



**~ Trust Chat ~  
Special Needs Trust  
May 12, 2009**



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## TYPES OF SPECIAL / SUPPLEMENTAL NEEDS TRUSTS

- Special Needs Trust - §1396p(d)(4)(A):
  - Established by a parent, grandparent, guardian or the court for a person under the age of 65 who is disabled.
  - Self Settled Trust: The beneficiary's assets are used to fund the trust.
  - Payback Trust: Upon the termination of the trust, any remaining assets are distributed to the State to reimburse it for expenses paid on behalf of the beneficiary.
  - Iowa Code refers to these as "Medical Assistance Special Needs Trusts."
  
- Special Needs Trust - §1396p(d)(4)(B):
  - Self Settled Trust: The beneficiary's income is used to fund the trust.
  - Payback Trust: Upon the termination of the trust, any remaining assets are distributed to the State to reimburse it for expenses paid on behalf of the beneficiary.
  - Iowa Code refers to these as "Medical Assistance Income Trusts."
  
- Special Needs Trust - §1396p(d)(4)(C):
  - Pooled Trust – generally small amounts.
  - Managed by non-profit.
  
- Supplemental Needs Trust:
  - Third Party Trust: Funded with assets that are not the beneficiaries.
  - Discretionary Trust
  - Not a Payback Trust: Upon the termination of the trust, the assets are distributed according to the settlor's directions.
  - Iowa refers to these trusts as "Supplemental Needs Trusts."
  
- Why establish a special / supplemental needs trust?
  - Enhance the beneficiary's quality of life without disqualifying the beneficiary from public assistance.
    - No need to disinherit
    - No need to give up public benefits
    - No need to survive on public benefits alone

## DISTRIBUTIONS FROM A SPECIAL NEEDS TRUST

- May be used for the purchase of the following:
  - Recreation, vacations, trips, entertainment, and hobbies
  - Transportation
  - Special education
  - Telephone and television services
  - Hair and nail care
  - Supplemental nursing care (to the extent not provided for by Medicaid)
  - Mobility aids such as wheelchairs and the like (to the extent not provided for by Medicaid)
  - Eyeglasses (to the extent not provided for by Medicaid)
  - Dental care (to the extent not provided for by Medicaid)
  - Insurance premiums
  - Computers/electronic equipment
  - Athletic training or competitions
  - Personal care attendants
  - Non-edible household supplies, such as Drano, laundry soap and paper products
  - Professional fees (legal, tax preparation, etc.)
  - Payment for personal services such as lawn mowing, house cleaning, grocery shopping and babysitting
  - Appliances
  
- May NOT be used for the purchase of the following:
  - Food, mortgage payments, real property taxes, rent, heating fuel, gas, electricity, garbage removal, water service, or any other similar expense that provide for the most basic needs of the beneficiary.
  
- Most Special Needs Trusts prohibit the trustee from making any distributions that would jeopardize a beneficiary's access to any public assistance program.

## SELECTING A TRUSTEE

- Sibling, Parent or Other Relative
  - Advantages
    - May be a strong bond between trustee and beneficiary
    - May be willing to serve without compensation
  - Disadvantages
    - Family tension: trustee may actually resent the beneficiary
    - Family members consider the trust to be “theirs” and not the beneficiary’s
    - Conflict of Interest if the trust will eventually pass to other family members upon death of beneficiary
    - Most have little or no
      - Investment experience or knowledge
      - Knowledge of public assistance programs; or
      - Experience with trust administration (especially Special Needs Trusts)
  
- Financial Institution
  - Advantages
    - Skilled in financial management
    - Have knowledge of public benefit laws
    - Experienced in trust administration and know for what purposes a Special Needs Trusts may be used
    - Well versed in complexities of trust income tax law
    - Objective third party
  - Disadvantages
    - Not as familiar with the family (may not know specific goal of the settlor if goals are not set out in the document)
      - A letter of intent to the trustee may negate this issue
    - Charge a fee
      - Typically charge a percentage of value of the trust
  
- Co-Trustees
  - This may give comfort to the settlor
  - Able to leverage sibling’s knowledge of the family and the bank’s investment and trust administration expertise
  - Provides check on the decisions that would otherwise be made by sibling
  
- Trust Protector
  - Given authority to review actions of trustee
  - May remove and replace trustee if necessary

## **PUBLIC ASSISTANCE PROGRAMS (NON-MEANS TESTED)**

- Disability, Retirement and Survivor's Benefits (SSDI)
  - Direct monthly cash benefit
  - Eligibility depends on disability/retirement and contributions to SSA
  - Not means-tested
  
- Medicare
  - Benefits
    - Part A – Hospitals
    - Part B – Physician and out-patient services
    - Part D – Prescription medications
  - Must pay premiums, deductibles and co-pays
  - Not means-tested

## **PUBLIC ASSISTANCE PROGRAMS**

- Supplemental Security Income (SSI)
  - Direct monthly cash payments
  - Eligibility
    - Disabled
    - Means-tested
      - Assets and resources
      - Income
  
- Medicaid
  - If person qualifies for SSI – automatically qualify for Medicaid
  - Federally funded – state administered
  - Benefits
    - Physicians, hospitals, prescriptions
    - In-home care
    - Long-term care
  
- Others: HUD rent subsidies, vocational programs, food stamps, educational benefits, etc.

These materials are made available for informational purposes only and should not be construed as legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.