

Law Office of Nicole A. Davidson

P.O. Box 125
Alamo, CA 94507

Cell: 510-919-8389
Tel/Fax: 925-932-5555

nicoledavidsonlaw@gmail.com
www.nicoledavidsonlaw.com

SPECIAL NEEDS TRUST

Who Should Have a Special Needs Trust?

A special needs trust is used for disabled children who, when they turn age 18, will not be able to earn a self-sufficient wage. These children will become eligible to receive a monthly income allowance through the Social Security Administration's Supplemental Security Income (SSI) program. They also qualify for payment of health services through Medicaid.

Who Creates the Special Needs Trust?

The trust must be set up by the disabled person's parents or a third party. To protect the disabled person, it will be necessary that all beneficiary designations, including those in the estate plan or on beneficiary forms, be changed to name the trust as beneficiary. If an asset is left directly to a special needs child, the child may be disqualified from government aid. It is important to check with friends and relatives, too, to ensure that the trust – not the child – is named as beneficiary.

Why Is It Necessary to Have a Special Needs Trust?

A special needs trust protects a disabled child's financial future. The special needs trust is an irrevocable trust that preserves eligibility for federal and state benefits by keeping assets out of the disabled person's name. Instead of paying for basic support expenses, which are covered by government benefits, the trust covers additional expenses such as telephone, education, car repairs, etc.

What Happens If There is No Special Needs Trust?

Government benefits will be cut off if the disabled person earns or has assets worth more than \$2,000 (excluding a home, car and household possessions). The government will terminate benefits if a disabled person receives more than \$60 of unearned income per quarter or is capable of earning more than \$500 per month.

Why Don't We Just Leave Assets to the Siblings of the Disabled Child?

If a family leaves assets to a sibling to provide for the disabled child's care, the disabled person will be left vulnerable. First, creating a moral obligation for the sibling to care for the disabled person is not the same as legally forcing the sibling to benefit the disabled person. Second, the sibling might be taxed at a higher rate than the disabled child or special needs trust. Third, if the sibling dies before the disabled person, the money will be transferred to the sibling's heirs. Fourth, assets left to a sibling can be claimed by the sibling's creditors or by the sibling's spouse in a divorce settlement.

Who Will Be the Trustee?

A family member may serve as trustee, a corporation may serve as trustee, or the two may serve together as co-trustees.