

Absolutely Positively

By Jerrold Zivic and Shari Shapiro

When thinking if your special needs child requires a

Special Needs Trust, it is a no brainer. In all likelihood the benefits provided by any branch of government will not be enough to sustain the quality of life you want your child to have.

It may be unpleasant to think about but you will not be here forever. Who will look out for your child when you are gone? By creating a Special Needs Trust during your lifetime you are giving your child options and opportunities that will otherwise not be available.

ADVANTAGES OF SPECIAL NEEDS TRUSTS

A properly drafted and executed Special Needs Trust can pay for medical care beyond that offered by a public program. The Trust can pay for special improvements and adaptations to a home for your child. The Trust can fund educational and recreational activities. The Trust can purchase specially equipped transportation suited to your child's particular situation.

A Special Needs Trust is the only means of passing property to an individual who is receiving SSI, Medicaid or other means-tested public benefits without causing a reduction or loss of those benefits. This is not something that benefits only wealthy individuals. A Special Needs Trust is for anyone who has a special needs child, rich or poor. Once the Trust has been established anyone can make gifts or bequeath property to the Trust for benefit of your child. You can control the disposition of any property that remains in the Trust after your child's lifetime.

AN ESTATE-PLANNING STRATEGY

Years ago people were advised to disinherit a child who was receiving public benefits as a means of preserving those benefits. The idea was that a non-disabled sibling would receive the disabled person's share and use it for his or her benefit. Such a plan offers no safeguards or assurances that the disabled individual will ever benefit. In addition, no one acting on that individual's behalf would have legal recourse to demand action on the disabled individual's behalf. This is no longer the case. Money can be left specifically for the benefit of a disabled individual without giving them ownership rights in the asset.



FINANCIAL, ESTATE & TAX PLANNING

Leaving assets directly to a trust creates a fiduciary relationship between the trustee and the beneficiary. The trustee is obligated by the terms of the document and

state law to abide by certain standards. By creating a Special Needs Trust you can ensure that someone you trust will be managing and investing your estate with your child's best interest in mind. You may choose an individual trustee, a bank or a non-profit. You can appoint a trust protector to oversee and monitor the actions of the trustee.

It is important to understand that the beneficiary of a Special Needs Trust cannot control the investment or distribution of trust assets. All distributions are in the discretion of the trustee in accordance with the guidelines that you establish.

Everybody thinks that a family member will be the best person to manage a trust. You might want to consider that even the best intentions of any family member might not work out.

Sometimes life's circumstances get in the way of good intentions. So when choosing a trustee it is always important to have backup systems in place in the event the person you choose cannot act as a trustee or to replace them if they act inappropriately.

Any parent who has spent their time and energy working to assure their special needs child of the best chance at having the highest quality of life possible in their particular situation will want to take this additional step. The Special Needs Trust can provide the means for enhancing quality of life beyond the limited parameters of government benefits. As limited as those government benefits may be, it is essential that the disabled individual continue to qualify for benefits.

Any parent with a special needs child absolutely positively needs to establish a Special Needs Trust for that child. That is the only way to ensure that your child has the quality of life you want him or her to have. Nobody is promised a tomorrow; and delay in drafting a Special Needs Trust could have a lifelong negative impact on your special needs child. •

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