



# Is a Special Needs Trust Right for You?

Helping those who need you the most.

**SENSIBA SAN FILIPPO**

CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS ADVISORS



An estate plan can take on many shapes and sizes, depending on the intention and needs of both the benefactor setting up the plan, and the beneficiary of the plan. Understanding the many types of planning vehicles available, including trusts, is an important step in the plan design process, as each type of trust often has specific benefits and costs associated with it.

Planning the distribution of one's assets is never an easy task, and it only increases in complexity when the plan is being designed to take in to account the future needs of a loved one with a disability. In such an instance, one type of trust in particular, the Special Needs Trust, should be considered as it allows the beneficiary to not only receive funds from the Trust to pay for certain future expenses, but to remain eligible for state and federal assistance programs as well.



This InfoCast™ will explain the different types of Special Needs Trusts, their purpose and basic functions.



## What is a Special Needs Trust?

A Special Needs Trust (also called a Supplemental Needs Trust) is a specialized legal document designed to benefit an individual who has a disability. A Special Needs Trust is most often a stand alone document in the estate plan, but can also form part of an individual's Last Will and Testament. Special Needs Trusts have been in use for many years, and were given an "official" legal status by the United States Congress in 1993.

## Why use a Special Needs Trust?

The Special Needs Trust was designed to maximize the quality of life of the individual with disabilities by allowing the availability of governmental and private resources.

The Special Needs Trust enables a person under a physical or mental disability or an individual with a chronic or acquired illness to have an unlimited amount of assets held in Trust for his or her benefit. In a properly drafted and administered Special Needs Trust, those assets are not considered for purposes of qualification for certain governmental benefits, including Supplemental Security Income, Medicaid, vocational rehabilitation, subsidized housing, and other benefits based upon need. Such programs can be used to cover a significant portion of a disabled person's cost of care and other necessities; however the programs typically have severe net worth limitations, so be certain to check with your tax advisor or attorney to discuss and monitor eligibility.



Use of the trust allows the individual to remain eligible as long as the assets are legally titled to the trust, not the individual, and as long as there is an independent trustee assigned to monitor and manage the trust's assets and distribution.

Special Needs Trusts serve two primary functions:

- Manage funds for someone who may not be able to do so due to his/her disability;
- Preserve the beneficiary's access to public benefits (i.e. Medicaid/ Medi-Cal, Supplemental Security Income, etc.)



## Which Special Needs Trusts to use?

Currently, there are two types of Special Needs Trusts available:

**THIRD-PARTY TRUSTS** A Third-Party Trust is established for a disabled person with the funds of someone other than the disabled person, the disabled person's spouse, or someone legally responsible for the disabled person.

If the Third-Party Trust gives complete and total discretion over the distribution of income and principal to the Trust's trustee, then neither the income nor principal will affect the beneficiary's eligibility for government benefit programs.



An option available to families or benefactors having a difficult time identifying an appropriate trustee may be the third-party trust or “pooled” trust. Through this option, funds from many special-needs families are bundled together and managed by non-profit groups that focus on disability issues.

**SELF-SETTLED TRUSTS** A self-settled trust is established for a disabled person with the disabled person’s own funds or funds from the disabled person’s spouse.

Generally, the individual must fall under strict net worth limitations in order to utilize a self-settled trust. However, in 1993, Congress permitted special-needs individuals under age 65 to have trusts funded with their own money – such as assets from a legal settlement or an inheritance – and still have access to government benefits.

### **When can a Special Needs Trust be established?**

A supplemental needs trust can be established at any time before the beneficiary’s 65th birthday. As part of the Estate Planning, the costs of the creation of the Trust are tax deductible.

### **What assets can be put in a Special Needs Trust?**

Virtually any kind of asset can be used to fund a Supplemental Needs Trust.



## The last word

The long-term financial care of a child, other loved one or dependant with special needs is a great responsibility. The proper use of the specialized protective vehicles that the government has set up in the tax code can provide a safe haven, however, that can provide parents and guardians some peace of mind.

Properly implemented, the Special Needs Trust is one way to leave money for a disabled loved one without jeopardizing their eligibility for government benefits.

For more information on eligibility and implementation of the Special Needs Trust or other estate planning techniques, please contact the Sensiba San Filippo Estate & Trust Team at [estate@ssflp.com](mailto:estate@ssflp.com).





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[info@ssflp.com](mailto:info@ssflp.com)

[www.ssflp.com](http://www.ssflp.com)



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