

Special Needs Trusts (SNT) for the Special Needs Child or Grandchild



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**Special Needs Trusts (SNT)
for the
Special Needs Child or Granchild**

by

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Parents or grandparents of a special needs child should leave assets in a Special Needs Trust, to avoid the child being disqualified from receiving government benefits, such as SSI and Medicaid. The reasoning behind these Special Needs Trusts is simple — prior to the protection now afforded by these trusts, parents would simply disinherit their special needs children rather than see them lose their

benefits. Since the state wasn't getting the inheritance monies anyway, why not allow it to go to the child for his or her extra needs, above and beyond what the state supplies, such as:

- Clothing
- Essential dietary needs
- Education
- Hobbies, sports, exercise
- Tickets for events
- Health care costs and medical procedures
- Vocational rehabilitation
- Household goods (appliances, furniture, computer, television)
- Personal care products
- Personal services (lawn mowing, housecleaning, baby-sitting, etc.)
- Music
- Real property
- Automobile (including gas and insurance)
- Transportation (buses, cabs, trains, domestic airfare)
- Vacations
- Burial costs

These trusts, however, offer traps for the unwary. Since payments to the child will generally reduce their SSI payments dollar for dollar, trustees of such trusts should be advised to make payments directly to the providers of goods and services. Preserving SSI benefits is crucial since eligibility for SSI determines eligibility for Medicaid.

In other words, if SSI is lost the recipient also loses their Medicaid benefits. In addition, any benefits previously paid by Medicaid may be recovered. As such, one also has to be mindful of bequests from well-meaning grandparents. Similarly, if a sibling dies without a will, a share of their estate would go to the special needs brother or sister by law.



Distributions from the trust to the beneficiary should be “in kind” rather than in cash. For example, the trust may own items such as furniture and allow the beneficiary child the use of them. In addition, the Special Needs Trust must be carefully drafted so that it only allows payments for any benefits over and above what the government provides, not only now but also in the future. The child may not control or have direct access to any portion of the trust.

There are two types of Special Needs Trusts. First party and third party. The first party trust is set up by a parent, grandparent, legal guardian or court using the child’s own money, either through earnings, an inheritance that was left directly to them or, perhaps, a personal injury award. Recent changes in the law allow the special needs child to establish their own first party Special Needs



Trust if they are legally competent to engage in contractual matters. These first party trusts require a “payback” provision, meaning that on the death of the child beneficiary, the trust must pay back the state for any government benefits

received. In other words, the state is saying that, we will let you use this money for your special needs, but whatever was not needed should go back towards your basic care. These trusts require annual reporting and accounting to the state and are limited to children under age sixty-five.

A third party trust is usually set up by a parent or grandparent, using their own money. Here, no “payback” provision is required because it was not the child’s own money that funded the trust and the parent or grandparent had no obligation to leave any assets to the child. Indeed, requiring a payback provision would discourage many parents from setting up a Special Needs Trust at all. Generally, on the death of the child beneficiary, the balance of the trust is paid out to the special needs child’s children first, if any, otherwise to the surviving siblings, then nieces and nephews, etc.

A major issue for parents today is the increased life expectancy of their special needs child. With major advances in medical care, many such children, who would have in earlier days predeceased their parents, are now surviving them. In order to solve this problem, parents often leave a disproportionate share of the estate to the special needs child. This can engender

hard feelings in siblings who, although agreeable to such an arrangement initially, may find themselves in need of funds later on and resentful of the uneven distribution in favor of the special needs child. The surviving siblings are often the only support network available for the special needs child so it is all the more important to keep peace and harmony in the family.

Often, an analysis with the elder law estate planning attorney will reveal that the assets from an equal division of the estate will, in fact, be sufficient to provide for the special needs child. If such is not the case, “second-to-die”, or “survivorship life”, insurance may be purchased to provide for any additional funds needed. These policies are written over both parent’s lives. Since the insurance company only has to pay when the second parent dies, the premiums are significantly lower than on a single life policy. Consideration should also be given to having the policy owned by an Irrevocable Life Insurance Trust.

Finally, in order to assist those who may have to care for the special needs child after the parent is gone, a “Letter of Intent” is often used. Here, the parent advises about any daily medical needs, their daily routines, their likes and dislikes, etc. Samples of the “Letter of Intent” for a special needs child are available on the Internet.



About the Author and Ettinger Law Firm

Principal attorney Michael Ettinger has been a member of the New York State Bar since 1980. He is an honors graduate of McGill Law School in Montreal, Canada and obtained his Master of Laws from the London School of Economics in 1978. Ettinger Law Firm, dedicated exclusively to elder law estate planning, was formed in 1991. Mr. Ettinger was a founding member of both The American Academy of Estate Planning Attorneys and The American Association of Trust, Estate and Elder Law Attorneys.



Ettinger Law Firm has prepared tens of thousands of estate plans and has filed thousands of Medicaid applications. Our staff of ten attorneys plus many experienced paralegals and support staff provide you with over one hundred years of combined elder law estate planning experience.

The law firm offers a free consultation to help you determine whether our services may be of benefit to you and your family. Please call us at 800-500-2525 to schedule your free consultation at one of our offices.

Please also visit our website, trustlaw.com, for directions to our offices and for more information about elder law estate planning.

Thank you for considering Ettinger Law Firm for your elder law estate planning needs.

Testimonials

“My wife and I experienced a very pleasant and informative process in establishing an Irrevocable Trust. Bonnie Kraham and her staff were very helpful throughout, and the serious nature of the matter was carried out with patience and good humor.— D.B.

“My experience was wonderful!! I have already recommended you to many of my friends.” — R.R.

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