

Special Needs Trust

To preserve the public assistance benefits of a person with a disability, such as a child with a developmental disability, etc., many people use a special needs trust.

Medicaid, which pays medical expenses for the poor, has limits on the amount of assets that a recipient can own or can earn during each year that welfare benefits are paid.



To qualify for the program prior to spending down one's estate, some individuals attempt to give their assets to relatives or invest them into an exempt form, such as a personal residence in which the spouse resides. Single persons sometimes transfer their residence to their children and retain the right to live in the house for the remainder of their lifetime.

The law denies persons eligibility for Medicaid benefits if assets were transferred less than 60 months before applying for benefits. This is a complicated, changing area of the law.

Trusts for Children with Disabilities

A parent of a child with a disability should review each asset to see whether or not it will pass to that child at time of the parent's death. For example, life insurance, annuities, IRAs, pension benefits, joint bank accounts, etc., often pass to persons other than those named in one's will or trust. If such assets pass to a disabled child, however, he or she may lose current government benefits. One must also decide whether or not to disinherit a child with a disability or use a special-needs type of trust.

Special needs trusts are generally established by the parents or other relatives of the disabled child. The trustee should have absolute discretion over how to expend the trust funds for the benefit of the disabled child:

- **Government benefits:** Government benefits should be used to meet basic needs such as food, clothing, and shelter.
- **Special needs trust:** The funds from the trust should be used for supplementary needs such as utilities, medical care, special equipment, education, job training or entertainment.

Seek Professional Guidance

Since the laws in this area are very complex and vary from state to state, experienced, knowledgeable legal counsel should be retained to draft the appropriate documents.