

SPECIAL NEEDS TRUSTS: WHAT EVERY PRACTITIONER SHOULD KNOW

By Tresi Weeks

What is a Special Needs Trust?

A Special Needs Trust (“SNT”) is created and administered for the benefit of a person who is or will be unable to support him or herself due to a serious disability. The trust provides for the care of the beneficiary, while preserving the beneficiary’s option to receive assistance funded by government agencies.

Many government services essential to persons with disabilities are subject to strict asset and income limitations. Supplemental Security Income (SSI) and Medicaid, for example, provide for the basic bare necessities of food, housing and medical care. To qualify for these benefits a single individual can have little more than \$2,000 in assets and minimal monthly income.

This presents a problem for most families who do not have enough assets to provide for all of their loved one’s lifetime care, yet want to provide more than the mere subsistence level provided by public aid. It also presents a problem when the individual receives a personal injury recovery or child or spousal support.

Funds placed in a properly drafted and administered SNT, however, are not considered an asset or resource for eligibility purposes. The trustee disburses funds to take care of the beneficiary’s needs not provided for by government programs, with the intent that the beneficiary remain eligible for public aid if needed.

Even a well drafted SNT can cause disqualification when administered incorrectly. For example, if the trustee gives cash or a debit card to the beneficiary, the beneficiary can lose eligibility for critical government aid. The trustee should obtain legal advice before making distributions.

Wills and Estate Planning

An SNT may be established to provide for the care of a child with special needs after the parents’ death. It may be a testamentary or inter-vivos trust in which the parents are the grantors and the child is the beneficiary. The parents’ wills are drafted to distribute that child’s portion of their estate to the trustee of the SNT.

Many parents fund the SNT by designating the trustee as a beneficiary of their life insurance. The child’s grandparents and other relatives can also contribute to the child’s care by gifting, or naming the SNT as a beneficiary of their will or life insurance proceeds. Naming the trust as a retirement account beneficiary can result in the loss of eligibility for government assistance if drafted incorrectly.

Failure to establish an SNT can be highly detrimental to the child’s future. An outright inheritance can result in the child’s loss of essential government aid. Without medical care and food and shelter, the effects can be devastating.

Some parents believe they should disinherit their child with special needs, leaving their assets to their non-disabled child with the hope that they will use it for the child with disabilities. This is rarely a good option. The assets can be lost to the non-disabled child's judgment creditors or estranged spouse, or can be used for purposes contrary to the parents' wishes. This option also places an unfair burden on the healthy child and strains the sibling relationship.

Divorce Proceeds

Child support and spousal maintenance paid directly to a child or spouse with disabilities may reduce the recipient's government benefits or may completely disqualify the recipient from receiving those benefits. To preserve eligibility, counsel should consider creating an SNT funded by the support. Attorneys should obtain an irrevocable court order requiring that the support be paid directly into the SNT.

Personal Injury Recovery

Personal injury proceeds can be used to fund an SNT for the plaintiff with disabilities who may need to rely on SSI and Medicaid now or in the future. Funding an SNT with a structured settlement annuity can cause disqualification, and must be prepared with great care.

Elder Law

An SNT can help spouses in Medicaid planning for long-term nursing home care.

Conclusion

Although planning with special needs trusts can be daunting, it can be rewarding to reassure worried clients that you can provide solutions to care for their special loved one when they are no longer able to.

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