

SPECIAL NEEDS TRUST

Self-Settled and Pooled. Federal law permits a disabled person to retain his or her own resources in one of two types of special needs trusts without those resources disqualifying him or her from SSI or Medicaid benefits. One type of special needs trust is a trust created for the sole benefit of a disabled individual under the age of 65 by the disabled individual's parent, grandparent, guardian, conservator or by the court. The other type of special needs trust is a pooled trust created and managed by a nonprofit organization. A separate subaccount is maintained for each beneficiary of the pooled trust, but the assets are combined for investment and management purposes. The subaccount is created for the sole benefit of an individual with a disability by anyone, including the disabled individual. In general, the state Medicaid agency will receive the remaining trust assets after the death of the disabled individual up to the amount paid under the state Medicaid program for services rendered to the disabled individual (unless the assets are in a pooled trust that continues in trust).

Third Party. A third party special needs trust is created and funded with the assets of a person other than the disabled individual. If the disabled individual does not have the legal authority to revoke the trust or direct the assets held in the trust for his or her own benefit, then the trust is not included as a resources for SSI eligibility purposes. This type of trust allows the creator of the trust the ability to preserve the disabled individual's public benefits and to supplement those benefits either through lifetime gifts or at death through an inheritance. The creator of the trust may also direct how the property is distributed after the death of the disabled individual.

FINDING A SPECIAL NEEDS ATTORNEY

Special needs planning is a highly specialized and complex area of law because each state has different laws that affect disabled individuals. Accordingly, you should seek guidance from an attorney who regularly handles matters affecting disabled individuals in the state in which the disabled individual resides. Often times, elder law attorneys will have this type of expertise.

For more information about finding a special needs attorney, see:

- [Questions and Answers When Looking for A Special Needs Law Attorney](#)
- [Special Needs Alliance – Find an Attorney by State](#)
- [Special Needs Answers – Find a Special Needs Planner](#)

PREPARING TO SPEAK WITH AN ATTORNEY

When you contact an attorney, the attorney will generally ask you a few basic questions to determine whether his or her services are appropriate for your situation. Common questions are listed below, so it may be helpful to prepare responses to these questions prior to contacting the attorney.

1. Have you signed any estate planning documents (i.e., will, revocable trust, marital agreement, incapacity documents)? If yes, it is helpful to have a copy ready to send to the attorney for his or her review.

2. Who are your heirs? It is helpful to list the legal names and ages of your spouse/partner, children, immediate family members and/or other loved one that you would like to include in your estate plan. If any heir is not a U.S. citizen, it is important to let the attorney know.
3. Do any of your heirs have special circumstances or needs that should be addressed in your plan? For example, are any of your heirs currently receiving or eligible for public benefits or do you expect any of your heirs to receive public benefits or become eligible for public benefits in the future? If yes, the attorney may request written documentation of the type of benefits received.
4. What is your net worth? For tax reasons, it is important to have a general understanding of your assets and liabilities. The most common assets include cash accounts, marketable securities, retirement accounts, the death benefit of life insurance plans, residences and vehicles, and the most common liabilities include mortgages, other loans and credit card debt. Any special assets, such as business interests or personal property of significant value, should be noted.
5. How are your assets titled? It is important to know how assets are titled because title may override provisions in an estate plan. For example, property titled between two parties as joint tenants will automatically transfer to the surviving party upon the death of the first owner to die.
6. Have you signed any beneficiary designations in connection with your assets? Beneficiary designations may also override provisions in an estate plan, so it is important to make sure that your beneficiary designations are in accordance with your estate plan.
7. Are you, your spouse and/or your partner currently the beneficiary of an Estate or a Trust?
8. Do you, your spouse and/or your partner expect to receive a significant gift or inheritance in the future?
9. Have you, your spouse and/or your partner ever filed a Federal gift tax return?
10. Who would you like to designate as a fiduciary under your estate plan? See Fiduciary Roles section, below.

FIDUCIARY ROLES

Personal Representative (also referred to as Executor): In your Will, you must designate a Personal Representative and successor Personal Representative(s) in the event your named Personal Representative is unable to so act. You should also be aware that you may designate two or more individuals to act as co-Personal Representatives. A Personal Representative

generally is responsible for collecting the assets of the Estate, filing the Inventory and any Federal or State Estate Tax Return, commencing and completing the probate of the Will (if needed), paying debts, administration expenses and taxes from the assets of the Estate, and then distributing the assets to the beneficiaries.

Guardians: If you or your spouse/partner have children, you must designate a Guardian and successor Guardians in your Will in the event you or your spouse/partner is unable to care for your children. A Guardian is charged with the physical custody of minor children (guardian of the person) as well as the management and administration of such minors' property (guardian of the Estate).

Trustees: Trustees are appointed to act under a Trust Agreement. Trustees are granted discretion to make or withhold distributions, and also have certain bookkeeping, investment and tax preparation duties which, to varying degrees, may be delegated to professionals.

Attorney-in-Fact: Under a financial Durable Power of Attorney, you may appoint an individual to conduct financial affairs on your behalf if you are unable to do so, referred to as an attorney-in-fact. You may name one individual or you may name co-attorneys-in-fact to act on your behalf.

Health Care Agent: Under a Power of Attorney for Health Care, you may appoint an individual to make health care decisions for you if you are unable to do so, generally referred to as your health care agent. It is not recommended to name co-health care agents in case those agents were to disagree about health care decisions that may need to be made.