



PLANNING FOR THE FUTURE: SUPPLEMENTAL AND SPECIAL NEEDS TRUSTS

By: Brigitta Sharpe, J.D. & Lori L. Guzmán, J.D.

Families of persons with disabilities sometimes face an array of different questions and issues when planning for future needs. Among these is how to plan ahead financially for the family member with a disability.

The fact is that the majority of people who live with a disability will at some point in time need public assistance. In order to qualify for public assistance, the individual must be or become “impoverished,” with assets below a bare minimum established by the government (currently \$2,000 for SSI and \$3,000 for Medical Assistance). And while the services available through public programs may be substantial once the individual becomes eligible, the actual cash benefits are quite minimal, occasionally forcing the individual with a disability to live below poverty level, unable to enjoy a greater quality of life. Family members frequently want to assist the individual by providing additional resources, but are uncertain how, since outright gifts can push the person with a disability above the required asset level, disqualifying them from receiving any government benefits at all.

Supplemental Needs Trusts and Special Needs Trusts can be used to benefit people with disabilities by supplementing and managing their resources while maintaining their eligibility for public assistance benefits.

WHAT IS A TRUST?

Before diving into the details of Supplemental and Special Needs Trusts, it is helpful to understand the terminology and general concept of a “Trust”. A Trust is defined by law as an written agreement in which one party- the “Trustee”- takes legal ownership of any form of property that has been transferred to him/her or it (e.g. a bank) by the person establishing the Trust. That “establishing” person is called the “Grantor” (or Settlor or Trustor). The property is known as Trust “principal,” or “corpus”. These Trust assets are invested and/or managed for the benefit of a third party known as a “Beneficiary.” The Grantor can also serve as Trustee. The Trustee has the highest of legal obligations to manage the property, and see that it is used only in a manner, and for the purposes established by the Grantor in the Trust document.

A Trust can be thought of as an empty vessel into which the Grantor “pours” property. The Trust can own a variety of assets including bank accounts, certificates of deposit, stocks, bonds, and real estate.

WHAT ARE SUPPLEMENTAL AND SPECIAL NEEDS TRUSTS?

Expanding on these trust basics, Supplemental and Special Needs Trusts are trusts established to benefit a person with a disability by supplementing the government benefits they receive. Both types of Trusts are Irrevocable, meaning once established, the Grantor cannot change the trust provisions, terminate the trust, or withdraw the trust assets. Both are intended to provide a source of funds to augment government benefits received by a person with a disability. Despite their many similarities, *Supplemental and Special Needs Trust are not exactly the same. The primary distinction is in whose money funds the trust.* If the person with a disability is funding the trust with their own assets, such as through an inheritance or personal injury settlement they've received, it is a Special Needs Trust. If the trust is funded with assets belonging to someone other than the person with a disability or their spouse, such as by a parent or grandparent, then it is a Supplemental Needs Trust. The following illustrates a few of the similarities and differences between Supplemental and Special Needs Trusts:

COMPARISON OF SUPPLEMENTAL AND SPECIAL NEEDS TRUSTS

	Supplemental Needs Trust	Special Needs Trusts
Use	Pay for needs not provided by government funded programs	Pay for needs not provided by government funded programs
For	Person with a disability under age 65 or who resides in long term care	Person with a disability under age 65
Established by	Someone other than the Beneficiary or spouse	Parent, grandparent, legal guardian or conservator, or court.
Funded by	Someone other than the Beneficiary or spouse or anyone obligated to Beneficiary per terms of settlement or judgment	Assets of the Beneficiary = resources of Beneficiary or spouse (can be assets entitled to but not yet received)
Distribution on Death	To person or non-profit designated by the Settlor	Governmental Agency to reimburse for all Medical Assistance benefits paid to Beneficiary; excess to person or non-profit designated by Settlor.
Purpose	To provide for the supplemental needs of a family member or friend with a disability.	To protect Beneficiary's assets (resources) for their lifetime use
Legal Authority	Minn. Stat. § 501B.89 and Minn. Stat. § 256B.056, subd. 3b(a) and (b)	42 U.S.C. § 1396p(c) and (d): Omnibus Budget Reconciliation Act of 1993 (OBRA 1993)

Once you understand the general nature and characteristics of each trust, you can better explore the details of each, beginning with the Supplemental Needs Trust. (Remember, the *primary differentiating factor is in whose money funds the trust*. If the money belongs to someone other than the Beneficiary, such as a parent, grandparent, friend, etc. a Supplemental Needs Trust will be established).

