

# Benefits of A Special Needs Trust

<u>Problem</u>	<u>Solution</u>
Creditor or IRS problems	Keep assets from control of beneficiary
Cannot handle money	Prevent beneficiary from spending principal on frivolous things or making bad investments
Bad marriage	Keep assets of the trust from spouse
Chemical Dependency	Prevents beneficiary from spending your money to support chemical dependency
Adult Parent	Allows trust to pay income and principal if necessary to care for an elderly parent without having the funds become part of the parent's estate.
Disabled (physically or mentally)	Can protect person's eligibility for government benefits.

**Spendthrift or Creditor Problems.** If a beneficiary cannot handle money or if you desire to protect a child's share of his or her trust inheritance from creditors or from the IRS, you can set up a Special Needs Trust for that child wherein he or she receives the income only and cannot have access to the principal of the trust. The trust can stay in existence until such time as the financial problems have been taken care of with the trustee having the discretion as to when to distribute the principal to the child free from trust.



**Bad Marriage.** A child may have a spouse you do not like or you fear they are headed for a divorce. The Special Needs Trust can protect said child's share of your inheritance from said spouse while at the same time providing income to said child.

**Substance Abuse.** We can provide a special needs trust if a child has a drug or alcohol problem the use of which might adversely affect the beneficiary's ability to manage property, with discretion in the trustee to distribute the trust assets at such time as the beneficiary is free from such problem. Such trust can provide for periodic drug testing and/or funds for counseling or rehabilitation facilities. Such a trust can pay the rent so a beneficiary has a roof over his or her head.



You can add such other requests or conditions in the Special Needs Trust that you may wish to provide. For example, if you have a child that is a member of a cult or is under the influence of one or more individuals or organizations who or which may successfully endeavor to induce the beneficiary to part with such property, we can set up a trust to protect the trust assets while still providing the beneficiary with income. Unless prohibited by law we can accommodate any reasonable request.

**INCENTIVE PROVISIONS** (*Not available if beneficiary is receiving government benefits*) may be included in a Special Needs Trust to encourage a beneficiary to overcome an alcohol or drug abuse problem, to learn to be more responsible in handling his or her financial affairs, or any other incentive which you feel will help the beneficiary become more responsible.



**Adult Parent.** If you wish to be sure there are funds to care for an elderly parent but do not want the parent to have complete control of the assets or if you desire to keep the assets out of the parent's estate, a lifetime trust will pay such amounts from income and/or principal of the trust assets as are necessary for the parent's needs. We can also provide for the trust to maintain a residence for the parent and direct the trustee to check on the parent periodically.

**Disabilities either Physical or Mental.** If a potential beneficiary is disabled, again consider putting property in trust for the beneficiary. If a beneficiary is eligible for government assistance we will prepare a special needs trust that will limit the trustee's ability to give money so as to minimize the risk of losing said assistance. This is called a **Supplemental Needs Trust** and is more restrictive in how the trustee may use assets to or for the benefit of the beneficiary in order to protect the beneficiary's eligibility for government benefits.



Such trust may allow the trustee to maintain a residence for the beneficiary using trust funds, either by buying a residence outright or paying rent for the benefit of the beneficiary. You may also name a person to act as guardian of an incapacitated beneficiary. The following is a detailed memorandum to the trustee giving detailed instructions providing a list of acceptable expenditures.

**Presented By:**

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**MEMORANDUM TO TRUSTEE REGARDING  
SUPPLEMENTAL NEEDS TRUST**

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TO: Trustee of Supplemental Needs trust

FROM: JAMES G. KNOLLMILLER

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**NOTE: If you have any questions as to what you may or may not do as the trustee under this trust, ALWAYS CONSULT with an attorney who works in the Elder Law field first before you take any initial action on the trust, as the laws governing such trusts are constantly changing and what was valid today may not be so in the future. Therefore, DO NOT RELY on any information provided herein but check to see what the current law provides.**

You have been named as the successor trustee of the Supplemental Needs Trust established by JOHN DOE and JANE DOE for the benefit of SUSAN DOE.

The grantors have created a sophisticated estate plan with the intent of maintaining any Medicaid benefits or SSI received by the above named beneficiary while preserving and maintaining adequate funds from which special items can be made available to the beneficiary. This plan is extremely important to the beneficiary because it avoids the disruption and anxiety that can be caused by the discontinuance of benefits and it promotes stability. In addition, it is the express intent of the grantors that said beneficiary be qualified for additional public benefits as may be available from time to time in the future.

The two basic benefits to be maintained may be Supplemental Security Income (SSI) and Medicaid. To maintain benefits, the beneficiary's assets must be kept below a certain level. Certain items are considered exempt resources, such as a home or a car, if the home is the recipient's principal residence and the car is used for medical transportation, generally it will be exempt. But you need to be careful with regard to providing what is called "in-kind support and maintenance" by the Social Security Administration (SSA). SSA considers groceries, mortgage or rent payments and essential utilities as "in-kind" payments and the beneficiary's SSI may be reduced. Generally speaking, the trust may purchase a home (outright no mortgage), but the title needs to be in the name of the trust.

