



Special Needs Trusts

Info for Individuals, Parents & Caregivers



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This guide is brought to you by Milestone Consulting, a full-service settlement planning and management company. Led by John Bair, the Milestone team has helped thousands of families navigate the settlement process with confidence.

Why You Should Know About Special Needs Trusts

You've been waiting for this day for a long time: your lawsuit is over, and you are receiving a settlement. But before you proceed, if you're an individual with a disability, or the family member of a disabled person, there are a few things you need to know.

It is possible, even likely, that you or your loved one receives government benefits such as Supplemental Security Income (SSI) and/or Medicaid. Receiving a large sum of money, such as a settlement, can mean disqualification from these benefits, so it is critical you are aware of your options. One of the most helpful tools available is a special needs trust.

Special needs trusts, also called supplemental needs trusts, are established to supplement, but not replace, a disabled person's government benefits. To avoid disqualification, the money in a special needs trust is not given directly to the disabled person. The trust pays for services or equipment that are not covered by your government benefits, such as the cost of medical service providers, transportation, insurance, cable and/or cell phone bills, and other needs.

This e-book is a good starting point on learning the ins and outs of special needs trusts. If you have questions that we do not answer in the pages that follow, please feel free to contact our team.

Key Terms

If you're thinking about setting up a special needs trust for yourself or a family member, you will likely hear the terms below.

Trustee

The trustee manages and oversees the trust for the beneficiary. Individuals and families setting up a special needs trust have several options for establishing a trustee. Most families benefit greatly from selecting both an independent professional trustee and a wealth manager instead of a bank that will lump the trust's functions all together.

Pooled Special Needs Trust

Pooled trusts are established and operated by nonprofits that have pooled together the resources of multiple families for investment purposes. Unlike a typical special needs trust, for which the individual or family decides on the trustee, the nonprofit will select a trustee to administer the funds in the account. Pooled trusts must maintain individual accounts for each beneficiary, but they can pool those resources together for investment and management purposes.

First-Party Trust

A first-party trust benefits individuals with special needs who have or expect to receive assets that would disqualify them from eligibility for needs-based benefits. A first-party trust requires that the assets belong to the beneficiary, such as an injury settlement or inheritance. The remainder of a trust typically reimburses the government for what it has paid. In other words, upon death, Medicaid and other government groups would first be paid back from the trust assets before they go to a beneficiary. (See the "Types of Special Needs Trusts" of this ebook for more information.)

Third-Party Trust

A third-party trust is established with money from a donor, such as a parent or guardian. Individuals have more control over the balance than they would if they had established a first-person trust. Unlike a first-party trust, the government is not entitled to reimbursement for Medicaid payments made on behalf of the beneficiary upon his or her death, because the funds in the trust belonged to someone else. (See "Types of Special Needs Trusts" for more information.)





Initial Concerns About Special Needs Trusts

One of the greatest concerns about administering a special needs trust is the fear of the beneficiary losing needs-based government benefits like Medicaid or Supplemental Security Income (SSI). To avoid this concern, some individuals and families have made alternative choices without considering the breadth of the consequences. Caregivers may leave money to a disabled beneficiary after they are gone, for example, but doing so may cause him or her to lose access to some needs-based government benefits anyway.

Seasoned planning experts know to be very careful in following the language of the statute when setting up a special needs trust. Choosing the right terms is critical. Hiring the right attorneys is a key step in the process. Having worked with trust and estate attorneys for almost 20 years, in thousands of cases and in almost every state, discussing the type of trust before hiring an attorney is important.

The biggest decisions families should focus on are:

- Selecting the right trust type,
- Choosing the right trustee,
- Working with an experienced settlement planner, and
- If necessary, hiring the right lawyer for the drafting of the trust.

As a general rule, the main concerns for a trust once it's established properly are related to accounting and the ongoing costs of administration.

By working with an experienced settlement planner, all of these issues can be managed professionally. The decision makers should know exactly how much they are being charged for each person or company involved in the administration. The best framework for most people is to have an independent professional trustee and a professional wealth manager, instead of a big bank that lumps the functions all together. Size matters. A large financial institution typically means more expensive.

