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December 3, 2008

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Third-Party¹ Special Needs Planning



A Special Needs Trust (SNT) allows an elderly or disabled person to be eligible for needs-based government benefits, while preserving funds to pay expenses not covered by those benefits. This planning allows an elderly or disabled person on government benefits to maintain a well-rounded and full life that includes common expenses such as education, Internet, cell phone, and car expenses among other things.

Government programs such as Social Security Income and Medicaid help disabled and elderly people get the care they need. There are many income and asset rules, however, that disqualify a person from receiving these benefits. By planning ahead, the family of an elderly or disabled person can use a SNT to give a loved one the greatest possible quality of life. For example,

Pat is 75 year-old, widowed and mother of three children. Her son, Doug, is 55 years-old, disabled, and receives SSI and Medicaid benefits. Pat's estate is valued at \$400,000. Funds left to Doug from Pat's estate will likely disrupt Doug's public benefits. Pat can, however, create a SNT. Funds can go to this trust instead of to Doug. He will then be able to continue getting his public benefits and SNT funds can supplement those benefits.

Similarly, an elderly couple can plan for funds to be put into a SNT at the first spouse's death. If the surviving spouse ever needs nursing home care then the SNT will protect one half the assets while the surviving spouse seeks Medicaid eligibility².

Essential requirements:

1. Trustee must have sole discretion to make distributions;
2. Trust must not be a general health, support, and maintenance trust³; and
3. The beneficiary should not have control over any part of the trust.

Trusts can be created in a will or during life. The later type, also called an inter vivos trust, may have specific advantages over testamentary trusts (please note the exception in FN 2), including:

1. SNT can be a repository for other family members who want to provide for individual;
2. Easier to name existing SNT as beneficiary in Retirement Plan;
3. Family can test out professional fiduciaries; and
4. SNT can keep funds away from creditors and divorcees.

Elderly couples and parents with disabled children should see an attorney about Special Needs Planning. Planning now can add greatly to a loved one's life quality of life. Low-income elderly and disabled people need not be restricted to only those benefits the government provides.

¹ Third Party Special Needs Trusts should be distinguished from a Self-Settled or Grantor created Special Needs Trust. The later type of trust has more limitations, requirements and is a more complex document.

² Medicaid rules treat an inter vivos SNT to a spouse like a gift, creating a period of ineligibility. Therefore, this option for married couples must be done through a will only. Also, Community Property Agreements transferring assets outright to surviving spouse must be revoked prior to first spouse's death.

³ Trust language need not be unnecessarily restrictive so as to force beneficiary on government benefits. For example, the need for support from the trust for moving expenses in a certain month may warrant the resulting one-third reduction in benefits.