

The Special Needs Trust: Planning for a Disabled Dependent

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If you have a child, sibling, parent, spouse, or other loved one who is physically, mentally or developmentally disabled -- whether from birth, illness, injury or drug abuse -- he or she may be entitled to valuable government benefits (SSI and/or Medicaid) now or in the future. Unfortunately, most of these benefits are available only to those with very limited means.

As a result, you may find yourself faced with a difficult choice. If you leave a substantial inheritance to this person, he will be disqualified from receiving government benefits which may be crucial for his care. On the other hand, you may not want to have to disinherit him in order to preserve these benefits.

Fortunately, a special needs trust will keep you from having to make this wrenching decision.

A special needs trust must be very specific in stating that its purpose is to *supplement* government benefits, to provide only benefits or luxuries *above and beyond* the benefits the beneficiary (disabled person) receives from any local, state, federal or private agencies.

It is critical that the trust not duplicate any government-provided services and that the beneficiary not have any resemblance of ownership of the trust assets. Otherwise, the government could attempt to seize the trust assets for repayment of services already provided or determine that the beneficiary does not qualify for future benefits.

To accomplish this, you will need to give the trustee complete control over the distribution of the assets and any income they generate; the beneficiary cannot be able to demand any principal or interest from the trust.

Give careful consideration to your choice for trustee. Of course, you (and your spouse) will continue to provide for this person while you are alive and able. But someone will need to assume this responsibility after your death or incapacity.

The most obvious choice is another family member who also cares deeply about this person. But be aware of a possible conflict of interest, especially if she will inherit the trust assets after your disabled dependent has died; she may care more about preserving trust assets than providing for your beneficiary.

Consider using (or adding) a corporate trustee; that's a bank or trust company that specializes in managing trusts. They can be impartial, and they will be around for as long as your beneficiary lives.

Finally, be sure to work closely with an attorney who has considerable experience with these trusts.

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