The support network for a special needs trust should feel like an extension of your family, with the professionalism of a law firm or accounting firm. You will just not get that with big box names.

Types of Special Needs Trusts

Administering a special needs trust properly can remove uncertainty and ensure a disabled person is protected and cared for during the course of his or her life.

As mentioned earlier, there are two common types of special needs trusts: a first-party and a third-party trust.



Option 1: First-person Special Needs Trust

A first-party trust requires that the assets come directly from the disabled person — for example, in instances of an injury settlement or inheritance. Additionally, upon death of the disabled individual, the remainder of a first-party trust typically reimburses the government for what it has paid. This means one can remain on SSI and Medicaid, and get the benefit of the assets placed into the trust, but upon death, the state is paid back first out of the trust assets before they can go to a beneficiary.

Option 2: Third-party Special Needs Trust

A third-party trust is usually created by a disabled person's family to ensure he or she receives the present and future care they would want and expect. Parents who set up a third-party trust have more control over the balance than they would with a first-person trust. The remainder could be allocated elsewhere. The government does not receive reimbursements like they would in a first-party trust.



With both trusts, the money cannot be given directly to the beneficiary. To protect against disqualification from government needs-based benefits, the trust instead pays medical service providers directly or pays for common needs like cell phone, cable or data costs, transportation, insurance and many other things that the government benefits do not cover.

Resources a Special Needs Trust Can Cover

Non-countable Resources

Money “gifted” to a special needs trust doesn’t count toward an individual’s assets or income, so it won’t interfere with SSI and Medicaid benefits. But managing a special needs trust isn’t easy.

The caveat to a special needs trust’s power of program compliance is that trustees cannot just give money directly to the beneficiary. Instead, the trustee can spend assets in the trust to purchase goods and services to improve the life of the beneficiary. The assets in a special needs trust pay for items that fall into two categories: “special needs,” meaning nonessential goods and services, and/or “luxuries” that government benefit programs don’t pay for.

The money in a special needs trust can pay for anything that government benefits don’t cover, and these items are considered “non-count-able.” Non-countable purchases that can be made from a special needs trust include items like the following:

- One home, as long as it can be considered the person’s primary residence
- Home furnishings and personal belongings.
- One motor vehicle
- Programs that use the funds to achieve educational or work goals
- Essentials for self-support, including certain purchases that will be used to work
- Life insurance policies (limited)
- Burial expenses of no more than \$1,500.

In some cases, a trustee can decide that, while making a payment may threaten a portion of the beneficiary’s government payments, that loss is still justified under the circumstances. Some particularly important expenditures may warrant taking a cut in benefits for the month. Of course, this is a determination that should be made after consulting an attorney well-versed in special needs trust law.



Which Purchases Affect Benefits Eligibility?

SSI benefits are limited to individuals with \$2,000 or less of countable resources. If a trustee gives the beneficiary countable assets that will likely affect the individual's eligibility for SSI and Medicaid.

Countable assets include the following (and others):

- Cash (intended for any purpose)
- Food and groceries
- Meals at restaurants (unless given as occasional gifts)
- Homes that are not the beneficiary's primary residence
- Rent and utility payments
- Mortgage payments
- Property taxes
- Checking and savings accounts
- Stocks and bonds
- Investment accounts
- Retirement assets, like an IRA or 401(k)

Sometimes, a payment for countable resources does not eliminate the beneficiary's eligibility completely. Giving a beneficiary \$2,000 in cash likely would, since that's the limit for SSI eligibility.

But paying for assets less than \$2,000 will reduce, but not terminate, SSI payments in the month that the payment is made. SSI benefits are reduced dollar-for-dollar, so every dollar spent on countable resources is one dollar less in benefits.



Critical Choices to Make For Third-Party Trusts

The establishment process is complex, and the choices individuals or family members make will directly dictate the fees they'll owe and the level of control they'll have. Below are four critical choices when establishing a special needs trust.

Choose a Financial Manager

Although it's not required, hiring an expert to manage the money – someone separate from the trustee – is a very good idea. An experienced wealth manager who specializes in special needs trusts can ensure families are making the right moves from day one and that the money is as beneficial as possible.

