

The Benefits of Special Needs Trusts

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If after reading Avery Cooper's Article, *To Trust or Not to Trust* [add a link here], you think a trust might be right for you and your family, you might also want to consider the benefits of preparing a Special Needs Trust for someone whom you wish to have as a beneficiary to your estate.

A Special Needs Trust, otherwise known as a Spendthrift Trust, is a trust created for a particular beneficiary, but it is created in such a way as to preclude the beneficiary from controlling the trust proceeds. Creating a special needs trust has the following three main benefits: 1) the beneficiary is not able to waste his or her inheritance as he or she would if given full control of the trust property; 2) the trust property cannot easily be reached by the beneficiary's creditors; and 3) the beneficiary may continue to qualify for certain government assistance programs without having to reimburse the state at the beneficiary's death.

A special needs trust is able to achieve the aforementioned goals because the beneficiary of such a trust does not actually own the assets; instead, the assets are owned and administered by the trust.

THE BENEFICIARY IS NOT ABLE TO WASTE HIS OR HER INHERITANCE

A beneficiary with a mental disability or an addiction might easily squander away the entirety of his inheritance from a will or distributions from a normal trust. However, a special needs trust can be designed in various ways to either limit or completely avoid distributions paid directly to the beneficiary, while still providing for the beneficiary's health, maintenance, and support, etc.

By way of example, Mr. and Mrs. Doe have \$900,000 and want to distribute the money equally among their three children, but they are worried about their youngest child, John, who is an alcoholic. Mr. and Mrs. Doe fear that if they left money to John, he would spend it all on alcohol, or on bad decisions made while drunk. However, they do not want to leave any of their children out of their estate plan. Instead, the parents can make outright distributions to their other children, and then, set up a special needs trust for John, naming someone they know and trust as trustee. The trust can arrange for direct payment of their child's rent and utilities, as well as provide a small monthly disbursement for the child's enjoyment. This way, Mr. and Mrs. Doe can plan for the security and enjoyment of their child without worrying that the proceeds will be spent irresponsibly.

THE TRUST PROPERTY CANNOT BE REACHED BY THE BENEFICIARY'S CREDITORS

The beneficiary of a special needs trust does not have the ability to voluntarily assign rights to the trust property. Thus, a creditor of the beneficiary cannot access the trust property, even by way of a money judgment. Instead, such creditors are subject to certain procedures and are not guaranteed payment from the special needs trust property.

For example, if John from the example above, got into a car accident and a judgment was rendered against him as a result, that money judgment could not be enforced against the trust that Mr. and Mrs. Doe previously set up. The money judgment can only reach the trust property if distributions are made directly to the beneficiary. As long as the trustee for the special needs trust makes distributions on behalf of the beneficiary, and not to the beneficiary himself, the trust property will remain protected as against creditors.

THE BENEFICIARY MAY CONTINUE TO QUALIFY FOR GOVERNMENT ASSISTANCE PROGRAMS

The main benefit of a special needs trust is to pass assets to a particular beneficiary while still preserving any government assistance the beneficiary receives. Benefits such as Supplemental Security Income (SSI) and Medi-Cal are only available to certain individuals with limited funds. Thus, if a person receiving such assistance suddenly inherited a large amount of money, she would no longer be eligible for the assistance based on her financial situation. Moreover, if the person then spent all of her money irresponsibly, it would be difficult to go back on government support. The individual also would have none of the inheritance left, which she may have wanted to pass on to her own, or the alternate beneficiaries, in the future.

Fortunately, the California Code of Regulations, title 22, section 50489.9, subdivision (a)(3)(B) and (4) provides for the implementation of special needs trusts to hold assets, rather than the individual. As a result, the trust can finance the needs of the beneficiary that are not covered by Medi-Cal, without jeopardizing the beneficiary's SSI or Medi-Cal eligibility.

This is only a basic overview of the benefits of a special needs trust. If you believe that a special needs trust is right for someone in your family, it is important to hire a qualified attorney for the preparation of your estate so the special needs trust can be tailored in a way so as to provide for the particular beneficiary's needs. When done properly, the trust property of a special needs trust can be disposed of in accordance with the Settlor's wishes.