



Special Families, Special Needs



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NEXT OPEN HOUSE

December 18, 2007
7:30am to 9:00am

Please call to confirm.

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*If you cannot attend, you
are welcome to call to
schedule a separate
appointment.*

The Role Of A Trustee

By Rob Wrubel, CFP®

Consider the following scenario: Two aging parents change basic wills to include special needs trusts to be included upon death. They do not have any other heirs and leave everything they own to their son with special needs. When they die, their home, remaining investment assets and all their possessions pass into the special needs trust for the benefit of their son.

What happens next? Who makes decisions regarding those assets? Should the home be sold? How much should be invested for growth and how much for income? Should an estate sale be held to sell any furniture, autos, collections or household items?

Often, my clients come in unclear as to the difference between trustee, guardian and conservator. First, let's try to get a sense of which functions each of the different titles provides. A guardian is responsible for the physical custody and well-being of the incapacitated person. Trustees are chosen to make decisions regarding assets held in trusts. They do not automatically get involved in personal and life decisions like a guardian. Conservators are court appointed trustees and are charged to manage and distribute assets on behalf of an incapacitated person.

The trustee is charged with performing duties in three key areas: taxes, asset management and disbursements. As part of these duties, trustees should create and implement an overall plan. Trustees are considered fiduciaries – meaning they must act for the best interest of the beneficiary. Choosing the person to fill the role as trustee is a difficult decision. This article addresses the duties of the trustee – deciding which person or institution to choose will be covered in another article.

Special needs trusts preclude the beneficiary (the person with a special need) from having any role in managing the assets in the trust or making decisions regarding disbursements from the trust. The assets specifically have not been given to the person with special needs as a way to protect the government benefits available to them. The assets in trust may be used for the special needs person's benefit, but only at the discretion of the trustee. The trustee has sole discretionary authority over how the assets in the trust are managed and distributed.

The trustee of a special needs trust must have a basic understanding of SSI/SSDI and Medicaid. The potential benefits of these government programs may outweigh the value of the assets in the trust. If the disbursements from the trust are not in accordance with government rules, then the special needs person might lose access to those benefits.

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In the above example, let's say Mom and Dad owned their own home. The home has been modified to meet the needs of their son with special needs and he is capable of living in the home with some assistance from friends and care organizations. Most likely, the trust can continue to own the home and the son can live there. The trustee could even give the home to the son as it is an exempted asset. Unfortunately, if the son then sold the house, he would have more than \$2000 of non-exempt assets and be disqualified from assistance programs. By keeping the home in the trust, the trustee has a better chance of preserving the value of that asset for the special needs son.

The trustee will have to make decisions on how to handle investment assets. Again, the trustee will likely keep stocks, bonds, mutual funds or annuities inside the trust and use portions of the money or income for the benefit of the son. Most of the time, individual trustees hire a professional, independent investment advisor to manage the investment assets in the trust. The trustee should work with the advisor to build a financial and investment plan taking into account the beneficiary's financial needs, health, life expectancy, quality of life needs and wishes of the person funding the trust (if specified).

Special needs trusts may not pay for expenses covered under SSI – primarily shelter and food. People with disabilities who qualify for government benefits are forced to live with minimal income and assets to maintain qualification. The trust can be used to supplement those benefits to improve quality of life. For instance, the trust cannot pay additional rent to provide better housing as that conflicts with current regulations, but the trust may pay for a new television or cover the cost of cable to improve the quality of life within that housing. The trust can be used for a wide range of expenses – including vacations, subscriptions, additional therapies, dental work, improved medical equipment, books, bicycles, etc.

Another significant legal obligation of the trustee involves preparation and payment of taxes. Trusts pay tax when they generate income. As separate legal entities, they are required to file tax returns. Often, special needs trusts pay at the highest tax rate. Most trustees hire a tax professional to provide guidance, preparation and filing of the tax return.

As you can tell, the trustee handles many issues for the beneficiary of a special needs trust. As a result, they are entitled to reasonable compensation for the work they do.

The trustee's role can be complicated and often filled with conflicting issues. They must often choose between the demands of today and the potential needs in the future. For example, the trustee might have to decide if it's better to send the beneficiary on a vacation to California or keep extra money in the trust for potential future medical expenses.

The person you choose to act as trustee will have many obligations – some personal, some technical. Often, the best people to choose are people that understand that putting together a team is in their own best interests and in the best interests of the person with special needs.

Rob Wrubel, CFP® is a Senior Investment Consultant with Cascade Investment Group, member FINRA & SIPC. Cascade Investment Group is not a tax or legal advisor. You should always consult with your tax advisor or attorney before taking any actions that may have tax or legal consequences.