

SPECIAL NEEDS TRUSTS

What is a “Special Needs Trust?” Sometimes this type of planning is referred to as a “Support Trust,” or a Discretionary Support Trust, or Special Needs Trust, or “Supplemental Special Needs Trust,. This is a trust where the beneficiary is receiving one or more types of public assistance, or is likely to receive public assistance in the future. Assets are transferred to the trust and are managed by someone other than the beneficiary who is receiving public assistance. It is not revocable or amendable by any member of the beneficiary’s immediate family. This type of trust is designed to “supplement” the public assistance that the beneficiary is receiving without causing the beneficiary to become ineligible for those public assistance benefits (Social Security Retirement Benefits, Supplemental Security Income-SSI, Social Security Disability-SSD, Medicaid, Medicare). This type of planning is just as much a concern for planning for parents as it can be about planning for children, grandchildren, nieces, nephews, etc. Furthermore, a beneficiary may be unable to properly manage his or her own affairs, and for this reason alone it may be a good idea to consider doing a Special Needs Trust or Supplemental Needs Trust.

The life expectancy for an individual with disabilities is typically no different from those without disabilities. There is no guarantee that public benefits will provide adequate resources for the beneficiary over the beneficiary’s lifetime. There is also no guarantee that public agencies will be there to provide acceptable services and advocacy for the beneficiary over the beneficiary’s lifetime.

It is important when creating a “Special Needs Trust” to clearly state your intent (what it is you are trying to accomplish). This is because many of the public benefits that are critical to a disabled person restrict their ability to have control over significant assets. It is important in this situation to express the intent that the Trustee supplement and not replace public benefits. Further, the beneficiary should not be able to direct or compel distributions from the trust.

Oftentimes we are talking about trying to meet the needs of someone who would otherwise be unable to live on his or her own. Therefore, housing is often the greatest concern. Just what kind of housing is necessary or acceptable? Because of these types of concerns, it may be necessary to see to it that the trust is properly or adequately funded. It may be necessary to do a sort of feasibility study to determine what future care may be necessary and what costs may be related to the necessary care for the beneficiary. Should provisions be made in the planning to provide funds for one or more caregivers? A caregiver can provide companionship, coordinate appointments and transportation, assist with transportation and walking, correspond with family and friends, help with meal planning and preparation, complete small household tasks, schedule activities and appointments and accompany the beneficiary.

You may wish to specify what social activities you want the Trustee to provide funds to support. You may want to include a provision expressing your desire that maintaining contact with specified family members is a priority and that the Trustee

should expend funds to make sure that these contacts are maintained. What opportunities do you want to address and make provisions for?

Choosing the right Trustee is also incredibly important. Many “Special Needs Trusts” fail because the named Trustee is not well-equipped to carry out the duties of a trustee in this situation. It is important to have a Trustee that understands public benefits and who will stay in touch with the beneficiary in order to make decisions that are in the best interest of the beneficiary. Sometimes an Independent Person or Bank Trust Department may be the best option.

What goals are you trying to accomplish? What considerations need to be addressed to provide for the beneficiary’s health, safety and well-being? What quality of life do you want to provide?

Every situation is unique. “Special Needs” planning is highly technical and full of potential problems. Please get advice from a knowledgeable estate-planning attorney and contemplate all of the necessary concerns before deciding how to plan for family members with “special needs.”

Tim J. Larson, JD, PA, has its offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners*, a select group of nationally known and recognized Estate-planning Attorneys.