

PROXY PARENT FOUNDATION

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What is a Special Needs Trust?

*By Baron L. Miller**

Seemingly everyone you know is telling you that you need a special needs trust. You don't doubt it, necessarily, but you would like to know just what these trusts are and how they work. This column will attempt to explain that.

A special needs trust is a specific type of trust that can exist for disabled persons. A trust is a type of legal entity, similar to a small company or maybe a mom and pop store, owning assets and earning income, with legally recognized rights and obligations.

The person or organization which is in charge of a trust is called the trustee. The trustee operates a trust by protecting and investing its assets, and using them and their income for the purposes of the trust.

Different types of trusts exist for different purposes. The sole purpose of a special needs trust is to maintain a fund for the needs of a disabled person. Its main distinction from other trusts is the restrictions that govern how the trust funds can be used. A properly drawn special needs trust will not affect a disabled person's right to public assistance benefits.

A special needs trust gives its trustee wide discretion in deciding how to distribute trust assets and income, while preventing a trustee from making distributions which would jeopardize eligibility for public assistance benefits. However, often a special needs trust will allow the trustee to make distributions which might reduce public assistance benefits, if the trustee determines that the value derived from those distributions would outweigh those reductions.

A trustee of a special needs trust is allowed to consult with the trust's beneficiary concerning distributions, but the document establishing the trust must deny the beneficiary the power to command any distributions. It is because of this absence of power that the assets of a special needs trust are, as a matter of law, deemed not to be owned by the beneficiary. It is what keeps the assets and income of the trust from being treated as those of the beneficiary, and what enables the beneficiary to remain eligible for public assistance benefits.

It is likely that right now we are assisting a loved one with personal care and financial support. We understand our loved ones' needs for public assistance benefits to pay for basic living and medical expenses, and how essential it is for us to supplement these benefits. We also understand the necessity to be careful in what we spend money on and how we spend it, as some expenditures can reduce our loved one's public assistance benefits, or even extinguish them. When we are no longer able to render this assistance, a special needs trust will stand in for us and continue the process of assistance.

There are two very crucial aspects of a special needs trust. The first is to properly establish one so it meets the legal and practical requirements which will make it effective for its purpose. The second is to appoint a trustee who has the ability to do the job.

The job of a trustee of a special needs trust is unique. The trustee must have the financial sense to obtain a maximum amount of income by investing the trust's assets while at the same time protecting them from the risk of loss. At least as importantly, the trustee must understand the individual special needs of the beneficiary, and know how to deal effectively with the beneficiary. A trustee needs to make wise decisions on how to spend trust funds so that the real needs of the beneficiary are provided for and the trust funds will last for the beneficiary's expected lifetime.

Often a family member or a trusted friend is the best selection as a trustee. But there are pitfalls, such as potential conflict with the beneficiary and possibly placing an unwanted burden on the family member or friend. Sometimes an organization like Proxy Parent Foundation, with its experience and expertise, is the best choice to serve as trustee.

A special needs trust is a significant estate planning tool, and is something that should be established for the great majority of disabled persons. A good special needs trust will enable us to feel assured that our disabled loved ones are protected to the extent possible.

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