



BRANDOW **LAW**

Plan smart. Plan ahead.

Supplemental Needs Trust

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WHAT IS SPECIAL NEEDS PLANNING?

- Special Needs Planning is the practice of ensuring that services and support will continue for the life of the person with the disability when the caregivers are no longer able to help.

WHY PLAN FOR THE FUTURE?

- Preserve needs-based public benefits
- Allow for private funding
- Provide lifetime financial support
- Provide guidelines for living arrangements, personal care, and advocacy with a letter of intent
- Establish an efficient, knowledgeable, and long-term management team

ESTATE PLANNING OPTIONS FOR A FAMILY WITH A DISABLED LOVED ONE MAY INCLUDE & IT'S IMPACT:

- Direct Bequest – governmental benefits at risk/payback to DSS
- Disinheritance – quality of life issues
- The “Look After” Promise – subject to creditors, divorce and bankruptcy
- ABLE Accounts – limited amount\$ and payback to DSS
- Supplemental Needs Trust – 3rd party protects benefits and quality of life

PLANNING WITH DIFFERENT TRUSTS

- First Party Special Needs Trust
 - D4a or Payback trust to DSS
- Third Party Supplemental Needs Trust
- Pooled Trusts
 - Asset and/or Income

FIRST PARTY SPECIAL NEEDS TRUST PURPOSES AND RESULTS

- \$ in person's name
- Vehicle to protect the assets of a person with special needs
- Income and assets available for the benefit of the person with special needs
- Maximizes and maintain government benefits
 - SSI and Medicaid
- Pay back to state for Medicaid on termination of trust, i.e. beneficiary's passing

THIRD PARTY SUPPLEMENTAL NEEDS TRUST

- \$ from others (3rd parties)
- Vehicle to manage other people's assets for a person with special needs
- Income and assets available for the benefit of the person with special needs
- Maximize and maintain governmental benefits
 - SSI and Medicaid
- No pay back to state for Medicaid
- Testamentary Vs. Inter Vivios
- **Contingent SNT's**

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DIFFERENCES HIGHLIGHTED BEWTEEN SNT'S

1st party SNT

- \$ in person's name (Person with disability)
- Protect the assets and or income (<65) of a person with special needs
- Trust \$ available for the **benefit** of the person with special needs – NEVER GIVE THE \$ TO PERSON
- Maximizes and maintain government benefits
 - SSI and Medicaid
- Pay back to state for Medicaid on termination of trust, i.e. beneficiary's passing
- Annual Accounting to Department of Social Services
- DO NOT PUT 3RD PARTY \$ IN THIS TRUST

3rd party SNT

- \$ from others (3rd parties)
- Manage other people's assets and or legacy for a person with special needs
- Trust \$ available for the **benefit** of the person with special needs – NEVER GIVE THE \$ TO PERSON
- Maximize and maintain governmental benefits
 - SSI and Medicaid
- No pay back to state for Medicaid
- Choice of either Testamentary Vs. Inter Vivios
- No accounting to Department of Social Services
- NEVER EVER PUT PERSON W/ SPECIAL NEEDS \$\$ IN THIS TRUST

POOLED TRUSTS UNDER OBRA

- Establish by a Not for Profit
- Sub-Account for the Sole Benefit of a Person who is Disabled
- Pay Back to the State unless the Reaming Funds are held by the Trust or for the Benefit of the Charity
 - 42 U.S.C. § 1396p (d)(4)(c)

Funding the Trust

- Real estate
- Cash
- Investments
- Retirement Benefits/IRAs
- Life Insurance
- 401k/IRA's

Permissible SNT Distributions

- Automobile/Van
- Accounting Services
- Acupuncture/Acupressure
- Appliances (Kitchen, household, entertainment)
- Alterations/mending clothes and shoe repairs
- Bottled water or water service
- Camera, film, recorder and tapes, development of film
- Clothing
- Clubs and club dues
- Computer hardware, software, programs, and Internet service
- Conferences or classes (academic or recreational) including supplies
- Curtains, blinds, drapes and the like
- Dental work not covered by Medicaid, including anesthesia
- Down payment on home or security deposit on apartment
- Dry cleaning and/or laundry services
- Elective surgery
- Fitness equipment
- Funeral expenses
- Furniture, home furnishings
- Gasoline and/or maintenance for automobile
- Haircut/salon services
- Holiday decorations, parties, dinner dances, holiday cards
- Home alarm and/or monitoring/response system
- Home improvement

COSTLY MISTAKES TO AVOID WHEN PLANNING FOR A CHILD WITH SPECIAL NEEDS

1. Failing to plan for yourselves
2. “Disinheriting” the child
3. Ignoring the special needs when creating a trust for the child
4. Failing to consider ABLE accounts
5. Creating a “generic” special needs trust that doesn’t fit
6. Procrastinating
7. Failing to invite contributions from others to the trust
8. Choosing the wrong trustee
9. Relying on your other children to use their money for the child with special needs’ benefit
10. Failing to complete and maintain a Letter of Intent
11. Failing to protect the child with special needs from predators
12. Failure to properly “fund” and maintain the plan



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