

An Introduction to Special Needs Trusts: How They Work and Why People with Disabilities Need Them

What is a Special Needs Trust?

A Special Needs Trust is a type of trust specifically for persons with disabilities that provide goods and services while maintaining the eligibility for and the current level of needs-based public benefits.

A trust is an arrangement in which one person manages money and other assets for the benefit of another person. Just like any trust, a Special Needs Trust involves three parties:

- The Grantor/Settlor who funds the Trust. This can be the person with a disability or a third party.
- The Trustee who manages the Trust assets. This can be anyone except the person with a disability.
- The Beneficiary who receives the benefits from the Trust assets. In a Special Needs Trust, this is the person with a disability.

Types of Special Needs Trusts

Self-Settled Special Needs Trust

- Funded by the assets of the beneficiary
- Established by the beneficiary's parent, grandparent, guardian, or a court

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- Given directly to any beneficiary under age 65
- Upon the beneficiary's death, Trust must reimburse Medicaid for benefits provided to the beneficiary during life

Third Party Special Needs Trust

- Funded and established by a third party
- No age requirement for beneficiary
- Does not require Medicaid reimbursement

How a Special Needs Trust Works

Special Needs Trusts are drafted to comply with the complex rules of federal needs-based benefits programs that are critical to people with disabilities, such as:

- Supplemental Security Income (SSI)
- Medicaid
- Section 8 Housing
- Food Stamps

When drafted and administered properly, a Special Needs Trust will allow the beneficiary to benefit from the Trust while retaining eligibility for public benefits and maintaining the current amount of benefits being received.

Maintaining Eligibility

A person must have very few assets to be eligible to receive public benefits. For example, the 2008 SSI eligibility maximum is \$2,000 for a single person and \$3,000 for a married person, subject to certain exclusions for some personal assets.

With a Special Needs Trust, the Trust, not the person with a disability, obtains a legal title to the assets held in the Trust. Therefore, the assets are not included in benefits eligibility calculations.

Maintaining Benefit Levels

Once eligible, any earned or unearned income to the disabled person may reduce his/her benefits. Distributions from a Special Needs Trust must be made directly to third parties; thus, they are not considered income to the beneficiary and will not reduce benefits.

Trust Distribution Rules

Trustees of Special Needs Trusts have complete discretion over whether distributions are made, the amount and for what they are used. Trust assets should be used to provide goods and services beyond those provided by public benefits programs, or risk reducing or eliminating those benefits. However, the Trustee can and should make distributions for shelter, food, and clothing if, in the Trustee's judgment, the advantages to the beneficiary outweigh the benefits reduction.

Permissible Trust Distributions

- Payment to third parties for home repairs and improvements
- Tools for repairs and improvements made by homeowner
- School tuition, books, and supplies
- Health & life insurance
- Entertainment (books, movies, audio, video)
- Bus passes
- Purchase & maintenance of vehicle
- Household goods
- Cleaning supplies
- Medical costs not covered by other benefits
- Massages
- Home care services not covered by other programs
- Medical equipment (e.g., wheelchair)

Distributions That Will Reduce Benefits

- Cash paid directly to the beneficiary
- Rent or mortgage payments
- Property taxes
- Homeowner association dues
- Homeowner's insurance
- Utilities
- Utilities connection charges
- Lodging while on vacation
- Food or groceries
- Frequent restaurant meals
- Clothing

Trustee's Duties

Typically, a parent, sibling, attorney, financial institution (such as a bank), or a non-profit organization is named Trustee of a Special Needs Trust. The Trustee is required to manage the trust property for the benefit of the disabled person by appropriately investing the trust assets. The Trustee is allowed to employ other professionals to help. In addition, the Trustee must comply with several duties specific to Special Needs Trust Trustees. These duties include:

- Inquiring about the beneficiary's needs and welfare
- Making appropriate distributions of trust property for the benefit of the beneficiary
- Ensuring the beneficiary maintains public benefits eligibility
- Reporting to the government agencies administering the benefits
- Collaborating with family, friends, social workers, and others who provide support to the beneficiary

Funding the Trust

Anyone may contribute to a Special Needs Trust. The trust may hold a variety of assets, such as cash, real and personal property, and securities, and it may be the owner or beneficiary of life insurance policies. There is no minimum or maximum to the amount of assets that the trust may hold.

Friends and relatives of the beneficiary should be advised to direct gifts and bequests to the trust, and not the beneficiary, to prevent disqualifying the beneficiary from public benefits.

You should speak with an attorney that specializes in estate planning or elder law if you have questions about whether you or a loved one may benefit from a Special Needs Trust.

Special Needs Trusts are complex and must be drafted and administered very carefully. You should always have an attorney draft your Trust.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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