

What is a special needs trust and who needs one?

By JAMES L. MELCHERS

A special needs person is an individual of any age who is permanently physically or mentally disabled. A special needs trust is a trust allowed by the government to insulate certain funds from consideration as a resource to a disabled person who is applying for governmental assistance programs. This trust shelters assets of a disabled person so they can qualify or maintain their SSI and Medicaid. The assets in the trust are used to improve the quality of life and care for the special needs person, such as providing the disabled person with more sophisticated medical, rehabilitative or educational aids.

For example, perhaps Angela needs a highly specialized wheel chair and Medicaid only pays for a basic wheelchair. The money in the trust could be used to upgrade the wheelchair to the one Angela really needs to function at her best. Even with severe physical disabilities, Angela may be mentally fine and able to learn. The money in the trust can be used for her education.

How are these trusts established and funded? The most common type of special needs trust is the "third party trust" which is created by a parent or loved one to shelter assets that the disabled child will inherit. The trust is created and embodied within the will of the parent or loved one and the trust takes receipt of the assets from the parents upon their death. Likewise the parent can create an irrevocable inter vivos trust (during his life) which can take receipt of assets from grandparents, other relatives and loved ones.

An example of the need for the third party special needs trust is Joey, an autistic child, who inherited money from his grandparents outright. They had a will, however it did not leave the inheritance to a special needs trust, but directly to the special needs grandson. Even though the amount inherited was rather modest, it exceeded what is allowed by the government, so Tommy lost his government assistance benefits. It didn't take long for his inheritance to be used up, and then Tommy's parents had to reapply and get Tommy re-qualified for government programs. A worse scenario would be for Tommy to inherit outright from his parents and not have an advocate to help him reapply for his benefits once his inheritance had been depleted.

Here's a note of caution. It is important to know that a child cannot renounce an inheritance in order to keep the governmental assistance programs. Therefore, in creating the third party trust, if the parents do not establish the special needs trust, it is too late after their death.

What happens to the third party special needs trust at the death of the disabled person? The principal beneficiary, a non-disabled person, often a sibling, will receive what is left in the trust and the trust is dissolved.

Another kind of special needs trust is the self created supplemental needs trust. The self created supplemental needs trust is a trust created to take receipt of the assets of the disabled person, such as money from the settlement of a personal injury case. At the death of the disabled child the assets remaining in this trust must be used to reimburse the governmental agencies that provided services. The trust, itself, should provide for such reimbursement.

An example of the need for the self created supplemental needs trust is the case of Jerome, who was severely injured in a playground accident and will receive a settlement for his injuries during his lifetime. This child was playing on a public playground still under construction and not secured in order to keep children out. Jerome fell from the equipment and was severely injured. He is in a persistent vegetative state with no hope of recovery so this second type of trust is perfect to ensure the continued

care of Jerome. It should be noted that Jerome could have been injured in any other type of accident and would have been able to put the settlement money into a special needs trust.

The consequences of not having a special needs trust in both instances are that the person has a period of time without support while reapplying for assistance and once the assets are all gone he will have only the support granted by the governmental programs.

In conclusion, it is important to understand that in order to maintain or apply for governmental assistance programs, inherited money or money from a personal injury case must not go to the special needs person in his name. The money must go directly into the name of the trust. Likewise, beneficiary forms for life insurance, retirement accounts and the like must read "to the trustee of the trust for the benefit of Johnny Brown."

Because the future cannot be predicted, it is important to review beneficiary forms yearly to make sure they read exactly as needed to have the money distributed properly.

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