

# New Jersey Law for Special Needs Children

NEWS & UPDATES ON ESTATE PLANNING FOR NEW JERSEY FAMILIES WITH SPECIAL NEEDS CHILDREN

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## Who Can Set Up a Special Needs Trust?

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The answer depends on what type of Special Needs Trust – a Third Party Special Needs Trust or a First Party Trust.

A third party trust, that is created to hold assets of another person for the benefit of the person with special needs, can be set up by anyone who is over the age of 18 and has the mental capacity to create such a trust. Typically, a parent or grandparent sets up a third party trust because they are usually the ones who are leaving assets to the person with special needs. However, with older couples, sometimes one spouse sets one up for the surviving spouse. In addition, a friend or other non-relative may set up a third party special needs trust to be the recipient of gifts from other friends of the person with special needs.

A first party trust, which is a trust created to own the assets of the special needs person, can only be created by a parent, grandparent, guardian or court. First Party Trusts have many more requirements than third party trusts and it is important that all formalities, starting with the creator of such trust, are followed.

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