



The Special Needs Trust

The only reliable method of making sure an inheritance or gift has a chance of reaching a person with a disability when he or she needs it is through the legal device known as a *SPECIAL Needs Trust (SNT)*. The SNT is developed to manage resources while maintaining the individual's eligibility for public assistance benefits (SSI/Medicaid). How is this done? Simply put, the family leaves whatever resources it deems appropriate to the special needs trust. The SNT is managed by a trustee on behalf of the person with the disability.

While government agencies recognize special needs trusts, they have imposed some very stringent rules and regulations upon them. Because of these rules and regulations, it is vital any family contemplating using a SNT consult an experienced attorney – not just one who does general estate planning, but one who is very knowledgeable about SNT's and current government benefit programs. One wrong word or phrase can make the difference between an inheritance benefitting the person with a disability and one which causes the person to lose access to a wide range of needed services and assistance.

The first thing which may come to mind for most families who have had experience with government benefits is the government says a person with a disability cannot have a trust. Correct! However, the special needs trust does not belong to the person with a disability. The SNT is established and administered by someone else. The person with the disability does *not* have a trust. He or she is nominated as a beneficiary of the trust and is usually the only one who receives the benefits. Furthermore, the trustee (manager) is given *the absolute discretion to determine when and how much the person with the disability should receive*.

Given the government's stringent requirements it is critical the trust be carefully worded and clearly show the trust:

- ◆ is established (grantor, settlor) by the family (person other than the person with the disability);
- ◆ is managed by a trustee (and successor trustees) other than the person with the disability;
- ◆ gives the trustee the absolute discretion to provide whatever assistance is required;
- ◆ should never give the person with the disability more income or resources than permitted by the government;

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- ◆ must be used for supplementary purposes only; it should add to the things provided by the government benefit program, not supplant (replace) them;
- ◆ defines what it means by supplementary/special needs in general terms, as well as in specific terms related to the unique needs of the person with the disability;
- ◆ provides instructions for the person's final arrangement;
- ◆ determines who should receive the remainder (what is left over) of the trust after the individual with the disability dies;
- ◆ provides choices for successor trustees – people or organizations that might be able to take a personal interest in the welfare of the person with the disability; and
- ◆ is protected against creditors or government agencies trying to obtain funds to pay for debts of the person or the family.

Since the SNT is a legal arrangement regulated by the laws of your state, there will be other sections that your attorney may need to insert. It is important to know, while the majority of public assistance funds come from the federal government (which provides guidelines for SNT's), it is the responsibility of each state government to regulate trusts and administer the federal benefits. As long as the federal guidelines are followed to the letter, the state will accept the SNT, and the trust will fulfill its function.

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