

7 Reasons to Establish a Special Needs Trust



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Special needs trusts (SNTs) can play an important role in helping families plan for children with special needs.

Here are some of the most compelling reasons to speak with your attorney about establishing an SNT.

1. Preserve public benefits while enhancing your child's lifestyle.

As adults, many individuals with significant special needs obtain basic support from Supplemental Security Income (SSI), which also is the gateway to Medicaid and other critical programs. Since SSI covers only essential expenses, most parents want to supplement their child's lifestyle. But because SSI imposes limits on income and assets, providing funds to the child directly can jeopardize benefits eligibility. Generally, the best solution is placing funds in an SNT. The Social Security Administration (SSA) does not count assets in an SNT when qualifying for SSI, nor do they count the assets as income for determining benefits eligibility, because the assets are owned by the trust rather than the child beneficiary.

2. Ensure assets will be used as intended.

With an SNT, distribution of assets is directed by trust documents as well as SSA and IRS guidelines. By comparison, if you leave assets to an "able-bodied" child and ask that some of the funds be used for the sibling with special needs, the child may fail to honor your request, lose the assets to creditors, or die prematurely and leave the funds to his or her own children.

3. Allow others to contribute.

If you establish the trust now, grandparents and others interested in helping your child can make annual gifts to the SNT of up to \$15,000 (\$30k for a married couple) without triggering any IRS reporting for the gift tax or generation-skipping tax. Anyone interested in leaving their child money should be advised to direct bequests to the SNT.

4. Fund the SNT as you wish.

SNTs can be funded with cash, securities or other resources. Often, a second-to-die life insurance policy offers the most affordable option, enabling a family to fund an SNT without depleting assets required for other household needs. If assets in an Individual Retirement Account (IRA) will represent a large portion of your estate, it's important to speak with an attorney about the most tax-efficient way to transfer those assets to an SNT.

5. Identify appropriate distributions.

If you establish and fund an SNT while your child is young, you can use the trust like a checking account to pay the child's expenses. A future trustee can then refer to a record of these payments as a guide in determining necessary and appropriate distributions.

6. Maximize the benefits of a personal injury settlement.

If your child wins a sizable settlement, having the payout (often a lump sum plus a structured settlement) directed to a self-settled SNT offers several benefits. Your child will still qualify for public benefits, you can use the settlement fund for nonessential expenses and your child may enjoy the financial security of receiving regular payments for life.

7. Enhance matrimonial settlements.

If your adult child who receives SSI and Medicaid divorces, having a self-settled SNT drafted through the divorce decree will allow any alimony or lump-sum payment from the child's ex-spouse to be paid to the trust. Many times the SNT may be needed to keep SSI or Medicaid providing the benefits. With public benefits intact, it's possible your child may need less from the ex-spouse. That could help ease matrimonial negotiations while still providing your child with ample resources.

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