

# How to Choose a Special Needs Trustee: 5 Considerations

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Choosing the right person to serve as trustee of a special needs trust is one of the most important and difficult issues in creating the trust.

Trustees typically take care of important tasks like the following:

- ◆ managing day-to-day operations of the trust,
- ◆ making distributions to the trust's beneficiary,
- ◆ investing the trust's assets,
- ◆ paying the trust's bills, and
- ◆ maintaining the beneficiary's eligibility for public benefits programs.

Despite the importance of the above responsibilities, the law isn't very strict about who may serve as trustee. As long as the person is over 18 years of age and is capable of managing his or her own affairs, the trustee can be:

- ◆ the child's parent or other relative,
- ◆ a trusted friend, or
- ◆ a professional — a lawyer, accountant, trust company, bank or private professional fiduciary.

**Here are five considerations to help in the choice of who should serve:**

## **1. Are they familiar with public benefit programs?**

To ensure that your beneficiary's eligibility is never compromised, a trustee's knowledge of public benefit programs is crucial. Many government benefits like Medicaid, Supplemental Security Income (SSI) and Section 8 housing have very complicated and contradictory rules governing special needs trusts. The trustee of a special needs trust must know these rules well, or, at the very least, work closely with a special needs planner who can explain the ramifications of his actions as trustee.

## 2. Does the trustee have time to do the job?

Serving as the trustee of an active special needs trust can seem like a full-time job. Depending on a beneficiary's needs, the trustee could spend a good deal of time paying bills, monitoring government benefits, helping to secure housing, paying for medical care and serving as a link between the beneficiary and a variety of service providers. If a trustee finds that she can't perform all of these tasks when needed, or if she is sacrificing her family life or other professional obligations in order to work as a trustee, then it may be time to look for a professional trustee.

## 3. Would a professional trustee be better in this particular case?

This could be an attorney, accountant, trust company, investment firm, bank or private professional fiduciary. A professional allows you to take advantage of that individual's or institution's experience with public benefits, investments, money management and tax planning. Another advantage is emotional distance. Sometimes, the strains of a beneficiary's demands for trust distributions can cause significant problems for family members. These intra-family complications can be avoided through the use of a professional trustee.

## 4. How comfortable are you giving trust control to an outsider?

For those who are uncomfortable with the idea of an outsider managing a loved one's trust, it is possible to appoint a family member and an independent trustee as co-trustees. By doing so, you can rest assured that there is a person who is familiar with the beneficiary and has her best interests at heart and that the public benefit programs' requirements are being met. Another option is to simultaneously appoint a trust "protector," who has the powers to review accounts and to hire and fire trustees, and a trust "advisor," who instructs the trustee on the beneficiary's needs.

## 5. Is a pooled trust an option?

A pooled trust, which is administered by a non-profit corporation, may be a good option for some families. Such trusts pool the resources of many beneficiaries, and those resources are managed by a non-profit association. Pooling trust resources can reduce administrative fees, increase the total funds available for investment, and permit access to better investment opportunities.

Because a pooled trust accepts contributions from many beneficiaries, the trust is able to make more stable investments and provide additional management services that a conventional special needs trust might not be able to afford. If the trust is modest in size, it may benefit from the low costs of a pooled trust. Others appreciate the fact that their funds will be used to help others with special needs.

Make sure that whomever you choose as trustee is financially savvy, well-organized, and, most important, ethical. Your special needs planner can help you make the best choice.

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