

*Staple
Here*

*Supplemental Needs Trusts:
For your loved ones*

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Table of Contents

What is a supplemental needs trust?.....1
 Why a Supplemental Needs Trust?.....2
 My Child Already Has a Trust.....3
 What are the uses of a Supplemental Needs
 Trust?.....3
 What happens after the trust is set up?.....4
 Conclusion.....5

Offices in Tampa, St. Petersburg, and
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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 the trust beneficiary is not currently receiving public benefits, a supplemental needs trust is a good idea if you think the trust beneficiary will ever want to apply for means-tested government aid.

Supplemental needs trusts are also sometimes called disability trusts, and are used by the parents of children with disabilities to ensure their children will always be cared for properly, or more generally by one family member planning the care for another. An additional purpose of such a trust is to maximize the benefits from a settlement award to a personal injury victim, and we discuss those types of trusts more fully in “Self-Settled Supplemental Needs Trusts: Protecting Your Settlement.”

If designed properly, a supplemental needs trust will improve the quality of life and care of the disabled person. If you predecease your special

needs child, these trusts can also help ensure access to services by providing a source of funds for a guardian.

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

Why 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 child's care. The trust helps protect your child's future by controlling how the money is spent and by ensuring their needs are met on an ongoing basis.

The trust can be structured to provide payments directly to schools, physicians, and other service

providers. By giving the trustee maximum discretion in distributing the funds on behalf of your child, you can provide for your child even though you are no longer there.

My child already has a trust. Why do I need another?

Most traditional 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 your child could either lose 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.

What are the uses of a supplemental needs trust?

You (or the trustee of your child's funds) can use the trust for your child's healthcare, especially for

items not covered by your government benefits. For example, you must be very cautious if you use the trust for things such as food and shelter because you can harm your child's eligibility for SSI.

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 for your child. Similarly, you can use the funds to modify a car or van to improve accessibility, to purchase a wheelchair, to hire attendant care, to travel, to pay for vocational or college courses for your child, or to build a swimming pool for physical therapy. You can also use your special needs trust for private hospital rooms for your child.

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 child's receipt of other benefits, such as SSI, can be adversely affected by how you spend your funds.

What happens after the trust is set up?

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.

To protect your child against creditors, the trust should contain a provision that prevents your child's creditors from applying trust assets to satisfy the debts of the child.

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.

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

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.