Knox McLaughlin Gornall & Sennett, P.C.
Erie • Pittsburgh • Jamestown, NY
814-459-2800 • www.kmgslaw.com

Special Needs Trusts

Posted on May 06, 2026

Parents of disabled children often worry about what will happen to their disabled child when they (the parents) are no longer living. In many instances, when the parent is no longer around to pay the costs of providing for the child's needs, that responsibility will in large part fall to the government. However, some of the most important benefits available to disabled persons are "means-tested", meaning that they are confined to persons who have minimal financial resources and/or income of their own.

So the concern becomes: How do I provide for the anticipated future needs of my disabled child without compromising their ability to qualify for government benefits?

A **special needs trust** (sometimes also called a supplemental needs trust) can be a way to bridge that gap. A special needs trust is a vehicle by which a prospective donor – typically a parent or grandparent – can set aside money (or other assets) in advance to meet the future needs of their disabled child without jeopardizing that disabled child's ability to qualify for means-tested public benefits, either now or in the future. Because the assets are never owned by the disabled child, but rather left in trust for them, the assets are not counted as part of the disabled child's resources.

There are several features that are somewhat unique to a special needs trust. One of the most important aspects of a special needs trust is the level of discretion given to the trustee. In order for entrusted assets not to be considered "available" to the beneficiary (and therefore counted toward the beneficiary's eligibility for various means-tested government benefits), the trust agreement must give the trustee broad discretion to make (or not make) distributions benefitting the beneficiary. If the standard for distributing trust funds (as set forth in the trust agreement) gives the beneficiary a legally discernible right to the entrusted funds, such that the beneficiary could enforce that right, then the funds will be considered available to the beneficiary. For that reason, **it is essential that the disabled beneficiary has no rights to force distributions from the trust, and that all distributions are at the complete discretion of the trustee.**

It is also important that the trustee be directed not to make distributions directly to the disabled beneficiary, but instead to disburse trust funds to those individuals or organizations providing services to the beneficiary. The reason for the distributions not be made directly to a disabled beneficiary is because funds in the beneficiary's possession will be counted for purposes of determining his or her eligibility for government benefits. As the thresholds to qualify for government benefits, such as Supplemental Security Income ("SSI") and Medicaid (also called "Medical Assistance" in Pennsylvania) are quite low, the need to keep money out of the beneficiary's hands is crucial.

Another crucial consideration is whom to designate as trustee. The person creating the trust (also known as the "settlor" or "grantor") will often prefer to designate a family member as a trustee. The desire to name a family member (such as a sibling) as trustee is frequently based on a belief that a family member will be more closely attuned to the beneficiary's needs and will therefore better advance his or her interest. While that may sometimes be true, there are also other significant countervailing considerations.

One such concern is that special needs trusts are relatively sophisticated and are therefore more difficult to administer than certain other types of trusts. A trustee should be knowledgeable not only of fiduciary duties and tax reporting responsibilities applicable to all trustees, but also of certain restrictions specific to special

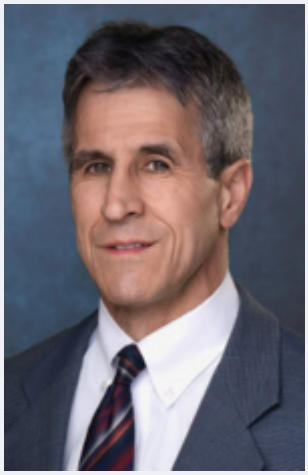
needs trusts, such as the rules governing various means-tested government benefit programs. For that reason, settlors may also want to consider naming an institutional trustee devoted to servicing the needs of disabled persons and that are able and willing to serve as trustee of such trusts. Because of their detailed knowledge of and familiarity with the rules applicable to need-based benefits, such companies are often attractive candidates.

Additionally, parents sometimes overestimate the involvement that the non-disabled sibling is willing or able to have in the disabled child's financial life. Naming a non-disabled child as the trustee of a disabled child's trust puts them in a fiduciary position and gives them a large amount of control over their sibling's assets. This can be an awkward family dynamic if the trustee sibling is too stringent, too generous, or not sufficiently involved in their role as trustee. For these reasons, grantor-parents should incorporate sufficient flexibility into the special needs trust, so that if a family member is no longer able to serve as trustee, there is a clear and simple way to nominate a successor trustee.

As with so many other things, advanced planning typically yields better results. A disabled child cannot retroactively create the same type of trust for themselves when their parent passes away; the planning must be done proactively to set up this type of trust prior to the grantor's death. A special needs trust is a tool that can be utilized to facilitate proper planning for the needs of a disabled individual, particularly if the disabled person is expected to need resource-limited public benefits.

See also: Special Needs Trusts: What, Why, When and What Else?

If you have questions about special needs trusts or have other Elder Law or Estate Planning concerns, please contact one of our Elder Law Attorneys or call 814-459-2800.



Jeffrey D. Scibetta

Jeffrey D. Scibetta focuses his practice on elder law planning, complex estate planning and administration, business & tax planning, and real estate. He has spoken to a variety of groups and professionals about all of these matters.

jscibetta@kmgslaw.com • 814-459-2800

Legal Advice Disclaimer: *The content of this website is provided for general information purposes only. It should not be used as a substitute for consulting an attorney for legal advice regarding the reader's own affairs. Knox McLaughlin Gornall & Sennett, P.C. is not responsible for the content provided on any third-party website which may be accessed via links provided by this site.*

Copyright © Knox McLaughlin Gornall & Sennett, P.C.
Not to be reproduced without permission.