



Special Families, Special Needs



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NEXT OPEN HOUSE

February 19, 2008
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.*

Choosing A Trustee Of Your Special Needs Trust

By Rob Wrubel, CFP®

My last article addressed the role of the trustee of a special needs trust – a person designated to manage assets in the trust of a special needs individual. The trustee is charged with performing duties in three key areas – taxes, asset management and disbursements on behalf of the trust beneficiary.

Trustees must handle complex and sometimes difficult situations. Most people are not well versed in taxes, investments, law and federal regulations. Instead, they assemble a team to help them understand these different areas and implement solutions to handle them effectively.

Trusts are established in several common ways.

For families with a special needs member, Mom, Dad or a spouse often set up the trust to be funded upon death. The trust springs into place to hold the assets left behind when the funder passes away. The house, stocks, cash and personal holdings then go into the trust. In this case, the person who set up the trust appoints a trustee in their documents.

Trusts can self-settle – this often occurs when a person receives payment as a result of injury, say in a car accident. In this case, the adult puts her own assets into a disabilities trust and appoints another person to handle the trust.

In both cases, it is important to choose a trustee who is trustworthy, competent and able to make decisions in a compassionate and reasonable way on behalf of the special needs person.

How do you actually make this difficult decision? What do most people do? It seems as if no one person can perform all aspects of the position well. The family member who gets along best with the person with a disability cannot keep his own records straight. The sister who is the attorney lives in another state. The closest relative is going through a divorce and cannot be asked to handle one more task. A corporate trustee, like an independent trust company or a bank, means having people involved who do not know and necessarily love the person with a disability.

Most of the time, people choose a family member or close friend who they feel will find the professionals needed to help handle trust administration, investments and taxes and who knows the family member with special needs. Often, no one can be found to fill this role or the person putting the trust in place wants to have a corporate trustee as a back up.

A few years ago, I met with a couple in their early 60s who had two sons who were each in their 30s. One son had undiagnosed developmental delays. He qualified

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for benefits in his state and was receiving services, SSI and Medicaid.

A prior advisor suggested opening an IRA for both sons when they turned 18. The parents had done so as they wanted to help their children build assets for the future. Unfortunately, the son lost benefits as a result of having more than the federal limit in an account he owned. The family spent the money and was then able to reapply for benefits. It took them more than two years to get him qualified again and into programs.

The family did not have any wills or trusts in place. They were at risk again of having the son with the disability lose benefits, as most states would give equal shares of the assets to the two children. Potentially, each of the sons could be awarded some assets upon the passing of the first spouse as well.

They could handle this in several ways. They could draft a will leaving everything to the typical son. They could give everything away to someone else or a charity. They could put everything into different types of trusts depending on their intentions. Or they could follow the most typical path for families with a disabled member: they could split the assets into two pieces – leaving part directly to the typical son and part to a special needs trust for the disabled son. This family indicated that they preferred this last choice but wished to leave more to the son with a disability than to the other.

I asked about the other son and was he someone who could handle managing the trust on behalf of the special needs brother. Both parents quickly said, “No!” The other brother was having trouble managing his own life, was constantly running out of money and could barely keep a job and an apartment. They expressed concerns that the other son would likely take money from the other given the chance.

In this case, it was clear that a corporate trustee would serve their needs best. I directed them to find a local estate planning attorney who had experience with special needs to draft the documents. They also were to interview several trustees in their city. In Colorado Springs, I recommend an independent trustee not affiliated with a bank. These are not available in every city. This couple had several options, and I gave them some advice on how to review the companies in terms of fees, services and options available.

I recommend that people consider trust language that allows for the trustee to resign and to have a way of having trustees replaced. I have seen situations where trust departments of banks will not step down even when confronted with significant legal action. When finalizing estate plans, most people are encouraged to list successor trustees and to give the trustee powers to appoint his or her replacement in case something happens to the first choice.

You must choose the best option available today and review the decision on a regular basis. Laws change. Financial needs change. Your best fit for a trustee may move to another country. Find an advisory team that you can work with to handle investments, insurance, estate planning and who puts your interests first. By acting today, you can insure you have enough time to make your special needs family member’s life as fulfilling and secure as possible.

Rob Wrubel, CFP® is a Senior Investment Consultant with Cascade Investment Group, member FINRA & SIPC. He is a fee-based financial planner and investment advisor who can be reached at (800) 984-9074. 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.