

Types of Special Needs Trusts, Trustee's Responsibilities and Other Helpful Information

Question: What is the definition of a Special Needs Trust?

Answer: A SNT is established for a person with a disability to supplement any benefits the person may be eligible to receive from government programs as a consequence of the person's disabling condition. A properly drafted SNT will allow the beneficiary to continue to receive government benefits while also benefitting from the SNT.

Question: What are the most common types of Special Needs Trusts?

Answer:

Third-Party SNT. Established by family members or others, and funded with property not owned by the beneficiary with a disability.

First-Party SNT. Established by a permissible "settlor" and funded with property that already belongs to the beneficiary with a disability (or to which he becomes legally entitled, e.g. inheritance, personal injury settlement, life insurance).

Pooled SNT. Established and managed by a nonprofit organization for the benefit of numerous beneficiaries with disabilities. Assets are pooled, i.e. combined, for investment purposes. Accounts may be funded with the beneficiary's assets (a "first-party" account) or with assets derived from others (a "third-party" account). Beneficiaries share in the income or gains generated by the pool of invested funds in proportion to their share of the assets in the pool.

Every individual with special needs is different; thus, every Special Needs Trust should be different. To determine which Special Needs Trusts are right for your family, meet with a qualified Special Needs Planner to discuss the specifics of your family's situation.

Question: Who should be the Trustee of a Special Needs Trust?

Answer: Serving as Trustee of a Special Needs Trust is not for the faint-of-heart. There are numerous traps for the unwary in administering a Special Needs Trust. Professional Trustees are strongly recommended, either to serve as the sole Trustee or as a Co-Trustee with a family member or other individual.

Question: Is there an instruction manual for the Trustee of a Special Needs Trust?

Answer: Yes! The Special Needs Alliance publishes a very helpful "Handbook for Trustees" which can be downloaded for free at <http://specialneedsalliance.org/free-trustee-handbook/> (available in both English and Spanish).

Question: In addition to the Trustee of a Special Needs Trust, who else can help assure the future care of a beneficiary with a disability?

Answer: A proper Special Needs Plan involves assembling a team of "allied professionals" to help secure the future of a beneficiary with special needs. In addition to an estate planning attorney who is familiar with the legal requirements for Special Needs Trust planning, the following allied professionals are valuable members of the Special Needs Planning Team: (i) a life care planner; (ii) a care manager; (iii) a life insurance professional who is familiar with

the distinct challenges faced by family members with special needs; (iv) an investment advisor who knows how to manage funds for beneficiaries with special needs, taking into account their generally lower investment risk tolerance; (v) a government benefits specialist and claims processor; (vi) a special needs advocate; (vii) a special education expert to assist in developing an “individualized education plan” for school age beneficiaries with special needs; (viii) a home accessibility specialist for beneficiaries with physical disabilities; and (ix) an accountant who is familiar with the deductions to which families may be entitled as a consequence of special needs expenditures. The estate planning attorney often serves as the “quarterback” of this team of allied professionals, and makes recommendations and referrals for team members.

Question: How do I find an attorney who is proficient in Special Needs Planning?

Answer: Special Needs Planning is a complex area of the law with which most traditional estate planners are unfamiliar. The Special Needs Alliance is an invitation-only group of attorneys that devote a majority of their practice to Special Needs Planning. A list of Special Needs Alliance attorney members can be found at <http://www.specialneedsalliance.org/find-an-attorney/>. Special Needs Alliance members are able to connect families with the other “allied professionals” that should be part of the Special Needs Planning team, described above.

Question: What is a Life Care Planner?

Answer: A Life Care Planner is a professional with either a medical or social work background who is familiar with many disabling conditions. This professional develops a Life Care Plan specifically for the beneficiary with the disability. A Life Care Plan for the beneficiary with special needs is an indispensable element of a realistic Special Needs Plan. Rather than just guessing as to the amount of money that will be needed to fully fund the special needs of a person with a disability, a Life Care Plan represents an objective, arm’s-length assessment of the estimated cost. A Life Care Plan itemizes those medical and non-medical services, products, equipment, housing options, educational options, and life-enhancing experiences from which the person with special needs will derive benefit during his estimated life expectancy, along with an economic analysis of the likely costs of each element of the plan, indexed for inflation. A Life Care Plan also provides an indispensable “roadmap” for the Trustee of any Special Needs Trust. If there is no Life Care Plan in place at the inception of a funded Special Needs Trust, the Trustee is advised to obtain one as the first order of business.

Question: How often does a Life Care Plan have to be updated?

Answer: A Life Care Plan should be updated periodically to reflect both an improvement or a deterioration in the condition of the beneficiary with a disability. No Life Care Plan is static or foolproof; the beneficiary’s needs and capabilities are always changing.

Question: How do you coordinate the generosity of other family members or friends who might want to help secure the future of a loved one with a disability?

Answer: This is a critical aspect of a successful Special Needs Plan. Well-intentioned friends and relatives can destroy a perfectly good Special Needs Plan by proceeding without the necessary coordination of efforts. One of the “network” of Special Needs Trusts that constitutes the cornerstone of an effective Special Needs Plan is a “receptacle” Special Needs

Trust. This third-party Special Needs Trust is designed solely for the purpose of receiving lifetime gifts, bequests or other post-mortem transfers for the benefit of a person with a disability. A “Dear Family & Friends” letter describes in detail how a person who wishes to make a gift or bequest to the receptacle Special Needs Trust may do so without having to prepare their own Special Needs Trust for that purpose.

Question: Why should a first-party Special Needs Trust be established as part of the “network” of Special Needs Trusts that constitute a proper Special Needs Plan?

Answer: There are many situations in which a person with a disability may become legally entitled to assets that would jeopardize his ongoing eligibility for means-tested government benefits. The well-intentioned generosity of a friend or family member who (i) leaves an outright bequest to the beneficiary, (ii) makes an outright lifetime gift to the beneficiary, (iii) dies intestate with the beneficiary thus entitled to share in the estate as an heir, or (iv) designates the beneficiary as a direct payee of a non-probate asset (*e.g.* an IRA or a life insurance policy), will jeopardize the beneficiary’s eligibility for means-tested benefits. The beneficiary may become legally entitled to receive child support or alimony payments. The beneficiary may win the lottery or be awarded a grant or cash prize. In each of these situations, having a first-party Special Needs Trust available on a “standby” basis provides a ready solution for handling the beneficiary’s assets in a manner that will not jeopardize his means-tested government benefits.

Question: I’m so confused! Is it possible to schedule a Special Needs Planning workshop that addresses all of these questions?

Answer: Yes, of course! Please feel free to reach out to Kristen Lewis at klewis@sgrlaw.com to discuss scheduling a Special Needs Planning workshop for your family or group.