

*Staple
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*Self-Settled Supplemental
Needs Trusts:*

Protecting Your Settlement

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Offices in Tampa, St. Petersburg, and Sun City Center

What is a supplemental needs trust?

Unlike other trusts, a supplemental needs trust (also sometimes called a “special needs trust”) is designed specifically to comply with tax laws and other rules that regulate government benefits. The trust is established so that extra needs are met through the trust, and public benefits programs such as SSI and Medicaid are maximized to provide for basic food, shelter, and healthcare expenses. Even if you are not currently receiving public benefits, a supplemental needs trust is a good idea if you think will ever want to apply for means-tested government aid.

Supplemental needs trusts are also sometimes called disability trusts, and one purpose of such a trust is to maximize the benefits from a settlement award to a personal injury victim. Special needs trusts are also used by the parents of children with disabilities to ensure their children will always be cared for properly, and we discuss those types of trusts more fully in “Third-party Supplemental Needs Trusts: Ensuring Comprehensive Care for Your Loved Ones.”

If designed properly, a supplemental needs trust will improve the quality of life and care of the disabled person. These trusts can also help ensure

access and ability to afford services and provide a less-restrictive alternative to guardianship.

A failure to plan for the long-term care needs of someone with a disability could mean a loss of freedom, inappropriate institutional placement, inadequate financial resources for the individual, or inadequate care.

Your Supplemental Needs Trust

Two types of supplemental needs trusts are available in Florida for personal injury victims, one for those under 65, called an “A Trust,” and one for those older than 65 years old, called a “C Trust.”

For personal injury victims under 65, an A Trust allows the recipient of a personal injury award to remain eligible for public benefits, such as SSI and Medicaid. All of the funds of the A Trust can be spent during the recipient’s life, with no pay back required to the state. If funds do remain, the state is paid back interest free, at the discounted state rate, with the remainder going to the personal injury victim’s beneficiaries.

An A Trust must be funded by the disabled person’s parent, grandparent, legal guardian, or the court. Beneficiaries cannot establish their own trusts.

Anyone, regardless of age, can establish a C Trust, and C Trusts can be created by the beneficiary. For those over 65, a supplemental needs trust can be even more valuable because the trust will protect Medicaid eligibility, which will help pay for long-term nursing home care. This is particularly important to victims of nursing home abuse who are pursuing their rights. C Trusts must be part of a pooled trust, one where the resources of many settlements are combined as part of one trust, and administered by a nonprofit association.

To qualify for either a C Trust or an A Trust, you must have a physical or mental condition preventing you from working that will last for at least twelve months or result in death.

Why do I need a supplemental needs trust?

Government benefits programs have a cap on the amount of income and assets you can have to become or remain eligible for the programs. There is also a long “look-back” period during which the government will scrutinize how you disposed of your assets, and significant penalties exist for fraudulent transfers.

A supplemental needs trust allows you to take advantage of a specific, narrow area of the law so you can become eligible for government benefits and retain a portion of your assets for your own care. If you are on Medicaid and are about to receive a settlement, it is always a good idea to have an attorney evaluate your situation for a special needs trust. In fact, we can help during the settlement process to ensure that the arrangement is structured for your maximum benefit every step of the way.

The trust helps protect your future by controlling how the money is spent and ensuring your needs are met on an ongoing basis with the proceeds of the settlement. In many instances, direct payment for goods and services can be arranged with stores and vendors, including major chains like Target and K-Mart.

I already have a trust. Why do I need another?

Most trusts do not comply with the requirements that allow you to qualify for government benefit programs. Even if your trust is irrevocable, the government rules will include that money in the calculation of your benefits. This means that you could either lose your benefits or not qualify for them initially.

It takes a special kind of trust that complies specifically with complicated government regulations to qualify under the government benefits programs. Also, each trust is structured to comply with different government programs and regulations.

I have a structured settlement. Isn't that enough?

A structured settlement will help protect your funds from being spent too quickly, and a special needs trust will keep you from spending money that you shouldn't have to spend. They actually work together to maximize the benefits of your settlement and to ensure you have long-term care and protection.

It is also important to realize that some structured settlements do not comply with special needs trusts. That's why it is important to consider a special needs trust as early as possible in the settlement process to ensure you are maximizing your results.

What can I use my supplemental needs trust for?

