

Special Needs Trusts

By: Richard L. Newman

Special needs trusts or "supplemental needs" trusts allow a disabled beneficiary to receive gifts, lawsuit settlements, or other funds without losing his or her eligibility for certain government programs. These trusts are drafted so that the funds will not be considered to belong to the beneficiary when eligibility for public benefits is being determined.

Special needs trusts are designed to pay for comforts and luxuries that could not be paid for by public assistance funds. Some examples of such comforts and luxuries are education, recreation, counseling, and medical attention, beyond the simple necessities of life. Special needs trusts are not intended to provide for basic needs, however, the trustee can use trust funds for food, clothing, and shelter if the trustee decides that doing so is in the best interest of the beneficiary. Under such circumstances, a loss or reduction in public assistance is possible.

Special needs trusts can provide for the following:

- medical and dental expenses
- annual independent check-ups
- specialized equipment (such a specially equipped vans)
- training and education
- insurance
- transportation
- essential dietary needs

If the trust is sufficiently funded, the disabled person can also receive

- spending money
- electronic equipment, computers and appliances
- vacations
- movies and entertainment
- payments for a companion, and other self-esteem and quality-of-life enhancing expenses.

Special needs trusts are typically created by a parent or other family member for a child with special needs. Special needs trusts may also be set up in a will as a way for an individual to leave assets to a disabled relative. Sometimes, a disabled individual can create a trust for his or herself, depending on the program for which he or she seeks benefits. These trusts are called "self-settled" trusts and they are frequently established by individuals who become disabled as the result of an accident or medical malpractice, and later receive the proceeds of a personal injury award or settlement.

If you are looking to create a Special Needs Trust, it is very important to hire an attorney with expertise in Special Needs Planning, because it is essential that a Special Needs Trust not be unnecessarily inflexible and generic. Although an attorney with some knowledge of trusts can protect almost any trust from invalidating the child's public benefits, an attorney without special

needs experience may not properly customize the trust to the child's particular needs, and the child may not receive the benefits that the parent provided when they were alive.

Another mistake attorneys without Special Needs Planning experience often make is putting a "pay-back" provision into the trust, rather than allowing the remainder of the trust to go to other individuals upon the demise of the special needs child. While these "pay-back" provisions are necessary in certain types of Special Needs Trusts, an attorney who knows the difference can save your family hundreds of thousand of dollars, or more.

For more information about Special Needs Trusts, or for assistance with preparing one, please contact Mr. Newman at 267-288-5765 or rich@newmanelderlaw.com.

Richard Newman is an attorney practicing in Southampton, PA. He specializes in Elder Law and Special Needs Planning. Visit his website at www.buckscounty-elderlaw.com.