Special Needs Trust

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A "Special Needs Trust" (more appropriately referred to as a Supplemental Benefits Trust) is a trust that is funded to satisfy certain needs of a beneficiary without disqualifying that beneficiary from certain social assistance programs, like Medicaid and Social Security benefits to which that beneficiary is otherwise entitled. For example, a parent would transfer assets into a trust by delivering such assets to a trustee that is named in a written trust agreement between the parent and the trustee for the benefit of the child. Then, the trustee would manage and distribute those assets to the child under the constraints of the trust agreement.

Such assets may include anything of value, including cash, investments in stocks and mutual funds, Certificates of Deposit (CDs), Individual Retirement Accounts (IRAs), real property, life insurance policies and government benefits. Anyone can name the trust as a beneficiary in their wills and anyone can contribute to the trust at any time. And, the trustee can be either an individual, a legal entity (i.e., bank or trust company) or a combination of one or more of either individuals or legal entities.

However, there are certain strict rules regarding the provisions of the trust agreement that have to do with how the money may and may not be spent. The trust agreement must designate that the money cannot be used to pay for the beneficiary's basic needs, such as housing, medical treatments covered by Medicaid, food or clothing because assets used for those purposes are considered "income" for the purpose of determining the beneficiary's eligibility to receive Supplemental Security Income (SSI) and Medicaid. The agreement must also state that the money cannot be used to pay for any item that is, or in the future may be, covered by SSI or Medicaid and that any expenditure that would jeopardize the beneficiary's eligibility for SSI or Medicaid are not authorized.

The trust assets can be used to purchase a home, (which can then be rented to the beneficiary). The trust can pay for ordinary or special furniture, medical and health costs not covered by Medicaid, such as experimental and alternative medical treatments, massage therapy, vitamins, certain durable medical equipment and special aids. It can pay for vacations, summer camp, trips, travel companions, or other recreation or entertainment. It can be used to buy sporting equipment or fund hobbies of any kind. The trust can pay for computers, haircuts, trips to the zoo, or a camera. The beneficiary can buy bowling shoes with trust money, but not regular shoes, because that is "clothing" and is paid for by SSI. The trust can also be used to pay for emergency legal costs in the event that the beneficiary is sued, charged with a crime or needs an advocate to deal with government or medical red tape. It can also pay for the beneficiary's funeral and burial expenses.

The grantor (the person who sets up the trust) can designate specifically in the trust agreement anything that he or she wants the trust to pay for, and can also specify things for which the money should not be used, like perhaps cigarettes or alcoholic beverages. The grantor may also spell out any items unique to the beneficiary that he or she wants to make sure are provided. For example, if the beneficiary loves sports, the grantor can specify that the trust should pay for a monthly trip to a ballgame. As long as they are allowable items, which will not jeopardize eligibility for government benefits, the grantor may give the trustee full discretion to spend the money how he or she sees fit to benefit the special needs beneficiary.