

LEGAL TIPS

Special Needs Trusts: Providing for Disabled Children and Adults

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A “Special Needs Trust” provides a way to set funds aside to benefit a disabled child or adult and preserve the disabled person’s eligibility for means-tested public benefit programs such as Medicaid and Supplemental Security Income. Special Needs Trusts are often referred to as “Supplemental Needs Trusts.”

These trusts may be categorized as “Third-party Special Needs Trusts” or “Self-Settled Special Needs Trusts.” A Third-party Special Needs Trust is created by someone other than the disabled person and is funded with assets belonging to someone other than the disabled person. For example, Dad creates a Special Needs Trust for his disabled son. Dad puts \$100,000.00 of his money into the trust.

A Self-Settled Special Needs Trust is created by someone other than the disabled beneficiary but is funded with assets belonging to the disabled person. For example, son is disabled due to an automobile accident and receives a cash settlement. Dad is appointed as the guardian of his son’s estate. Dad then obtains a court order to create a Special Needs Trust for son’s benefit. Dad uses his authority as guardian of son’s estate and places the money from the settlement into the trust for son’s benefit. Son will benefit from the trust for his lifetime. Upon his death, the state is entitled to repayment for certain benefits provided to the son. The trust must contain a provision to make the required repayment.

Great care must be taken to properly draft the trust so that it will qualify as a Special Needs Trust and not cause the disabled person to lose eligibility for means-tested public benefit programs.

A useful tool in some situations is the use of a “Pooled Trust” for the benefit of a disabled person. The pooled trust is administered by a non-profit organization. Assets are contributed to the pooled trust and individual accounts are established for each beneficiary. A disabled person may contribute his own assets to the pooled trust or someone else may make a contribution on behalf of the disabled person.

The main Texas organization managing a pooled trust is The ARC of Texas (www.thearcoftexas.org).

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