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WHAT IS A SPECIAL NEEDS TRUST?

By: Sabrina Winters, Charlotte special needs attorney

As a Charlotte special needs attorney, I'm often asked, "What exactly is a Special Needs Trust?"

For starters, a special needs trust is legal entity created to hold assets of a person with a mental or physical disability. The trust names a trustee whose job is to manage the assets and distribute them according to the provisions of the trust. There are specific limitations on the way assets can be distributed so that they do not disqualify the beneficiary from eligibility for asset based government programs.

Types of special needs trusts

1. Self Settled Special Needs Trusts

In a self-settled special needs trust the assets in the trust belong to the beneficiary. For example, if the person becomes disabled due to negligence of a doctor or car accident, it is possible that the beneficiary received a settlement as a result of litigation. In this case, a self settled special needs trust would be created for the beneficiary to receive and hold the settlement funds in order to preserve government benefits.

2. Third Party Special Needs Trusts

A third party special needs trust is created by a third party with assets that belong to the third party. For example, the parents of a child born with Down syndrome or autism might create a special needs trust for their child as a part of their overall estate plan. In the case of a third party special needs trust, family members may make lifetime gifts to the child.

Distributions for Special Needs Trusts

In order to preserve government benefits it is important to direct the trustee not to pay for services that are provided by a government agency. If done correctly, the assets in the special needs trust will not be counted as a resource. The trust must authorize distributions only for special or supplemental needs. Some examples of this might include dental care, specialized therapy, and services of a caregiver. Improper distributions of a special needs trust can cause a loss in government services, so it is critical that the trust be set up and then managed properly.

Who Should Create a Special Needs Trust?

Not all Charlotte special needs trust attorneys have the training, expertise or knowledge to create a special needs trust. You should consult with an attorney who is experienced in creating these trusts and who knows how to properly advise trustees.