

# PLANNING *for your* SPECIAL NEEDS CHILD



A GUIDE TO  
SPECIAL NEEDS TRUSTS



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# SPECIAL DREAMS NEED SPECIAL PLANS

A parent or caregiver of a child with special needs has more to consider than most providers. Planning for a lifetime of financial, medical, educational, and legal needs may seem daunting, but there are steps a parent or caregiver can take to provide for and protect

loved ones with special needs throughout their lifetime.



## PROTECTING YOUR CHILD'S FINANCIAL FUTURE

If you want to leave money or property to your child or a

loved one with special needs, you must plan carefully, or you could jeopardize their ability to receive certain government program assistance, including Supplemental Security Income (SSI), Social Security Disability (SSDI), and Medicaid benefits. Currently, these benefit programs generally require unmarried recipients to own no more than \$2,000 in assets. They also place limits on income, subject to a few exceptions.

A Special Needs Trust (SNT) is essentially a mechanism to hold property – which can include real estate, finances, or other tangible items – managed by one person to benefit someone with physical and/or mental disabilities. An SNT can be established whether or not the person with special needs has the capacity to manage their own finances.

The person managing the trust is called the trustee, and the person who benefits from the trust is called the beneficiary.

The trustee is often a family member, financial institution, or a third party appointed by the court. The trustee has complete discretion over the trust property and will be in charge of spending money to help the person with special needs. The trust can last as long as necessary, generally until the beneficiary's death or until the funds run out.

A special needs trust you create and fund for your loved one with special needs is called a third-party special needs trust. A trust that is funded with property that belongs to the beneficiary, or to which the beneficiary is or becomes legally entitled is called a First Party Special Needs Trust.

## THIRD PARTY SPECIAL NEEDS TRUSTS

Third-party SNTs are usually established and funded by the parents or relatives of an individual with special needs.

A properly drafted third-party SNT allows the beneficiary with special needs to receive inheritances, gifts, or other funds but not lose eligibility for certain government programs. SNTs are designed so they may cover certain comforts and luxuries for your loved one with special needs that cannot be paid for by public assistance funds. An SNT allows funds to legally be used to improve the beneficiary's quality of life by providing for items that are not considered necessities of life, such as:

- A vacation with friends
- Tickets to a ball game
- A wheelchair, ramp or chair lift
- Out of pocket medical expenses
- Home furnishings
- Music and art classes
- Educational classes and more



# FIRST PARTY SPECIAL NEEDS TRUSTS

First-party SNTs are most often used when the person with a disability inherits money or property outright or receives a court settlement. These SNTs also are useful when a person without a prior disability owns assets in his or her name, later becomes disabled, and thereafter needs to qualify for public benefits that have an income or asset limitation.

## WHAT ARE THE BENEFITS OF A SPECIAL NEEDS TRUST?

Inheriting assets, such as a lump sum of money or property, is problematic to a person with special needs who is receiving, or will be receiving, government benefits. The inheritance can disqualify the person from receiving government assistance such as SSI, SSDI, Medicaid, Vocational Rehabilitation, and Subsidized Housing. Setting up a SNT can help to avoid this issue. The trustee has total control over the management of the trust property, so government program administrators do not count SNT assets when considering eligibility for

government benefits. Additionally, setting up an SNT is designed to protect the beneficiary from being sued, as the funds in the SNT are generally not subject to any judgment.



# HOW DO I GET STARTED?

It is important to work with an attorney who is knowledgeable about estate planning for families with a special needs child. Determining how a special needs trust should be drafted to meet the particular needs of your family requires a thorough knowledge of public benefits, as well as applicable federal and state laws related to taxes and governing trusts and estates.

Abrahams Kaslow & Cassman LLP has over 75 years of experience counseling individuals and families on estate planning needs. AKC Law provides effective estate planning to preserve family wealth that goes beyond drafting wills and trusts. We recognize that caring for an individual with special needs requires unique and complex financial planning. This planning does not get easier as the person with special needs gets older. Our attorneys are experienced in establishing Special Needs Trusts and are members of the Academy of Special Needs Planners. ASNP is a nationwide network of attorneys and financial planners who provide special needs planning services. Academy members work together to stay current on legal developments and to share cutting-edge techniques in planning for individuals with special needs.



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The information you obtain in this guide is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.



# ATTORNEYS WHO CAN MEET YOUR SPECIAL NEEDS

You have plenty of difficult decisions to make, finding the right attorney does not have to be one of them.



**John W. Herdzina**

Partner

John has developed a special emphasis on assisting families and caregivers who are parenting or caring for a child with physical or cognitive challenges. He can help you determine which trust will meet your specific needs and be most beneficial to you.



**Andrew P. Deaver**

[adeaver@akclaw.com](mailto:adeaver@akclaw.com)

Partner

Andy's practice focuses on estate planning, including Special Needs Trusts, guardianships, conservatorships, probate and trust administration. This focus has allowed him to assist many families of children with special needs. He helps families with the transition from childhood to legal adulthood, to enable parents to provide the necessary guidance and assistance to their special needs child going forward.



