

# Planning for Children With Special Needs

Parents or grandparents planning for the financial well-being of a child with special needs face several challenges. They must design their financial and estate plan so that it provides for their child with special needs without:

- Depriving their other children of a meaningful inheritance;
- Placing their other children in a position of responsibility that they may not be prepared or willing to assume;
- Rendering their child with special needs ineligible for government benefits like Supplemental Security Income (SSI) and Medicaid.

For families wrestling with these complex issues, a special needs trust can prove to be a viable solution.

## Comparing Options in Gifting to a Child With Special Needs

*While you have a number of choices available to you, the value of establishing a special needs trust is that it both offers assurance that your wishes will be carried out and provides that your child will remain eligible for government benefits.*

CONTEMPLATED ACTION	POSITIVES	NEGATIVES
Direct gift or bequest	<ul style="list-style-type: none"><li>• Simplicity</li><li>• No cost to implement</li></ul>	<ul style="list-style-type: none"><li>• Child may not be capable of managing assets</li><li>• Direct gift or inheritance may result in ineligibility for government benefits</li></ul>
Direct gift or bequest to child's siblings (to provide for child with special needs)	<ul style="list-style-type: none"><li>• Simplicity</li><li>• No cost to implement</li><li>• Child with special needs remains eligible for government benefits</li></ul>	<ul style="list-style-type: none"><li>• Requires siblings' commitment</li><li>• Assets may be at risk, if sibling faces litigation or divorce</li></ul>
Special Needs Trust	<ul style="list-style-type: none"><li>• Child with special needs remains eligible for government benefits</li><li>• Your wishes are implemented as intended</li><li>• Minimizes family conflict and turmoil</li><li>• Assets can be managed according to your wishes</li></ul>	<ul style="list-style-type: none"><li>• Requires services of a estate planning attorney</li><li>• Requires services of an independent trustee</li><li>• More expensive to implement</li></ul>

# First Steps

Like any trust, a special needs trust is established by a grantor for the benefit of a beneficiary—in this case, your child with special needs. As the grantor, you appoint an independent trustee to ensure that the provisions of the trust are carried out as you intended.

You can establish a special needs trust with a gift or bequest. With a gift, you remove assets from your estate and, therefore, reduce your estate tax liability. With a bequest, you will not reduce your estate tax liability, but you will earmark certain assets for the benefit of your child with special needs.

Your child should never receive a direct distribution from the trust. In fact, the trust document may specifically prevent trustees from making direct distributions to the child with special needs. Rather, assets can be distributed directly to health care, social service or education providers, thereby enabling you to pay for these services without actually giving income to your child.

## **SAFEGUARDING BENEFITS.**

Government benefits are available to help children with special needs who require assistance to meet and provide for their food, shelter, health care and other living expenses. When these children are under the age of 18, their eligibility

for benefits is based on their parents' income and assets. Once they reach the age of majority, however, their eligibility is based on their own income and assets. As a result, leaving assets or distributing income directly to beneficiaries with special needs can disqualify them from receiving government benefits that provide basic life necessities and that could enhance their lives.

With a special needs trust, your child will maintain eligibility for benefits from government agencies, both federal and state. What's more, you can supplement those benefits with resources that will enable your child to enjoy a better standard of living.

Special needs trusts also enable you to:

- Direct how assets will be managed, thereby relieving your other child(ren) or beneficiary of responsibilities that he or she might not be able to assume;
- Protect assets from creditors or litigation; and
- Create a succession plan for any assets remaining in the special needs trust after the death of your beneficiary with special needs.

Depending on the projected size of your estate, you can establish and fund a special needs trust with a gift or bequest. Or, if you wish, you can transfer any life insurance policies you own to the special needs trust, if the trust includes

benefit from your estate. Additionally, you may wish to consider having your special needs trust purchase an insurance policy on your individual life or on you and your spouse's lives jointly to provide the same benefit to your child.

The American Taxpayer Relief Act of 2012 ("ATRA of 2012"), which was signed into law by President Obama in early 2013, ends much of the uncertainty around estate taxes that has been looming over many people during the past several years. While no law lasts forever, many individuals will now feel comfortable moving forward with plans they may have previously chosen to put off.

Under ATRA of 2012, the federal estate tax applicable exclusion, which is indexed for inflation, is equal to \$5,450,000 in 2016. Since the federal gift and estate tax rates are unified, this means the gift tax exemption is the same \$5,450,000 for 2016. This is the total amount that can be given or bequeathed in 2016 without incurring a federal gift or estate tax. Whatever portion of the exemption that is not used during an individual's lifetime can be left to heirs in a will or trust. In addition to this lifetime exemption, individuals can make annual gifts to as many beneficiaries as they choose of up to \$14,000 in 2016. The annual exclusion for gifts to a non-U.S. citizen spouse is \$148,000.

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language that allows for the transfer of existing life insurance policies, and designate the special needs trust as owner and beneficiary of the policies. In that way, you remove the death benefit of the policy from your estate. Please note that if you do transfer ownership of an existing life insurance policy from your name to the special needs trust, you would need to outlive the transfer of ownership by three years to permanently remove the death

All of these changes mean it is time to update your plans. Putting aside the new law for a minute, if you haven't taken the important step of updating your will and other estate documents over the past few years, it is critical to do so now. For one thing, the higher exemption amounts mean that formula clauses in wills may lead to unintended consequences.

# How to Fund a Special Needs Trust

Like any trust, special needs trusts can be funded with stock, real estate or other assets. Most special needs trusts are funded with liquid assets such as cash and stock, because the needs of most children with special needs are usually most easily funded with cash payments, and because the costs are not exorbitant in nature. For some grantors, especially those who would like their children to have a higher standard of living, life insurance may be a preferable choice.

