

SPECIAL NEEDS TRUSTS

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Special Needs Trusts are trusts that are set up by a third party for the benefit of a disabled or elderly beneficiary. Third party means that the person funding the trust, the grantor, can not be the same person as the beneficiary. These trusts are usually set up by a parent, grandparent, court etc for the care of the said individuals with the goal of providing funds for their benefit while sheltering the benefits they receive from the government, such as Social Security, Medicaid, etc. The reason why the grantor can not set up this trust for her own benefit is because the assets that are used by the grantor to fund the trust are owned and controlled by the grantor, and hence they are counted as income for the purpose of eligibility to receive the said benefits. So those types of trusts are called Self Settled Special Needs Trusts and they will disqualify the beneficiary from eligibility of governmental assistance.

An efficient Special Needs Trust must therefore be settled by a grantor for the benefit of another who has a disability that qualifies them for SSI and Medicaid benefits, and for those 65 and older, without disability, who nevertheless must economically rely on SSI and Medicaid benefits.

This type of trust give the person serving as trustee absolute control over when and how the trust property is spent, as long as it is spent for the sole benefit of the beneficiary, and it must expressly state that the grantor intends for the property in the trust to be used to pay for goods and services that aren't provided by SSI and Medicaid.

Your attorney can create this type of trust for you by including this language. The trust will take effect when you sign and have the document notarized. Once a federal Identification Number is obtained (file SS-4 form with the IRS- can be done online at www.irs.com) then you can use that number to open a deposit account and deposit a small initial deposit. More funds can be added later. After that you must notify the appropriate agency that provides the said benefits. They will ask to see a copy of the trust to ensure that it is a third party trust and that the property used to fund the trust is not available to the beneficiary as a countable resource.

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The Special Needs Trusts \$2,000 Resource Limitation: Countable Resources and Allowable Expenses