

# ESTATE PLANNING NEWS



## The Special Needs Trust: Providing for a Disabled Loved One While Preserving Government Benefits

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On their way home from a dinner party, Abbott and Bailey, husband and wife, were involved in a fatal car crash. Although they always planned to write a will, Abbott and Bailey never got around to it. Under California's intestacy laws, their modest \$400,000 estate eventually passed through probate to their sons, Remy and Tyge.

Remy, a car salesman, used his \$200,000 inheritance to pay down his mortgage and splurge on a new BMW. Tyge, who is autistic and depends on government housing and medical care, lost his benefits. Tyge's doctors sent medical bills directly to him, and the group home where he lives charged him for residency and services received.

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# Estate Planning News

## Announcements

The Law Office of Nicole A. Davidson has moved!

New mailing address:  
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## Tip of the Month

### **Advancement**

Howell gave \$50,000 to his son, Howell, Jr. After Howell died, his daughter, Alice, sought a judgment that the gift was an advancement to her brother. Howell Jr. was also the executor of their father's will.

In *Walter v. Stewart*, a Georgia court held that the advancement could be proved by an acknowledgment signed by the gift recipient. As executor, Howell Jr. had a fiduciary duty to make such an acknowledgment if his father had intended the gift to be an advancement.



## Entertainment

### **The Valet (2006)**

When a photo of a billionaire businessman Pierre Levasseur (Daniel Auteuil) and his supermodel mistress, Elena (Alice Taglioni), makes the papers, he gets in trouble with his wife (Kristin Scott Thomas). To trick her and save his marriage, Pierre tracks down an unassuming valet (Gad Elmaleh) who was inadvertently part of the picture and pays him to feign a romance with Elena. But unintended consequences ensue in this merry comedy.



# Estate Planning News



A government that is big enough to give you all you want is big enough to take it all away.

-- GERALD FORD

*Presidential address to Congress*

## The Special Needs Trust

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A few years later, Tyge's inheritance was gone, and his social worker helped him reapply for government benefits. Those benefits are quite limited, though, and Tyge's parents are no longer around to pay for visits with Remy, over-the-counter medicines, or even basic supplies like razors, soap and shampoo.

Whereas an inheritance should ordinarily improve a person's lifestyle, this one has worsened Tyge's.

### **A Question of Fairness?**

The first question that many people ask is: "Should the government continue to subsidize someone who has money?"

While the services available through government benefit programs may be substantial (*e.g.*, medical coverage through Medicaid), the actual cash benefits are generally quite small and force the recipient to live way below the poverty level. For a disabled individual to have any type of meaningful lifestyle, family, friends or local charities must provide supplemental assistance.

The government permits supplemental contributions, yet the regulations are very strict and must be carefully monitored.

### **Special Needs Trust**

The Special Needs Trust (SNT) is the only reliable method of ensuring that an inheritance reaches a disabled person. The SNT is developed to manage resources while maintaining benefit eligibility. The family leaves whatever resources it deems appropriate to the SNT, and the SNT is managed by a trustee for the benefit of the disabled person.

The government has strict requirements for a SNT:

- (1) it must be created by a third party (*note*: different rules apply to self-established SNTs);
- (2) it must be managed by a person or entity other than the disabled person;
- (3) the trustee must have absolute discretion to provide any required assistance;
- (4) the trustee should never give the disabled person more income or resources than the government allows;
- (5) trust funds must be used for supplementary purposes only, they cannot replace government benefits; and
- (6) the trust must provide who receives the remainder of the trust after the disabled person dies.

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## The Special Needs Trust

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### **Should the SNT Stand Alone or Be Part of the Revocable Living Trust or Will?**

In simpler days, an attorney would advise parents to include a SNT for a disabled child through their Revocable Living Trust or Wills.

However, experienced estate planning attorneys now recommend a stand alone SNT. A stand alone SNT is separate from the family's main estate, and it can receive gifts immediately. The trustees, who are often the disabled child's parents, create a separate bank account for the SNT. Through that account, the parents pay for supplementary items, showing the future trustees the types of expenses that are appropriate to the disabled child's needs and that have passed government scrutiny. The main advantage of a stand alone SNT, though, is that other family members can leave an inheritance to the SNT as opposed to adding complex provisions to their estate plans or inadvertently disqualifying the disabled person from government benefits.

In addition, if the stand alone SNT is irrevocable, its assets will avoid estate tax, and they will be protected from creditors.

### **Choosing the SNT Trustees**

The family usually nominates close relatives or friends to serve as trustees. However, it is possible that human trustees will all die before the disabled person. Therefore, it is advisable to list an advocacy or disability organization as the last successor trustee.

### **Funding the SNT**

Once a SNT is created, the family should have a qualified financial planner who will find the funds to put in the SNT and make sure that those funds will last the disabled person's lifetime.

Various funding options include:

- (1) Standard government benefits;
- (2) Savings;
- (3) Family assistance (*e.g.*, residential care, supervision, and monetary backing);
- (4) Parents' estate;
- (5) Inheritances from close relatives or friends who have expressed an interest in helping the disabled person;
- (6) The family home;
- (7) Investments;
- (8) Military benefits; and
- (9) Insurance.

For the average family, life insurance will be the only way to leave a large lump sum for the future by making small monthly payments. It is also one of the few guaranteed methods of funding a trust.

### **Conclusion**

With proper legal and financial planning, the family can provide for a disabled loved one without jeopardizing eligibility for government benefits.

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