

Third-Party Special Needs Trusts

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Perhaps one of the biggest concerns for parents of children with special needs is how to provide for their child when the parents are no longer around. While there is no perfect replacement for parents' love and care, some legal and financial planning methods can alleviate those concerns.

Consider this family's situation: John and Sally have three adult children: Charlie, Emily and Sam. Charlie and Emily are independent and healthy; however, 37-year-old Sam has a mental illness and lives with John and Sally. John and Sally understand that Sam will need a home, income and a support system provided for him for the rest of his life.

Without appropriate estate planning, Sam will inherit from his parents. Because Sam is not capable of managing financial assets, the court would most likely appoint a guardian who would have to request distributions to be made for the benefit of Sam and account to the court each year. Moreover, the assets that Sam receives may preclude him from obtaining certain types of governmental assistance benefits without the assets being spent down on the cost of his care.

John and Sally are considering leaving all their assets to Charlie and Emily who have promised to take care of Sam. Although this may seem like a good arrangement, it has serious problems that could imperil Sam's security—no assets are legally protected for Sam, who may live a long time. Despite the best of intentions, Charlie and Emily may not live up to their commitment due to financial problems, becoming disabled themselves, getting divorced or dying.

A good solution is the creation of a *third-party special needs trust* (also known as a supplemental needs trust) for Sam. The SNT would be designed to hold Sam's inheritance. It needs to be carefully drafted so that the assets in the trust can be used to enhance Sam's lifestyle without causing him to lose his needs-based benefits. If an intended beneficiary has a disability and is not capable of managing his or her own money, then this beneficiary may also be supported in the community through a variety of means-tested entitlement programs, such as Supplemental Security Income (SSI) and Medicaid. In most of programs, the beneficiary's receipt of funds will terminate the beneficiary's participation in the program. SNTs are designed to allow the beneficiary to maintain eligibility for most means-tested programs, while still allowing the trustee to access trust funds to pay for goods and services that enhance the quality of the beneficiary's life.

Of course, there is no one perfect solution that works just right everyone. However, it is important to remember that in creating a third-party special needs trust; you must make sure that it conforms to the applicable laws, while maintaining maximum flexibility to improve the quality of life of the child with special needs.