

# Why Should You Use a Special Needs Trust?

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**EVER WONDERED WHAT A SPECIAL NEEDS TRUST IS AND WHY YOUR CHILD WITH AUTISM MAY NEED IT? IF SO, READ ON.**

**A** special needs trust is primarily used so your loved one can have assets and resources available to them above and beyond the maximum allowable resource limit for Medicaid and SSI. The special needs trust is a tool that, if designed appropriately and managed correctly, enables you or others to contribute assets to provide for your loved one's lifetime support needs—without negatively impacting their qualification for government benefits.

## What assets can the special needs trust own?

A special needs trust can own just about any type of asset that you or I can own. A special needs trust can own investments like stocks and bonds, can be a checking or savings account, can own life insurance, annuities, real estate and more.

As you decide the best funding mechanism (or the best combination) for your loved one's special needs trust, you need to consider the risks associated with each asset. For instance, when a family is considering funding a special needs trust with rental real estate, it is critical to have enough cash available in the trust to pay for maintenance, vacancies, a property manager and taxes.

Speaking of taxes, it is important that you understand how taxes function with regards to special needs trusts as you determine how to fund your loved one's trust. Taxes inside of a special needs



trust work differently than taxes for individuals. Tax management is a critical component and will be a major factor in determining the assets you use to fund your loved one's trust.

## How to set up a special needs trust

We always recommend that families find a qualified special needs attorney; someone who has the experience to word the special needs trust with the appropriate language. It is also important to understand the two ways in which a special needs trust can be set up. Families can decide to design it either as Testamentary or Inter Vivos.

Testamentary means the special needs trust exists inside your will. The disadvantage to this design is that the trust only comes into existence and can only be used after you die. This limits how and when your family can begin to use your loved one's special needs trust.

An Inter Vivos special needs trust, sometimes called a Stand-Alone special needs trust, means the trust exists immediately. This type of design provides much more flexibility for your family and for your overall plan.

It is with this type of design that any member of your family or any friend can provide funding to the trust while you are alive. This flexibility allows older family members, like grandparents, to make contributions to your loved one's special needs trust.

With this option, mistakes such as giving money directly to your loved one, which can cause your loved one to lose necessary government benefits, will not happen.

Setting up the special needs trust correctly is imperative to ensuring your loved one's plan works.

## Who makes decisions within the special needs trust?

The decision-maker for a special needs trust is called a trustee. The trustee is a fiduciary and must make decisions in the best interest of the beneficiary. The beneficiary of a special needs trust is the individual with a disability.

The trustee not only needs to make decisions in the best interest of the beneficiary (with regards to investment decisions and how to use the money while it resides inside the trust, in order for those resources to provide for the lifetime support needs of the beneficiary), but it is critical they understand the distribution rules of a special needs trust.

Special needs trusts are unique in several ways. One way is how, when and why money is spent. When money is needed from a special needs trust, it must be withdrawn and used in a specific way, because if not, the beneficiary's government benefits could be jeopardized.

The trustee position is critical. It is imperative that the family members who set up the special needs

trust give a great deal of thought to this position. Many times, parents or grandparents would like another family, such as a brother or sister to the individual with special needs, to be the trustee. This person can be a good choice because they know the beneficiary and will understand their needs. Unfortunately, most of the time this individual has never managed a special needs trust and won't know the rules.

Such a decision could be fraught with pitfalls and mistakes, and these mistakes could result in the loss of government benefits (which means hundreds of thousands of dollars worth of resources over the lifetime of the individual with a disability—GONE). It does not have to be this way.

The creators of the trust, usually the parents, could ensure their family member trustee has an expert guide or advisor that they can consult when making trust decisions. In this way, families have the best of both worlds: a family member who knows and understands their loved one with a disability, and a professional who knows the ins and outs of managing a special needs trust!



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