

Third-Party Special Needs Trust

AN ALTERNATIVE: A THIRD PARTY SUPPLEMENTAL NEEDS TRUST (also called a Special Needs Trust)

A Third Party Supplemental Needs Trust is funded with parents' money or "other people's money" – the assets never belong to the person with a disability and the person with a disability never was directly entitled to the money or other assets.

- The Trust must be drafted by a lawyer, utilizing the appropriate legal terms and language. This is not a "do it yourself" project. The Trust cannot be drafted by a Financial Planner.
- When the Trust is created, the person who creates the Trust (the "Grantor") appoints a Trustee. The Trustee is the person responsible for managing and using the Trust funds for the benefit of the person with a disability (known as the "Beneficiary."). In a Supplemental Needs Trust, the Trustee is given very broad authority to decide how to manage the property and how and when to spend the money, as s/he deems appropriate for the beneficiary.
- The Trust may be funded with funds that pass through a parent or another person's will. The Trust may also be designated as the beneficiary to receive funds that pass outside of the will, like life insurance policies, certain retirement benefits, or joint bank accounts.
- In order for these funds to pass into the Trust they must be properly titled, and the beneficiary designation must be clear for the funds or property to go into the Trust. The lawyer who drafts the Trust should explain this process.
- A Third Party Supplemental Needs Trust may also be created and funded while a parent is still alive. In addition to the other requirements, the Trust must be irrevocable, which means that a grantor can't change his or her mind once the trust is created and funded. After better understanding your family's situation and needs, your lawyer can explain the benefits of both this Supplemental Needs Trust created during your lifetime and the Supplemental Needs Trust created upon your death.
- A Third Party Supplemental Needs Trust can be established for a person of any age.

For more information on topics discussed in this fact sheet, contact

The Arc of Frederick County.

Phone: 301-663-0909

www.arcfc.org

The Arc
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These Fact Sheets are designed to provide general information only and are not designed to provide legal advice. Families and individuals are strongly urged to consult with an attorney and other appropriate professionals regarding their individual situation before taking action.

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- A Third Party Supplemental Needs Trust doesn't require any prior state approval or authorization. However, you may be required to show the Trust document to Social Security and Medicaid to confirm that it complies with their requirements and the funds should not be counted as a resource for benefit purposes.
- Funds in a Third Party Supplemental Needs Trust are protected from the Trustee's creditors and other potential personal or professional financial problems the Trustee may experience.
- The person who creates the trust (or the Grantor) can designate contingent beneficiaries, or people who would receive any funds remaining in the Trust upon the death of the child with a disability.

Other Planning Issues to Consider:

- Benefit programs, trust drafting requirements, and special needs planning are complex. Choose a lawyer with experience in the area. Remember that one size does not fit all and discuss your family's unique circumstances.
- You may want to discuss these issues with grandparents or other close relatives and friends who may be thinking about leaving money to your child so they can plan appropriately as well.
- Parents need to have their own legal documents in order.
 - An advance directive allows another person to make medical decisions for you if you are unable to do so. It can also provide direction to that person and to your doctor about your wishes regarding "end of life" care.
 - A durable power of attorney allows another person to make financial decisions for you if you are unable to do so. This can be critical, not only to be able to access funds to meet your own needs should you be unable to do so, but also to access funds that you may use to assist your child.
- Parents can also lay out a road map, describing their vision for the child and providing critical information about their child in a document called a "letter of intent." See the Fact Sheet "Letters of Intent" for more information.

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