**M. Tyler Johnson**

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Associate

Tyler is a member of AKC Law's Business Team and Special Needs Trust Team. Tyler enjoys working closely with clients to help them identify their estate and business planning needs and then form an individual plan for each unique set of circumstances.

# 10 MISTAKES TO AVOID WHEN PLANNING FOR A LOVED ONE WITH SPECIAL NEEDS

## 1. Doing nothing

The most popular estate plan in the United States is doing nothing. While not a good idea for anyone, it is particularly troubling when there is a loved one with special needs. If someone does nothing and then dies or becomes incapacitated, his or her estate is managed under the rules set forth in his state's probate code. Generally, the state probate code does not protect a

loved one with special needs. Doing nothing is not an option.



## 2. Disinheriting your loved one

Many families who have a loved one with special needs rely on SSI, Medicaid or other government benefits to provide food and shelter. To protect these benefits, you may have been advised to disinherit

your loved one with special needs. If there are no assets set aside, he or she will depend on public benefits. Public benefits rarely provide more than welfare-level care. Having a well drafted third-party special needs trust provides legal protection for your loved one's inheritance that can be used to supplement their public benefits.

## 3. Leaving assets to someone else to care for your loved one

This plan is fraught with landmines. Even well intentioned siblings have their own lives and may focus on their own financial concerns rather than the loved one's. Other issues also arise, such as when the person who received the funds divorces and the assets are split with a spouse who has no interest in protecting the loved one. What if the person charged with care dies first, or if they become incapacitated themselves? What if they are sued, have significant debt or creditor problems and resort to using funds intended for the loved one? A third party special needs trust protects everyone. The trust leaves clear and legally binding instructions and protects the assets you've set aside for your loved one's care.

#### **4. Using a one-size-fits-all special needs trust**

Some special needs trusts are unnecessarily inflexible and generic. The trust may preserve government benefits, but many of these bare bones trusts prevent distributions that may be in the best interests of the person with special needs and improve his or her quality of life. Some special needs trusts are “irrevocable” upon signing. While this is sometimes appropriate, most prefer a revocable trust to retain the right to improve and change the trust as the years pass. A special needs trust should be flexible and personalized to your family’s needs.

#### **5. Failing to plan for more than public benefits**

The main issue with one-size-fits-all special needs trusts is that the only goal is preserving public benefits. While preserving public benefits is important, it should not be the only goal. The special needs trust should be designed to enhance your loved one’s quality of life in all aspects. This can include life-long financial planning, where they will live, who will provide advocacy, and developing a plan for proper caregiving. Special needs planning is not about the document; it is about making sure your loved one with special needs has the legal protections necessary to enjoy a comfortable quality of life when you are no longer there.

#### **6. Not using a professional who focuses on special needs planning**

Many plans fail because the professional who created the plan did not understand the unique needs of persons with special needs, whether a financial planning professional who treats special needs financial planning the same as everyone else or an estate planning attorney who does not understand the specific public benefit rules and creates a plan that fails the legal requirements. An attorney who understands how to plan for people with special needs can save the family significant money and worry.





## **7. Failing to include others in the planning**

A benefit of creating a special needs trust that is immediately effective is that your extended family and friends can also make gifts or leave inheritances to the trust you create. This will reduce the cost to the family in trying to set up different plans for different situations. A letter to other family members explaining that you have created a trust that will protect your loved one's benefits, enhance their life, and preserve assets should provide instructions on how to properly name the trust as a beneficiary.

**8. Choosing the wrong management team** When you or your spouse can no longer serve as trustees, the choice of who is responsible to manage your loved one's assets can be challenging. If the wrong person is put in charge, or the right person dies and there is no plan for succession, the entire special needs plan can fall apart. Creating a team of professionals and family members is generally recommended. The professional trustee will be responsible for keeping apprised of the public benefit rules, managing the day-to-day finances, providing disbursements, maintaining records, and preparing accountings, while the family makes sure the trustee is doing what the trustee is supposed to do.

**9. Failing to protect your loved one from predators** All too often, people with special needs fall victim to predators. This can be a financial scam where the predator takes over their assets or a trick that deprives them of much-needed care. Predators are particularly attracted to vulnerable beneficiaries, such as the young and those with limited self-protective capacities. With a trust, you limit access to the information about your loved one's money. It provides further protection because the person with special needs cannot direct where assets go.

**10. Failure to properly “fund” and maintain the plan** A special needs plan must have assets to make the plan work. This is an excellent time to bring together your financial planner and special needs planning attorney to assist in creating a lifetime plan. The financial advisor can create sample future scenarios that show how much is needed to fund a plan and then present different ways to accomplish this goal. Sometimes, it is adding a life insurance policy and naming the trust as beneficiary, or it may use existing assets. The attorney can then prepare the documents to cover the needs of the loved one. The plan should be reviewed every three to five years to make sure it continues to meet the loved one's needs. By doing so, you can create an effective special needs plan that will last a lifetime.



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