

TWO THINGS CERTAIN®

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**Planning For A Beneficiary With Special Needs
in Your Will or Trust
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Putting together an estate plan is emotionally trying in any case. One wants to keep control and plan for any number of eventualities to protect loved ones. This process is more difficult and much more important when planning for a beneficiary with special needs. In the context of wills and trusts, "special needs beneficiaries" typically refers to those who are currently receiving (or may likely receive in the future) government benefits for a medical condition or disability. Such beneficiaries range from infants with developmental issues to seniors with dementia; relevant medical conditions range from Down's Syndrome to psychiatric concerns. When creating a plan for a special needs beneficiary, one must make arrangements to provide personal care and financial support.

Personal Care

All parents have faced the quandary of finding an acceptable guardian in the event they predecease a minor child. No one can equal the original parent and so the parent must come to terms with naming an adequate substitute. For many parents, this issue becomes moot when a child reaches age 18. In the realm of special needs, guardian and caretaker duties can continue for the life of the beneficiary.

The nature of the medical condition and the age of the beneficiary determine how much care is needed and the length of the custodial relationship. In the case of cognitive impairment, for example, the necessary care varies with a beneficiary's lifestyle: anything from independent to institutional living. In creating a plan for the beneficiary, one needs to designate one or more caregivers able to assist for the life of the beneficiary. Those caregivers must care enough about the beneficiary to be intimately involved in their life and have the necessary time and skill to assist.

If the amount of future care is unknown or likely to be high, one can direct a successor to hire a care manager who can create a care plan and connect the various parties assisting in the care of the beneficiary. Care Managers are professionals who assist families and beneficiaries by developing a plan for the care of a beneficiary (see <http://www.naccm.net> for more information).

Financial Care

Every special need incurs expenses beyond those faced by the average beneficiary. The amount necessary to support such a person can be astronomical, based on the severity and likely duration of the underlying condition. Very few families are financially able to privately pay the costs of care for a beneficiary with special needs. Most families turn to government benefits like Medicaid, Social Security Income (SSI), Social Security Disability Income (SSDI), and disability and pension benefits offered by the Department of Veterans Affairs. Many of these programs are means-tested - that is to say that they are not available to those whose income and resources exceed modest limits. This puts the family and caregivers in a Catch-22:

they want to provide for a beneficiary but do not want their support for a beneficiary to disqualify him or her from benefits. The solution to this problem exists in a Special Needs Trust.

The Special Needs Trust

A Special Needs Trust is a Trust created to provide funds for a beneficiary with Special Needs in such a way as to not disturb or preclude governmental benefits. There are many types of trusts and even different flavors of Special Needs Trusts. The type one would create out of one's estate would set aside resources to provide supplemental support to a beneficiary for life, name a trustee to manage and distribute the assets, and designate who should receive any funds remaining after a beneficiary's death. Funds in a Special Needs Trust cannot be paid for any expense that would disqualify a beneficiary from government benefits. Instead, distributions from a Special Needs Trust can only be spent to supplement those benefits (this is why such trusts are also called 'Supplemental Needs Trusts').

A Special Needs Trust should be funded with enough resources to provide supplemental benefits for the life of the beneficiary. Such a trust can hold any type of asset or property. The trust will continue until the beneficiary passes or until the trustee spends all the assets on the beneficiary. The trust should then designate to whom any remainder should be distributed after the death of the original beneficiary.

Naming A Trustee Of A Special Needs Trust

Special Needs Trusts are more challenging to administer than other Trusts. The rules regarding which expenditures count as income for a beneficiary and which do not vary by jurisdiction and are byzantine in every case. JGB strongly recommends a professional trustee be named to manage a Special Needs Trust; we have seen cases in which a well-intentioned family member simply cannot understand the myriad regulations and inadvertently interferes with a beneficiary's benefits. JGB can recommend trust companies that have experience administering Special Needs Trusts. The trustees will be responsible for hiring and supervising care managers for the life of the Trust.

Conclusion

Providing for a beneficiary with special needs shifts the direction of a will or trust. Providing for and protecting a special needs beneficiary often becomes the most important goal of a plan. At Johnson, Gasink & Baxter, LLP, we happily help families protect their most vulnerable loved ones using Special Needs Trusts.



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About the Author:

Dan Gasink focuses his law practice on Wills, Trusts and Probate. He enjoys helping families through the difficult transitions of life and passing. Dan's law firm, Johnson, Gasink & Baxter, LLP solves clients' problems using careful planning , reliable procedures, hard work, and creativity.