



O'DIAM & ESTESS
LAW GROUP, INC.
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Special Needs Trust Planning



Important Notice

The information in this presentation is only intended for general educational purposes. It is not intended as specific legal advice regarding any particular situation. Always consult a qualified estate attorney for professional advice before undertaking any estate planning or administration matters.

IRS Circular 230 Notice

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Important Planning Considerations



It's not ALL about Money & Taxes!

The OLD Special Needs Planning Rules

Anything a special needs loved one receives from an estate will disqualify him or her for the benefits he needs (Medicaid, SSI).

The only way to protect the benefits a loved one needs is to disinherit him from the estate completely.

The NEW Special Needs Planning Rules

We can **PROVIDE**
for a special
needs loved one
and **PROTECT** the
benefits they
need!



Special Needs Planning: *Overview*



	1st Party	3rd Party
Whose Money?	Individual with Disabilities under age 60 (<i>unless</i> using Pooled Trust*)	Anyone <u>except</u> the Individual with Disabilities
Who Sets Up?	<ul style="list-style-type: none">• Individual with Disabilities• Parents or Grandparents• Guardian• Court	Anyone <u>except</u> the Individual with Disabilities
Who Inherits After Special Needs Beneficiary Dies?	Medicaid Payback (then other beneficiaries, if excess)	Anyone! No Medicaid payback required.

Third Party Special Needs Trusts

	Standalone Trust	Rev. Living Trust Share
When Funded?	Right away (and/or later too)	After Grantor(s) pass away
Who Can Contribute?	Anyone <i>except</i> the Individual with Disabilities (<i>can</i> have multiple donors)	Only the Grantor(s)
Things to Note:	<ul style="list-style-type: none">• Generally irrevocable	<ul style="list-style-type: none">• SNT Share doesn't exist until later (can't receive / protect anything now)

Pooled Special Needs Trusts

POOLED TRUST

Collective trust fund that holds separate accounts for the benefit of disabled beneficiaries, administered by a non-profit organization.



Special Needs Trusts: *Design Decisions*



OR



Individual Trustee

Corporate Trustee

Case Study: *Meet the Gellars*



- Chandler and Monica have a 10 year old son, Joey.
- Joey was medically injured as a baby, and he was awarded a \$500,000 personal injury settlement.
- The Gellars don't have much family, except for Joey's eccentric Aunt Phoebe. Phoebe and Joey are very close, but Phoebe is not financially responsible.
- **QUESTIONS:**
 - What type of Trust?
 - Who to serve as Trustee? Successor Trustee?

Special Needs Trust *Administration*

TRUSTEE RESPONSIBILITIES

- Manage Trust assets (“prudent investor”)
- Keep Trust records
- Account to Beneficiary / surrogates
- Determine whether a distribution is allowable under SSI & Medicaid rules (“POMS”)
- Coordinate with Beneficiary / family to ascertain needs, quality of life enhancement opportunities



Special Needs Trust *Administration*



INVESTMENT MANAGEMENT CONSIDERATIONS

- Clearly Documented Investment Policy
- Divesting from Low Basis Positions
- Accommodating Stakeholder Requests
- Discretionary Income in a Low Rate Market
- Financial Planning Software

Special Needs Trust *Administration*



RELATIONSHIP MANAGEMENT CONSIDERATIONS

- Set Realistic Expectations Early and Often
- Revisit Synopsis of Trust Provisions
- Goals Based Portfolio Reviews
- Collaboration with Powerholders
- Ongoing Partnership with Drafting Attorney

Coordination with *ABLE Account*

WWW.STABLEACCOUNT.COM



- Set up online
- Use for any “*qualified disability expense*” – even necessities!
- Exempt for Medicaid & SSI
- Can Contribute \$15,000/yr (up to \$100,000 exempt for SSI)
- Subject to state payback at death

Case Study: *Meet the Simpsons*



- Homer and Marge have a 45 year old daughter, Lisa, who has had developmental disabilities since birth.
- Before they died, Homer and Marge set up a Third Party Standalone SNT for Lisa. The SNT now holds \$1,500,000 for Lisa.
- ABC Bank is the Trustee, and Lisa's brother Bart is the Co-Trustee.
- Lisa lives in an independent apartment and participates in a work program through the County Board of Developmental Disabilities.
- Lisa has a STABLE Account.

Questions?



Let's Talk About It!



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**“A goal without
a plan is just a wish.”**

Antoine De Saint-Exupery

