



[HOME](#): : [Legal/Living-Will](#) 

What to Look for in a Special Needs Trust

By [Nicholas Deleault](#)

Article Word Count: 843 [\[View Summary\]](#) [Comments \(0\)](#)

Parents of children with special needs face unique and often troubling obstacles when attempting to financially plan for the future. Most often, these parents substantially rely on supplemental security income (SSI) benefits through the Social Security Administration, which helps to pay for treatments and necessary special needs programs.

The dilemma faced when planning for the child's financial future is that an outright bequeath to a child will most likely disqualify them for public assistance, and the child is also most likely unable to care for themselves. Parents are often faced with the very real possibility of having to disinherit a child in order to preserve the child's right to receive SSI benefits and other public assistance.

The main goal of an effective financial plan for a special needs child is to provide funds for living without limiting the child's access to available benefits. A Special Needs Trust helps parents accomplish this goal.

The development of the Special Needs Trust arose because of the need for a vehicle that would enable parents to deal with various governmental restrictions on how it disburses benefits. This planning device is generally based largely on Social Security Administration guidelines which permit payment for certain services without negatively affecting SSI benefits or eligibility status. To achieve its goal in preserving public assistance eligibility, the Special Needs Trust must be carefully structured as a fund which supplements, without supplanting, SSI provisions for the child's needs in areas such as housing, food and clothing.

As with most trusts, a Special Needs Trust requires four essential elements: (1) a corpus (the money or assets placed in the trust); (2) a beneficiary (the special needs child); (3) a trustee who distributes the funds and has discretion over such disbursements; (4) a purpose, often set out in the trust document, which guides how the funds will be distributed. An attorney experienced in trust creation and maintenance should be used in order to ensure that the trust document accurately and effectively accomplishes its goal.

The trust document must accurately describe the relationship between the corpus, the trustee and the beneficiary. In order to maintain its discretionary nature, the beneficiary must be kept from personally receiving the body of the trust for any purpose other than that set out in the document itself. The trustee's role is the most important aspect of the Special Needs Trust. When choosing a trustee, the settlors (parents) of the trust must elect a person of trustworthy character who will fulfill his or her fiduciary duties to the beneficiary. The trustee should generally be prohibited from giving cash to the beneficiary, as doing so could cause the cash to be considered income, affecting the beneficiary's eligibility for SSI benefits.

The most important element of a Special Needs Trust is the trustee's absolute discretion in determining the timing and amount of distributions. The discretionary status of the trust is necessary in order to keep the beneficiary eligible for public benefits. While there is no formal mechanism to ensure that trustees uphold their duty to provide for the child, if it is found that the trustee failed to inquire as to the welfare of the beneficiary they may be held personally liable for their failure to inquire into the beneficiaries status.

See, *Marsman v. Nasca*, 573 N.E.2d 1025 (Ma. 1991).

Without absolute trustee discretion in making distributions, the trust corpus could be deemed income of the child, disqualifying them from SSI or Medicaid benefits (in Massachusetts, individuals who are eligible for SSI benefits are automatically eligible for Medicaid benefits). It is important to keep in mind that the purpose of the trust must be to add to and not replace existing governmental benefits. The trust document must explicitly instruct the trustee only to make distributions for items which are not covered by government benefit programs.

It is not necessary that a Special Needs Trust be created with funds sufficient to provide for care of the child over their entire lifetime, but at some point over the course of the trust this goal should be achieved. An experienced attorney with financial and estate planning expertise can help design the means to achieve this goal. With the assistance of an experienced attorney, there are several steps that parents can take to work toward adequate funding. Some potential strategies include (1) using the Special Needs Trust as a pour-over trust, with the trust to receive a portion of the parents' estate on their death; (2) directing investment income into the trust; (3) placing real property into the trust as part of its corpus; and (4) encouraging family gifts to the trust, rather than directly to the child. There are many options available to the parents of a special needs child in order to ensure that the child is able to achieve adequate assistance over the course of his or her life. An experienced estate planner can advise any concerned parent of every option available and can help to achieve the most optimal and efficient vehicle for providing assistance to the child over the course of his or her lifetime.

This article was written by Nicholas J. Deleault, who write [estate planning](#) articles for Goldstein and Clegg, LLC

Article Source: http://EzineArticles.com/?expert=Nicholas_Deleault

This article has been viewed 919 time(s).

Article Submitted On: February 12, 2007