Unlike assets that fluctuate in value, life insurance generally offers the ability to leave your child a designated amount.

In addition, the death benefit provided by life insurance will be received income tax-free by the special needs trust.

## LIFE INSURANCE CONSIDERATIONS.

Permanent life insurance, like whole life insurance and universal life insurance, is generally a better choice than term life insurance. While term insurance is less expensive than permanent insurance—at least it is in the short run—it is subject to expiration or greatly increased premiums after a specified period of time. Permanent insurance, as its name indicates, can remain in effect for your entire life with premiums usually staying

level for the duration of the insurance contract, or possibly ceasing in later years.

**POLICIES YOU OWN.** Life insurance policies that are owned by the insured are includible in the insured's estate when he or she dies. If you, as grantor of a special needs trust, were to transfer ownership of your life insurance policy to the trust and also name the trust as the beneficiary of the insurance contract, you may receive two benefits:

1. You may reduce the size of your estate by transferring ownership of the existing policy to the trust, because you will no longer own the policy; and
2. Your child with special needs, who would be the beneficiary of the trust but not of the policy, would never actually receive the death benefit directly; therefore, your child would remain eligible for government benefits. Please note, as previously stated, when starting with an in-force life insurance policy on which you are the owner, you must outlive the transfer of ownership to the special needs trust by three years to remove the death benefit from your estate.

## Anatomy of a Special Needs Trust

*Result: You've enhanced the standard of living for the person with special needs by supplementing his or her government benefits.*



1 You consult with an estate planning attorney who has an understanding of special needs trusts.

2 You establish a special needs trust for the benefit of a person with special needs.

3 You designate a trustee capable of executing trust provisions.

4 You fund the trust with either liquid assets, such as cash or securities, or, with a life insurance policy.

# The Choice of a Trustee

Family members can serve as trustees, but only if they agree to assume this responsibility and are committed to making sure that the provisions of the trust are carried out to the fullest. Consider that planning for children with special needs is complex enough without possibly alienating other family members

to whom you hope to leave a legacy. In addition, you should think carefully about who is best qualified to serve as your trustee. A corporate trustee may be a preferable alternative because of its ability to be both independent and objective in carrying out the provisions of the special needs trust.

**THE BIG PICTURE.** Your special needs trust should be established as part of a financial plan that includes strategies that work in concert with each other to help provide all of your heirs with the inheritance you desire. In creating your plan, you will need to work with a trust and estate attorney who specializes in setting up special needs trusts. The attorney will work to establish your special needs trust in the context of a financial plan that meets all your objectives.

**MORE INFORMATION ABOUT SPECIAL NEEDS TRUSTS.** Detailed information on government benefits,

including a brochure, titled “Benefits for Children with Disabilities” (SSA Publication No. 05-10026, January 2011, ICN 455360), is available from the Social Security Administration at 800-772-1213 or [www.ssa.gov](http://www.ssa.gov).

The Arc of the United States, [www.thearc.org](http://www.thearc.org), represents people with intellectual and developmental disabilities. For information on a chapter in your area, call 800-433-5255.

The Special Needs Network (TSNN) is a not-for-profit corporation dedicated to helping families with dependents with special needs optimize the lifelong care of their loved ones. Access their website at [www.tsnn.org](http://www.tsnn.org).

Parenting Special Needs is an online magazine serving the special needs community. Access their website at <http://parentingspecialneeds.org/>.

## WHAT IS AN ABLE ACCOUNT? ABLE

Accounts, which are tax-advantaged savings accounts for individuals with disabilities and their families, will be created as a result of the passage of the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 or better known as the ABLE Act. The beneficiary of the account is the account owner, and income earned by the accounts will not be taxed. Contributions to the account made by any person (the account beneficiary, family and friends) will be made using post-taxed dollars and will not be tax deductible, although some states may allow for state income tax deductions for contribution made to an ABLE account.

## AM I ELIGIBLE FOR AN ABLE ACCOUNT?

The ABLE Act limits eligibility to individuals with significant disabilities with an age of onset of disability before turning 26 years of age. If you meet this age criteria and are also receiving benefits already under SSI

and/or SSDI, you are automatically eligible to establish an ABLE account. If you are not a recipient of SSI and/or SSDI, but still meet the age of onset disability requirement, you could still be eligible to open an ABLE account if you meet Social Security’s definition and criteria regarding significant functional limitations and receive a letter of certification from a licensed physician. You need not be under the age of 26 to be eligible for an ABLE account. You could be over the age of 26, but must have had an age of onset before the individual’s 26 birthday.

The total annual contributions by all participating individuals, including family and friends, for a single tax year is \$14,000. The total limit over time that could be made to an ABLE account will be subject to the individual state and their limit for education-related 529 savings accounts. The first \$100,000 in ABLE accounts would be

exempted from the SSI \$2,000 individual resource limit. If and when an ABLE account exceeds \$100,000, the beneficiary’s SSI cash benefit would be suspended until such time as the account falls back below \$100,000. It is important to note that while the beneficiary’s eligibility for the SSI cash benefit is suspended, this has no effect on their ability to receive or be eligible to receive medical assistance through Medicaid.

## WHICH EXPENSES ARE ALLOWED BY

**ABLE ACCOUNTS?** A “qualified disability expense” means any expense related to the designated beneficiary as a result of living a life with disabilities. These may include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses which help improve health, independence and/or quality of life.

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