



ABSOLUTE Advantage

Trust and Estate Law Happening Now

SPRING 2023



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WHO SHOULD WE NAME AS TRUSTEE OF OUR CHILD'S SPECIAL NEEDS TRUST? By Kirsten Howe

A [special needs trust](#) or a supplemental needs trust is a trust, typically established by parents for their disabled child, that is created to provide financial care for that child without jeopardizing any government benefits that they may be entitled to. Parents will set up the special needs trust so that after they die there is money and a trustee in place to care for that child. One of the biggest concerns for parents is who will care for their child after they are gone. Parents know their special needs child the best and fear that nobody can care for their child as well as they can. This fear often leads parents to name one of their other as trustee for their special needs child's trust.

Should we name a Sibling as Trustee?

Other than the parents, who else knows the child best? Their siblings! Families often assume that siblings will take on the role of Trustee for their special needs sibling and this is a common solution that works for many. However, this is not always the best solution and we encourage families to consider some important possibilities and ask themselves some questions before defaulting to a sibling.

Things to Consider:

- Putting someone in charge of their sibling's money can create strain in the relationship between the siblings, even if they have the best relationship.
- The child in charge of the trust may inherit from that trust one day when their special needs sibling dies, this can cause great conflict.
- Being the trustee may handcuff the trustee child, they may never feel like they can

on vacation, or move, or do what's best for themselves if they are constantly worrying about what is best for their sibling.



Questions to Ask:

- Can the sibling serve the complex needs of our child and advocate for them after we, as parents, are gone?
- Does the sibling really want to be trustee and advocate for their sibling or are they just being agreeable?
- Is the sibling familiar with the public benefits programs that the special needs child is on or could qualify for?
- Does the sibling have time to do the job properly?
- Can the sibling hire and lead a team of advisors to make the best decisions for the trustee?

Who would make the best Trustee?

Because being an advocate for a special needs person and dealing with government benefits is often fraught with steep learning curves and frustration, it may be better to leave that task to a professional. Licensed professional fiduciaries and corporate trustees will often take on the task of administering a special needs trust and often their fees are well worth paying because they have often already

"A GOOD PLAN IS LIKE A ROAD MAP: IT SHOWS THE FINAL DESTINATION AND USUALLY THE BEST WAY TO GET THERE."

-H. STANLEY JUDD



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WHO SHOULD WE NAME AS TRUSTEE OF OUR CHILD'S SPECIAL NEEDS TRUST? (CONTINUED)

administered a special needs trust and don't need to reinvent the wheel for each client. They frequently have contacts or proven processes in place with government agencies and can often be more effective than a family member who is starting new.

This does not mean that the siblings of the special needs child won't be involved. Because the sibling knows the special needs child well, they may be allowed to advise the professional trustee about what would be best for their sibling. The professional trustee can be required to report to the sibling so they are aware of everything going on, and the sibling can even have the power to remove and replace a trustee if they feel that the trustee is not the best fit for their special needs sibling.

Speaking with your estate planning attorney to make sure that your child's special needs trust is set up properly is an important part of your estate plan. Naming the right people for the right roles is critical. We encourage our clients to do some deep thinking about who they would want to be trustee for their special needs child.

WHY DO I NEED AN ATTORNEY TO SETTLE MOM'S TRUST?

By Madison Gunn

Many people are under the mistaken impression that when someone dies, if they have a trust, there is nothing to do – that the trust itself takes care of everything. This is clearly not true. There are always tasks that need handling after someone dies. Many people think they can take care of all of those tasks without any help from an attorney.

And while for some very determined people it might be possible, it is usually better to work with an attorney. Here are just a few of the reasons why:



1. Attorneys save time. Probably, given enough time and with the help of Google, a trustee could figure out all the things that need to be done in a trust administration. An attorney does these projects every day and has done them many, many times. The attorney knows exactly what needs to be done and exactly how to do each step in the process.
2. Attorneys know how to handle the unusual or unexpected. No two trust administrations are alike, but they each have at least one unexpected issue or problem. This happens in every case, I promise. It might be an asset that is supposed to be in the trust but isn't; it might be a minor or special needs beneficiary whose circumstances are not taken into account in the trust document; it might be that the trust doesn't have enough cash to complete the administration. Whatever the problem is, the attorney has the expertise to figure it out and make it work. Without Google.
3. Attorneys know how to minimize taxes. Even after a death there might be tax-saving opportunities that trustees need to know about. For example, Prop. 19 has

WATCH US LIVE ON OUR ABSOLUTE TRUST TALK PODCAST

The Absolute Trust Talk Podcast is a resource to help you make informed planning decisions for today and tomorrow. Each episode delivers relatable interviews and easy-to-consume insights with actionable steps allowing you to move through your unique journey in life with intention. Tune in every other Thursday at 11:00 AM PST to watch Kirsten or Madison interview a featured guest LIVE on Absolute Trust Counsel's Facebook page: www.Facebook.com/AbsoluteTrustCounsel. If you miss the Facebook Live interview, you can listen to the podcast version on our Absolute Trust Talk podcast page: www.AbsoluteTrustCounsel.com/Podcast.