You can use the funds for your healthcare,

especially for items not covered by your government benefits. Although you can also use it for things such as food and shelter, you will want to be certain you do not harm your eligibility for SSI if you do so. You may be able to use the funds to purchase a home, and you can use the funds to modify your existing home to make it accessible. Similarly, you can use the fund to modify a car or van to improve accessibility, to purchase a wheelchair, to hire attendant care, to travel, to take vocational or college courses, or to build a swimming pool for physical therapy. You can also use your special needs trust for private hospital and nursing home rooms.

You should consult with your attorney before spending the trust if you are not certain that your expenditure is appropriate. You must always keep in mind that your receipt of other benefits, such as SSI, can be adversely affected by how you spend your funds.

Are there any disadvantages?

Depending on what type of special needs trust works best for you, by law the money remaining may first have to be used to repay the state any public funds used for your care. The remainder can then pass to your heirs. You will be repaying the state, though, at their lower cost, rather than the more expensive private pay rate. You also do not have to pay interest on the deferred payments, giving you an

interest-free loan. You are, however, allowed to spend all of the money in the trust, with nothing remaining to go to the state.

Depending on the type of trust that works best for you, you may also have to decide on a trustee and an administrator, and your best choice may not be a family member. Proper administration is critical and choosing a trust administrator who will stay current on the latest changes in the law is vital.

What happens after the trust is set up?

Proper trust administration is critical. We can help you monitor your situation and work with your trustee to ensure you are complying with all regulations and laws. You should contact us if you make any major changes that could affect the receipt of government benefits, including using your trust funds.

A trustee should maintain accurate records of your trust, invest the funds reasonably, file tax returns as needed, and comply with the terms of the trust. A trustee of a special needs trust should also monitor the receipt and eligibility for public benefits and collect social security where applicable. At times, the trustee may have to convince government agencies

that the trust is a viable way to protect assets.

By making sure your trust is administered properly, you can feel confident your assets are handled correctly. We offer this service and will be happy to talk to you about it.

I really like my original attorney. Why do I have to go to someone else?

Different areas of the law require different expertise, and sometimes it is necessary to use attorneys with different backgrounds to make sure *all* of your rights are protected.

Rest assured that we will work closely with your attorney, making sure your original counsel is informed about your case. We will work together to provide you with the best possible service.

We regularly work with other attorneys, and it is not uncommon for us to receive multiple referrals from the same office because of the care, understanding, and quality of service we provide.

If at any time you have any questions, please do not hesitate to contact us.

Conclusion

Implementing a supplemental needs trust can be complicated, and we welcome your questions and the opportunity to speak with about maximizing your resources by using this important tool.

As with all areas of elder law, constantly changing state and federal laws and regulations make this a particularly difficult area of the law to navigate. Our firm keeps current on these changes not only by tracking legislation, but by regularly attending and presenting at local, state, and national elder law seminars. We look at our clients' situations in a holistic manner, taking into consideration physical, spiritual, and financial needs.

For additional helpful articles on elder law, please visit our website at www.law4elders.com.

Jack M. Rosenkranz

Notes

Jack M. Rosenkranz received his law degree from the Walter F. George School of Law at Mercer University and his undergraduate degree from Memphis State University. In college, and again in law school, he used his skills and his knowledge of political science and public surveys to bring much-needed changes to campus policies. As a result of his efforts at college, he was awarded the John W. Burgess Award for Meritorious Achievement in Political Science.

Mr. Rosenkranz now uses his natural abilities and legal training in his Elder Law practice, which includes Medicaid and Medicare planning, estate planning, advanced directives, Veterans benefits (such as Aid and Attendance), probate, supplemental trusts, and other long-term care planning needs. He was the first to receive both the Outstanding Achievement Award for the Florida Chapter of National Academy of Elder Law Attorneys and the Member of the Year Award for the Elder Law Section of the Florida Bar in the same year.

His peers have selected him as a Leading American Attorney in Elder Law, and he has an AV rating, the highest possible, with Martindale Hubbell. He remains active in the Elder Law Section of the Florida Bar, the Florida Academy of Elder Law Attorneys, and the National Academy of Elder Law Attorneys, Inc. Mr. Rosenkranz mentors new elder law practitioners, sharing with them the knowledge he has obtained from attending and presenting at numerous local, state, and national seminars each year since he began his practice in 1991

Mr. Rosenkranz has co-hosted a weekly radio program, "The Informed Elder," on 570 WHNZ. He regularly gives presentations and other informative talks about elder law to the public and to other attorneys.