Choose Your Jurisdiction

Where you retain a trustee makes a difference. For example, with the experience of a settlement planner, parents should plan to create the trust in a state where Medicaid eligibility is needed or may be needed.

Choose a Trustee

Many people assume their local bank or a big national institution is the best trustee. However, this is actually the most expensive route. Trustee fees and expense ratios can run as high as three percent. Banks and other big institutions are also rarely suited for the intensity and complexity of special needs trusts.

On the other hand, many parents are eligible to be their child's trustees, but few courts will allow it due to a conflict of interest. Trust companies that are independent of major financial institutions are typically best. Look for the following qualities when interviewing potential trustees:

- Competence, knowledge and experience specifically with special needs trusts and helping people maintain eligibility for government programs.
- No conflicts of interest.
- No problem with including language in the trust agreement that would allow the professional trustee to be removed if necessary.
- Willingness to communicate often and always keep the individual's best interest in mind.

Choose a Fee Schedule

A properly designed special needs trust should cost no more than 1.25 percent per year. The best choice is to hire a professional, independent trustee with a fee of around 0.5 to 0.6 percent. For example, if a trust has a balance of \$400,000.00, the annual total fees might be about \$5,000.00.





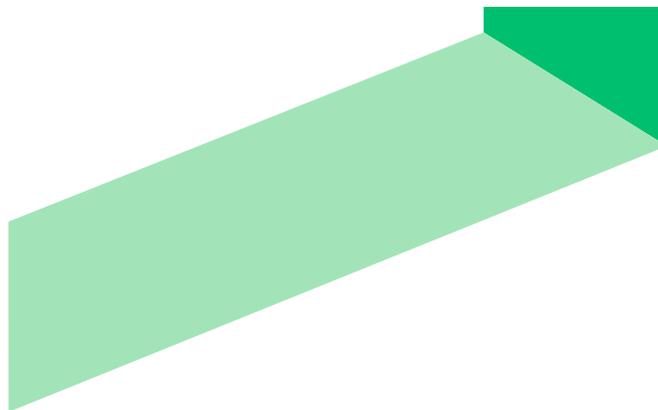
Getting Professional Help With Government Benefits Compliance

If you are considering establishing a special needs trust for yourself or a loved one, chances are, you're starting off at the helm alone. You're a highly-capable decision maker and could certainly make phone calls, read articles, and gather the research necessary to:

- Determine whether a special needs trust is an effective tool,
- Find a trustee, and
- Complete the process to establish the trust.

However, different obstacles and complexities could arise to slow or halt your progress. Why do it alone, when an experienced professional can navigate the waters with you? A neutral settlement planner can not only connect with your family and provide reassurance and support, but he or she can also provide the advice you need to help you through the upcoming decisions.

Building a comprehensive plan requires experience of many levels. Our firm has consulted on hundreds of special needs trusts of all kinds. We would be glad to assist you and answer any questions you have.



About

John Bair, CEO of Milestone



Since starting in the settlement management industry in 1999, John Bair has guided thousands of plaintiffs and their families through the transition from litigation to the eventual steps towards their future. His benevolent nature finds John involved in monumental cases, such as representing families of victims who were lost in the crash of Flight 3407. John was responsive to the tragedy of 9/11 and offered pro bono services to the families of the victims.

A passion for consumer protection resulted in John's involvement with the drafting and creation of federal and state legislation. He frequently advises attorneys on the complexities of closing a settlement, and is licensed in all 50 states.

John has earned multiple accreditations and achievements that speak of his commitment to providing plaintiffs and their families with the best representation. John is guided by his vision that every client is provided the Milestone safeguard for their legal, financial, and emotional well-being.

Milestone Consulting

Milestone Consulting, LLC is a settlement planning and management company. Our approach is comprehensive, but our focus is simple - your future. We have guided thousands of clients through the settlement process. By taking the time to understand the complexities of each case, assessing the best outcome, and finding the path that enables each client to manage their many needs, we secure your future.

The Seventh Amendment is the pillar of our justice system. Our forefathers enforced the right of the common man to level the playing field against the largest of corporations. This belief system is deeply ingrained in the fabric of our firm, and the preservation of this right is something to which we are wholly committed.



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