

SPECIAL NEEDS PLANNING

Abridged

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1. What is **Special Needs Planning**? It is a part of overall **estate planning**; the special provisions for the management and disbursement of a disabled family member's portion of your estate, in a manner that does not compromise public benefits. Goal: to keep your family member from having an estate of his/her own, while still providing for him or her; to maintain eligibility for benefits and to provide for proper management.
2. What are Public Benefits?
 - a. Need – based Benefits:
 - Supplemental Security Income (SSI)
 - Medicaid
 - Miscellaneous
 - need determined on person's own financial standing after age 17.
 - b. "Entitlements"; Wage-Earner derived benefits:
 - Social Security
 - Social Security Disability Income
 - Medicare
3. What Would Happen if You Died Without Special Needs Planning?
 - a. if no plan at all, the laws of descent and distribution dictate.
 - b. If "normal" or "typical" ("non-special") planning, special child receives a share of your estate.

Under either scenario, your special needs child would likely become disqualified from benefits, could mismanage the inheritance, and could need a guardianship of the estate.

4. Principles of Underlying State and Federal Benefits Law
 - a. SSI, Medicaid and certain other benefits are based on financial need; there are very low asset and income thresholds to qualify.
 - b. At age 18 and after, the person's parent's financial situation is not considered in the qualification review.

- c. If a person needing public benefits or publicly provided services has sufficient assets or income, he or she should pay for the services as he or she is able.
 - d. If a person is a beneficiary of a **support** trust (e.g. “health, support and maintenance”), the person may be deemed to have sufficient means for self support, and the trust could be assessed for the cost of care, or the person may not qualify for services.
 - e. Assets in a properly created **Special Needs Trust** do not disqualify a person and are not considered to be the person’s resources.
5. Why is special planning for my special child necessary or desirable?
- a. **To avoid:**
 - leaving funds directly to an incapacitated person; resulting danger of mismanagement, non-management, misspending.
 - Jeopardizing public benefits (e.g. SSI, Medicaid).
 - Funds or assets being seized or attached for basic care costs.
 - Estate guardianship.
 - b. **To create:**
 - A fund available to supplement basic care.
 - A vehicle for carrying on parents’ financial function when they are gone; caring, competent management and disbursement of funds.
6. The Primary Tool of Special Needs Planning: The **Special Needs Trust** (or “Supplemental Care” Trust)
- a. What distinguishes the SNT from other Trusts? Expressly not for support or other services or care which may be provided by government entities or paid for with government funds (with possible limited exceptions).
 - b. Examples of SNT uses: payment for travel, companions for travel, dental care, special therapies, entertainment, entertainment equipment (VCRs, DVD players, TVs), telephone service, cable

service, educational, social, recreational services, services and care not provided by public agencies or with public funds.

c. How SNT can be created:

- Testamentary (through your Will).
- Inter Vivos (now).
- Comparing the two alternatives; pros and cons.
- a hybrid approach: a nominally funded Inter Vivos trust.

d. The Parties:

- Grantor – you.
- Primary Beneficiary – your special child; contingent beneficiaries – you decide.
- Trustee(s) – you choose; more in h., below.

e. Pooled Trusts (an alternative to creating your own trust).

- The Arc of Texas Master Pooled Trust.
- for information: (800) 252-9729; thearcoftexas.com.

f. What the Trust Owns, How it Gets its Assets (“Funding” the Trust):

- now, with money or property (pros and cons).
- through your Will (part or all of your estate upon your death).
- with life insurance, etc. payable upon your death.

g. Why Not Just Give or Leave Money Directly to a Trusted Person for the Special Person’s Benefit? Risks:

- bankruptcy.
- divorce.
- accident liability.

- business failure; creditor problems.
- death of the person you were counting on.
- h. SNT Trustee Alternatives
 - an individual.
 - two or more individuals (i.e. Co-Trustees); consider limited independent authority, such as up to \$1,000.00.
 - professional trustee (trust company or bank trust department).
Discussion of fees, rates and minimum fees.
 - combinations of the above.
 - pros and cons of above alternatives.
- i. Trust Protectors; Trust Committee
 - can oversee, fire, appoint successor Trustees.
- j. How Much to Fund the SNT?
 - the **variables**: the extent of the person's disability, type(s) of available benefits, the person's ability to earn income, other children's or grandchildren's needs.
 - the **unknowns**: life expectancies, the future of public benefits, the amount available (size of your estate) at your death.
 - a percentage or fraction of your estate.
 - a specified sum (adjust for inflation?).
 - calculating what is likely to be needed or used annually.
- k. What happens to Trust Balance when the Beneficiary Dies?
 - remainder beneficiaries.
 - possible conflict of interest with family member as Trustee.

1. What does the typical SNT document say?
 - identifies Beneficiary.
 - states its overall intent.
 - designates Trustee(s) and successor Trustee(s).
 - says not for care or benefits which can be obtained from or paid by a public entity.
 - says it is to be used to pay for supplemental care (special needs); gives examples; gives Trustee discretion.
 - identifies contingent beneficiaries.
 - provides for limited trust amendments.
 - contains disincentives to attack.
 - possible *trust committee* or *trust protector(s)*.
 - you can easily tailor the trust language to the unique needs of your child and the rest of your family.

7. Know the difference between a first party Special Needs Trust and a third party Special Needs Trust. The distinction is very important, legally and financially.
 - First Party Special Needs Trust is funded with the beneficiary's own assets (e.g. personal injury award, unanticipated inheritance, etc.)
 - **Third Party Special Needs Trust** is funded with anyone else's assets (e.g. parents, grandparents). **Today's presentation has been about Third Party Special Needs Trusts.**

8. Where to Go to Begin Special Needs Planning: an attorney who specializes in Special Needs Planning.