THE MINNESOTA SUPPLEMENTAL NEEDS TRUST

In General

A Supplemental Needs Trust can be established and funded by parents, grandparents, friends or others to supplement or augment the needs of a person with a disability who is receiving or will be receiving publicly funded benefits, such as Social Security or Medical Assistance. Properly drafted and managed, a Supplemental Needs Trust can hold an unlimited amount of assets, without those assets ever being considered “available” for Medical Assistance or Social Security eligibility purposes.

Establishing a Supplemental Needs Trust under Minnesota law

A Supplemental Needs Trust can be incorporated into the will of a parent, grandparent, sibling or other interested person. It may also be created, established, and funded by any of the above parties during their lifetimes. Creating a trust while living is often preferred because of its greater flexibility, protection against potential changes in the law, and ability for others to then place funds into the trust.

Essentially, a written document, called a trust instrument or agreement is drafted, naming the Grantor, Beneficiary, and Trustee. The Trust Agreement is executed (signed) by the Grantor and Trustee. An application for a Trust identification number is sent to the I.R.S. and once received, that number can be taken to the bank to open the trust account. No court involvement is required to establish the trust.

The Purpose and Use of a Supplemental Needs Trust

The Supplemental Needs Trust is designed to enhance the Beneficiary’s quality of life by providing for those supplemental needs, such as more sophisticated medical, rehabilitative, recreational or educational aid, not provided by governmental assistance. Social Security and Medical Assistance provide a basic level of income support for food, clothing, shelter and medical care. The Supplemental Needs Trust is intended to “fill in the gaps” and supplement this basic support and care according to the individualized needs of the Beneficiary.

The Trustee must first rely on public or government benefits, however, if such benefits are not available or are insufficient, the Trustee is authorized to distribute funds to supplement the benefits. Examples of allowable supplemental needs could include trips, vacations and other travel, companion services and the costs of a health home aide, eyeglasses, radios, DC players, TVs, and computer equipment, etc.

Administering the Minnesota Supplemental Needs Trust

The individual selected by the Grantor to act as Trustee has the responsibility to administer or manage the trust. Frequently, if parents/grandparents serve as Grantors, and establish a Supplemental Needs Trust for their child/grandchild, they also act as Trustees. There are, however, professional trustees who can manage trusts for individuals. The Trustee(s) of a Supplemental Needs Trust have the responsibility and discretion to distribute or accumulate Trust income and determine timing, amount and use of Trust funds on behalf of the Beneficiary. The Beneficiary cannot have authority over the Supplemental Needs Trust or have the right to force the Trustee to make distributions, otherwise the Trust assets could be considered “available” to the Beneficiary for Medical Assistance purposes. The Trustee must act according to the terms of the Trust. There are general guidelines and considerations the Trustee should follow, the most important of these include the following:

1. Under no circumstances can the trust assets be directly disbursed to the Beneficiary. In other words, the trustee cannot write checks or make payments directly to the Beneficiary. All payments from the trust should be made to the person or persons supplying the goods or services to the Beneficiary.
2. Trust funds cannot be used to pay for items or services for the Beneficiary that are already provided or could be provided by any governmental unit or agency. Generally, these include the Beneficiary’s basic needs, such as food, shelter, clothing and medical care. The trust can provide for the Beneficiary’s reasonable expenses and needs when benefits from publicly funded benefit programs are not sufficient to provide adequately for those expenses and needs.
3. At no time should assets received by any government unit or agency be placed into the Trust, including Social Security payments, VA payments, etc.
4. The Trust must be established and used for the “sole benefit” of the Beneficiary.
5. The Trustee must keep records of all transactions made on behalf of the trust. The Beneficiary has the right to request an accounting at any time.

Upon the death of the Beneficiary, the remaining assets of the Supplemental Needs Trust are distributed according to the provisions set forth in the trust as determined by the Grantor. This might include distributions to other children or grandchildren or non-profit organizations.

