



How to Meet the Needs of Special Needs and Aging Beneficiaries

It was Czech novelist and short-story writer Franz Kafka who left us with the advice, "Better to have, and not need, than to need, and not have." Time and again, the loved ones of special needs beneficiaries express this estate planning goal; parents, grandparents and others close to differently-abled individuals want their loved ones with disabilities to have sufficient resources to take them through life. The challenge is leaving money to a special needs beneficiary in a manner that maintains eligibility for government programs based on demonstrating and meeting financial need tests. Partnering with an estate planning attorney familiar with federal and state disability benefits opens the door to alternative solutions and often relieves a mountain of stress.

Often, the only programs available to assist individuals with special needs are government programs designed for those who meet certain economic tests. Leaving too many resources outright (\$2,000.00 in assets, not counting the residence and one car) to a participant in one of these need-based programs will disrupt eligibility. The good news is that there are many alternatives to leaving assets outright to a special needs beneficiary.

What is a Wholly Discretionary Trust?

A popular tool for many of our clients is a wholly discretionary trust (WDT). A WDT is a contract between the trust's creator (often called the grantor or the settlor) and the trustee. This contract allows the trustee to pay income and principal to or for the benefit of the beneficiary with special needs. What makes a WDT unique is the beneficiary's inability to compel a distribution. This allows the WDT to safeguard these assets, as WDT assets are not considered assets 'belonging'

to the special needs beneficiary. Consequently, a WDT keeps the benefit programs that determine eligibility based on financial needs in place while allowing loved ones to plan ahead.

How Long Does a Wholly Discretionary Trust Last?

The wholly discretionary trust lasts as long as it has assets or throughout the beneficiary's life. If the WDT has assets remaining upon the death of the beneficiary, the WDT can pay for funeral and burial arrangements. After this, a family member or



charity can be named as the remainder beneficiary. A WDT is often used in conjunction with an ABLE account and is part of a larger safety net designed to support the special needs beneficiary.

Who Can Benefit from a Wholly Discretionary Trust?

A WDT may also be used to provide for family members who are over the age of sixty-five and eligible for Medicaid. If a client has aging parents and wants to supplement senior living without committing hard-earned money to pay long-term

care expenses, such as a nursing home or assisted living, a WDT gets the job done. Again, the trustee can, but does not have to, provide luxuries—dining out, spa services, vacation money, and club memberships—for the aging trust beneficiary. The WDT is a contractual substitute for the financial assistance our clients voluntarily offer while living. Every situation is different, but if your estate plan includes a special needs beneficiary or a beneficiary eligible for Medicaid, our expert estate planning attorney at Carlile Patchen & Murphy LLP can help you navigate through to find the right solution for you.