As trustee, you will be authorized to provide certain permissible items to the beneficiary in the way that a parent might assist his or her child if the parent were still available and able to do so. The key here is to provide only those permissible items and only on the terms permitted by the source of public-benefit funds. There are basic rules that must be followed and, although this memorandum will not comprehensively discuss the rules, an overview is provided. ***Before making any expenditures on behalf of the beneficiary, you should contact the governmental agency involved and an Attorney who specializes in Elder Law to make sure said expenditure is still permissible.***

All income is countable. Tangible non-cash items that you give to the beneficiary that could be converted into cash and used to provide clothing or shelter are counted. Furthermore, any cash you give the beneficiary could reduce or eliminate the benefits to which the beneficiary is entitled for that month. Under SSI a gift can be counted as income, so the SSI cash benefit would be reduced dollar

for dollar by the amount of the gift. For that reason, it may be better to give one larger gift that affects benefits in only one month rather than several smaller gifts, which, if spread over several months, could reduce benefits in several months.

***There is one general no-no which is that cash should never be given directly to the beneficiary.*** Money can be spent for the benefit of the beneficiary, but the beneficiary should never receive money directly. For example, if the beneficiary needs a new TV, you cannot give the beneficiary money, or a debit card or credit card so the beneficiary can go out and buy it, but you can find out what TV the beneficiary wants and pay for it yourself with assets from the Supplemental Needs Trust.

It is critical for a beneficiary to keep all assets in all accounts at a total that is under the asset limit. Pay particular attention to accounts held by a facility trust fund or to jointly owned or forgotten accounts. These accounts, if they exceed permissible limits, can cause a beneficiary to receive benefits for which he or she is not eligible. If an SSI recipient receives (even innocently) benefits for which he or she is not entitled, the beneficiary is considered to have received an overpayment. Overpayments usually have to be repaid to SSI.

It is also critical that the trustee accurately, honestly, and promptly report income and assets according to program rules. You will be able to obtain copies of the specified program-reporting rules at the site of each program or by calling the agency and requesting copies of the reporting obligations. You must keep clear and accurate records of what you have spent on behalf of the beneficiary and any funds spent by the Trust. It is also important to determine if any agency requires a copy of this trust. If they do, please see that a copy is provided to that agency.

If your beneficiary ever receives a notice terminating his or her benefits, you should **SEEK HELP IMMEDIATELY**; you may have only ten days from the date of the notice to appeal. **DO NOT DELAY**. Also, be sure you have organized the affairs of the beneficiary so that you promptly see all notices from the funding agency. If you use direct deposit, be sure you are the addressee for correspondence.

NORMALLY, recipients of any public benefits will be required to fill out forms and/or visit the agency at least once a year. **Do not ignore requests for information.**

The rules for Medicaid, SSI, and any other public benefits: Veterans Compensation, Veterans Pension, Aid to Families With Dependent Children, Food Stamps, Social Security; and Medicare, are all different. Do not assume that eligibility for one program is the same as eligibility for another program.

Finally, it will be necessary for the successor trustee to complete and file Internal Revenue Form SS-4 with the IRS when the trust becomes irrevocable and obtain a tax number. Remember such trusts must file income tax returns and may be liable for taxes. Generally, trust tax returns are filed on a federal form 1041 and similar state reporting forms.

You must work closely with a competent advisor, or consult with responsible agencies, to clarify exactly what items may be given to the beneficiary without jeopardizing the beneficiary's benefits. The attorney who prepared the trust documents, JAMES G. KNOLLMILLER can advise you and/or help you obtain the services of an attorney who specializes in planning under Medicare and state law that governs these situations and can assist in providing the most recent Internal Revenue Service rules and other governmental agencies regarding distributing funds to protect any Medicaid or SSI benefits received by the beneficiary. **DO NOT DELAY**. If in doubt always err on the side of seeking competent legal assistance from an attorney who is knowledgeable in this area.

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**CAUTION: PLEASE BE ADVISED**

**This memorandum has been prepared to provide general educational information on the stated subject matter. It should not be interpreted as providing specific legal advice or response to any individual questions or issues you may have. Application of the ideas and concepts presented should only be undertaken after you consult with your legal counsel and obtain their advice as it pertains to your individual situation.**

**PLEASE NOTE:** Based on IRS Circular 230, the Internal Revenue Service may consider this memorandum as a "covered opinion." Therefore, we make the following disclaimer regarding its usage. Any tax advice we provide in this communication is not intended or written to be used, and cannot be used by you or any other person or entity for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or any applicable state or local law. It is provided for information and guidance only. You need to consult with your tax advisor regarding any tax issues that arise in the funding and operation of your trust.

**IRS Circular 230 Disclosure**

**Pursuant to recently enacted U.S. Treasury Department Regulations and to ensure compliance with the requirements imposed upon us by the United States Internal Revenue Service, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.**

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