

SPECIAL NEEDS PLANNING

Q.- What is a Special (Supplemental) Needs Trust (“SNT”) and when do I need it?

A.- Various government benefits, Medicaid, SSI, housing subsidies, and Department of Social Services (DSS) housing are provided free, or at minimal cost, to disabled people, who have minimal assets. Whether paid directly to the disabled person, or into an ordinary trust, most gifts and inheritances, and other litigation (personal injury) recoveries jeopardize government benefits. However, these amounts won't disqualify a disabled person for government benefits, if they are paid into an SNT. A SNT should be created, even if your loved one doesn't yet receive benefits, because government benefits may be required later, especially, if disabilities worsen with age.

Q.- Why do I Need a Special Needs Trust Even If My Disabled Child Lives at Home?

A.- Even though your disabled child lives with you now, he or she eventually may be placed in a DSS or mental health placement or otherwise require long term care. Consequently, the disabled child may be forced to fund the group home, medical, and other costs that would be covered by government programs if your estate plan included a Special Needs Trust.

Q.- When and How do I Set Up a Special Needs Trust?

A.- To create a Special Needs Trust, you typically sign a written trust instrument. Although you don't have to fund your SNT until you pass away, you must sign the trust instrument during your life time. If you don't, your child will face substantial costs, which wouldn't arise if an SNT were in place when you die. Because an SNT must comply with complex and arcane government benefit rules, an SNT should only be drafted by a lawyer familiar with SSI, Medicaid, DSS and other government program rules.

Q.- How Can Special Needs Trusts Reduce Costs If I Need Nursing Home Care?

A.- Medicaid generally pays nursing home costs for people with minimal resources except that a temporary Medicaid disqualification period usually applies to a person who makes gifts to reduce resources to Medicaid limits. However, an individual may qualify for Medicaid immediately by making gifts to a “sole benefit” SNT. Gifts to a “sole benefit” SNT are exempt from gift disqualification penalties and also avoid jeopardizing the SNT beneficiary's government aid.