THE SPECIAL NEEDS TRUST

In General

Unlike the Supplemental Needs Trust, *the Special Needs Trust must be funded with the person with a disability's assets*. The Special Needs Trust can be established by the Beneficiary's parents, grandparents, guardian, conservator, or the court. As with the Supplemental Needs Trust, the Special Needs Trust is established in order to supplement or augment the needs of a person with a disability who is receiving or will be receiving publicly funded benefits, such as Social Security or Medical Assistance. The Special Needs Trust can also hold an unlimited amount of assets as long as they belong to the Beneficiary, without those assets ever being considered "available" for Medical Assistance or Social Security eligibility purposes.

Establishing a Special Needs Trust

The method for establishing a Special Needs Trust can vary depending primarily on who is establishing the trust. If a parent or grandparent of a person with a disability is establishing the trust, the process can be much the same as with the Supplemental Needs Trust. A trust agreement is executed, a tax identification number is obtained and an account is established. Generally, no court process or supervision will be required.

If however, a conservator or guardian (someone other than the parent) or the court is establishing the trust, the process will be different and the court will be involved. The process varies somewhat, but generally, the first step is to file a petition requesting authorization from the court to establish the trust. The court then sets a date and time for a hearing on the petition. The court will then issue an order allowing for the establishment of the trust. Often, the court will require the Trustee to file bond in order to protect the Beneficiary's assets. Once the trust is established, an initial trust inventory and annual accountings must be filed with the court, which maintains supervision over the trust.

The Purpose of a Special Needs Trust

The purpose of a Special Needs Trust is the same as with a Supplemental Needs Trust: to enhance the Beneficiary's quality of life by providing for those supplemental needs, such as more sophisticated medical, rehabilitative, recreational or educational aid, not provided by governmental assistance. It is intended to "fill in the gaps" and supplement the Beneficiary's basic support and care according to their individual needs. The examples of allowable supplemental needs listed above for Supplemental Needs Trusts would also apply here.

Administering the Special Needs Trust

The individual confirmed by the court as Trustee (or if no court involvement, the individual nominated by the Grantor) has the responsibility to administer or manage the trust. The Trustee of a Special Needs Trust has the responsibility and discretion to distribute or accumulate Trust income and determine timing, amount and use of Supplemental Needs Trust

funds on behalf of the Beneficiary. As with the Supplemental Needs Trust, the Beneficiary cannot have authority over the trust or have the right to force the Trustee to make distributions, otherwise the Trust assets could be considered “available” to the Beneficiary for Medical Assistance purposes. The Trustee must act according to the terms of the Trust. The general guidelines and considerations the Trustee should follow are the same as listed above with the Supplemental Needs Trust. In particular, it is very important that the Trustee keep records of all transactions made on behalf of the trust. All original documents should be kept, including photocopies of all checks, invoices, paid receipts, etc. As stated earlier, many Special Needs Trusts are court supervised, which require an annual accounting be made to the court each year. Even if the trust is not court supervised, the Beneficiary has the right to request an accounting at any time.

Because the Beneficiary is able to enjoy government benefits and programs without having to “spend down” their own assets which are protected by the Special Needs Trust, any assets remaining in the trust upon the death of the Beneficiary must first be used to repay Medical Assistance, or other government funding sources, for the total amount they have paid out on behalf of the Beneficiary. Thereafter, any remaining funds can be distributed to the person or organization designated in the trust agreement.

CONCLUSION

A person with a disability requires consideration in many areas, not the least of which is a comprehensive plan for the future. Usually, estate planning perspectives are directly related to death or dying. However, for parents with a children with disabilities the perspective is more properly related to *as life planning*.

Because the standard of living and quality of life necessary to provide confidence in the future cannot always be financially supported solely by governmental entitlements and benefits, planning requires consideration of procedures to preserve assets for persons with disabilities in such a way as not to interfere with governmental entitlements and benefits. Supplemental and Special Needs Trusts are tools which can be used to preserve assets and income without interfering with benefits and entitlements, which in turn, can provide parents and families with a sense of comfort that their loved one with a disability will have access to educational, therapeutic and vocational experiences designed to promote their skills and abilities to maximize self reliance, independence and the ability to enjoy life.

GUZMÁN LAW FIRM, P.A., 14847 Energy Way, Apple Valley, MN is a private law firm that focuses on providing legal services to persons with disabilities, seniors and their families. Home visits, facility visits, and evening and weekend appointments are available.

Telephone: (952) 432-0648
Fax (952) 431-2491