WHY DO I NEED AN ATTORNEY TO SETTLE MOM'S TRUST? (CONTINUED)

made property tax planning even more challenging and confusing. You don't want to make a mistake that could trigger a reassessment and higher property taxes.

4. Attorneys make sure you carry out your fiduciary duty. As trustee, you have a duty to act in the best interest of all of the trust beneficiaries. What does that even mean? For starters, it means you have to comply with all laws, whether you are aware of them or not, and all provisions of the trust, whether you understand them or not. This is perhaps the most compelling reason to work with an attorney. It is their job to make sure you do your job completely and correctly. If you fail, you could be personally liable for your mistakes.

Before you take on the job of trustee after a family member's death it is always best to talk to an attorney. The peace of mind that comes from knowing that you have a professional to guide you through the process is invaluable.

2023 IN NUMBERS

Estate Tax

- Estate Tax Exemption: \$12,920,000 *per person*
- Gift Tax Annual Exclusion: \$17,000 *per person*

Medi-Cal for Long Term Care

- Statewide Average Private Pay Rate for Skilled Nursing Facilities: \$11,576
- Asset Limit: \$130,000 (+\$65,000 for each additional household member – up to 10)
- Income Limit for singles: \$1,564
(If income is higher, there will be a share of cost)
- Income Limit for couples: \$2,106
(If income is higher, there will be a share of cost)

- Community Spouse Resource Allowance (CSRA): \$148,620
- Minimum Monthly Maintenance Needs Allowance (MMMNA): \$3,715.50

THE EASIEST WAY TO STAY INFORMED

Please "like" or "follow" us on our social media pages for quick access to our blogs, announcements, and events:

-  [FACEBOOK.COM/ABSOLUTETRUSTCOUNSEL](https://www.facebook.com/absolutetrustcounsel)
-  [LINKEDIN.COM/IN/KIRSTENHOWE](https://www.linkedin.com/in/kirstenhowe)
-  [TWITTER.COM/KIRSTENHOWE](https://twitter.com/kirstenhowe)
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-  [YOUTUBE: KIRSTENHOWE](https://www.youtube.com/kirstenhowe)

MARVELOUS MADISON

Madison, our associate attorney, has a wealth of information and, should anyone in her orbit have a question or concern, staff or client alike, she does not skip a beat in providing the best possible answer.



firm. Denette is the director of client services and relations, she is the acting business manager and office manager, she is our team spirit captain, technology fixer, go-to problem solver, and the list goes on. Regardless, it's safe to say that Denette is the glue that holds ATC together.

3 Fun Facts About Madison:

1. Madison joined Absolute Trust Counsel in late 2019, right before Covid hit pandemic levels and the majority of jobs pivoted to a Zoom format. Ironically, before starting at ATC, Madison practiced law on the go. Madison visited clients all over Northern California and created estate plans for families who were able to meet in satellite offices closest to their homes. She covered a territory from Monterey and Fresno to the South and Roseville and Santa Rosa to the North, and everything in between.
2. Madison taught herself how to crochet during the Covid lockdown, and her skills are so top-notch, a Madison Gunn baby blanket is a high in demand item. Lucky for Kirsten, Madison crocheted a beautiful adult blanket in our ATC colors (navy, gold and white). The ATC blanket is so soft and cuddly, Kirsten has to fight her cats off of it every time there is a chill in the air.
3. Madison has the gift of gab. She can talk to anyone about anything!

WELCOME, CAMERON KLOTZ!



Absolute Trust Counsel has a new Client Concierge (aka Administrative Assistant). If you have an opportunity to work with Cameron, please welcome her to the team.

UPCOMING EVENTS

May 9th, 2023: 4pm – 5:30pm
East Bay Regional Parks
Foundation presents,
Lessons Learned on the Front Lines of Estate Planning with Kirsten Howe

Complimentary Zoom Webinar
For more information and to register:

www.RegionalParksFoundation.org

May 22nd, 2023: 1pm – 2pm
My Health Angel presents,
Legacy Planning with Madison Gunn
Complimentary Zoom Webinar
For more information and to register:

www.MyHealthAngel.com



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PERSONAL NOTE FROM KIRSTEN

Dear Clients and Other Friends,

It takes a little while to get this newsletter from our computers to your mailbox. I am writing this on the first day of spring, so happy spring to you! This day is also the one-month birthday of the most wonderful granddaughter ever born, so I have lots to be happy and excited about!! The bad news is she lives in Ohio, but since I can work remotely I am already planning my second visit.

I hope spring is full of wonderful things for all of you, too.

Warm regards,

Kirsten Howe, Attorney at Law

**PLEASE RECYCLE, REDUCE AND REUSE.
SHARE THIS NEWSLETTER WITH FRIENDS AND FAMILY.
TO UNSUBSCRIBE, EMAIL US AT
INFO@ABSOLUTETRUSTCOUNSEL.COM.**

