

SPECIAL NEEDS IRREVOCABLE TRUST

(TRUST BENEFICIARY IS DISABLED CHILD)

(FUNDING: CASH OR OTHER PROPERTY)

FIXED OR FLEXIBLE PREMIUM LIFE INSURANCE

HIGHLIGHTS OF THE PLAN

OVERVIEW

A Special Needs Trust is an irrevocable trust established by the parents or caregivers of a disabled child or individual. These trusts are designed to provide comforts and luxuries to the disabled child in such a way that they would not cause the child to lose or forego any governmental or private assistance to which the child would otherwise be eligible.

Most states have statutes that permit the creation of a trust for the benefit of mentally or physically handicapped individuals to supplement assistance available through governmental programs, such as Medicaid and Social Security Income (SSI), without disqualifying the disabled person for the governmental assistance. Since these statutes vary significantly from state to state, it is essential that local law be consulted before such a trust is created.

ALTERNATIVE SOLUTIONS TO THE SPECIAL NEEDS PROBLEM

There are several ways to solve the problems associated with a special needs child.

1. Depending upon the nature of the child's disability, the parents could leave the property outright to the child. The obvious drawback to this strategy is that the child may not have the physical or mental capacity to manage his/her resources or to properly apply them to his/her needs. If the court must appoint a guardian to care for the child, the process that the guardian must follow in meeting the child's needs under the guardianship is complex and expensive.
2. The parents could leave assets with a sibling or other relative of the disabled child. This strategy places the income tax and management burden on individuals who may or may not want the responsibility or be in a position to accept it.
3. The parents could leave the assets in a discretionary trust that gives the trustee, in the trustee's absolute discretion, the power to distribute trust income or principal for the benefit of the child without limiting that assistance to the child's supplemental needs. In some states, the trustee's discretionary powers would not disqualify the child from receiving governmental assistance. But some states may interpret the trustee's unlimited discretionary power to provide benefits to the child as an available resource that would disqualify the child from receiving certain governmental assistance.

4. The parents could leave the assets in a special needs trust specifically designed to provide for the child's supplemental needs. Such a trust specifically states that its purpose is to provide for the child's special needs that are not covered by governmental and private assistance programs and that no benefit is provided under the trust that would disqualify the child from receiving governmental or private assistance.

ADVANTAGES OF A SPECIAL NEEDS TRUST

1. Parents can provide for the care of a disabled or handicapped child without diminishing or eliminating benefits and services available through Medicaid, SSI, and other governmental and private assistance programs.
2. Trust resources can be managed by professionals.
3. Quality of life can be maximized. Other family members are relieved of the responsibility to provide for the financial care of the disabled or handicapped child.

DISADVANTAGES OF A SPECIAL NEEDS TRUST

1. The trust must be carefully drafted so as to keep from eliminating or diminishing governmental benefits or services that would otherwise be available.
2. Crummey withdrawal powers should probably not be used with such trusts because the beneficiary's withdrawal right could be considered a resource available to the child that would disqualify the child from receiving certain governmental benefits. Hence, contributions to the trust would not qualify for the gift tax annual exclusion.

Note: A special needs trust funded with a private reverse split dollar plan could be a useful strategy as it is possible to structure such plans where no gift to the trust is required. Such a plan should only be implemented with the close supervision of legal and tax counsel.