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# **SPECIAL NEEDS AND SUPPLEMENTAL NEEDS TRUSTS**



## WHAT YOU NEED TO KNOW

In general, a trust is created when property or assets are managed by a person or firm for another person's benefit. The person or entity who manages the trust is known as the trustee. They are responsible for making decisions in the best interest of the person who benefits from the trust, known as the beneficiary. Trusts allow you to place conditions on how and when your assets will be distributed when you die, reduce estate and gift taxes, and allow you to skip the lengthy and expensive probate process.

### What is a Special Needs or Supplemental Needs Trust?

Special Needs Trusts, also called Supplemental Needs Trusts, are created to benefit a loved one with physical or mental disabilities. They differ from other trusts due to unique conditions that accommodate the specific circumstances and lifestyle of a person with special needs. Special Needs Trusts also ensure your loved one doesn't jeopardize eligibility for government benefits due to increased assets. Depending on the type of assets, you can choose between a First- or Third-Party Trust.



## First-Party Special Needs Trusts

This trust is designed to hold the assets owned by the person with special needs, such as a personal injury settlement. It can also be funded by an inheritance, retirement plan, divorce settlement, or life insurance proceeds. Ownership of these assets is transferred to the trust, and proceeds can only be used for supplemental expenses not covered by any government program. If the Special Needs Trust is a first-party trust, when the person with special needs passes, the trust must repay the state for benefits advanced to the recipient with any remaining assets.



## Third-party Special Needs Trusts

This trust holds assets provided by parents and family members who want to ensure their loved one has the financial resources necessary to enjoy the best quality of life possible after the parent or caretaker is gone, as well as during the life of the grantor, if the trust is funded by the grantor while alive. Funds can be used for personal services, entertainment, travel, transportation, and medical costs not covered by insurance or government benefits programs. When your loved one with special needs dies, family members can be beneficiaries of the trust. The state doesn't have to be repaid from the remaining funds since the source of the funds was from parties other than the beneficiary.

Choosing the right trustee for a Special Needs Trust is extremely important as he or she must be someone you are certain will act in your loved one's best interest after your death. Often, this is a trusted family member who knows the beneficiary and his or her needs. However, if your situation doesn't allow for this, a court may appoint a third party to manage the trust according to the provisions.

Angiuli & Gentile, LLP can help you choose the right trust for your situation and advise you when selecting a trustee. Our attorneys can also serve as experienced trustees who understand your needs and priorities and have your best interests in mind.

## Why is a Special Needs Trust Important?

One of the important features of a Special Needs Trust is ensuring assets in the trust won't be counted toward asset thresholds required by government programs such as Supplemental Security Income (SSI) and Medicaid. The trustee has complete control over the assets in the trust instead of the beneficiary. For this reason, government programs, such as SSI and Medicaid, ignore assets in such a trust when determining eligibility. Many people are unaware of this and make the mistake of distributing money or property to a loved one with special needs during life or through a will. This could cause them to exceed the asset limits for SSI or Medicaid, terminating their benefits.

Special Needs Trusts holding proceeds from a legal settlement for the person with special needs also ensures a windfall won't affect government benefits. And if a loved one with special needs is sued, the funds in the trust are protected from being paid out in damages.





# How to Set Up a Special Needs Trust in New York

Even if you believe your loved one with special needs will never need government benefits, it still makes sense to consider a Special Needs Trust. They can provide for the unique and specific needs of your loved one in ways that other types of trusts can't. You never know what may happen in the future, especially when you're no longer around. It may turn out that your loved one needs government benefits one day, and they'll be ready for this option.

Special Needs Trusts are an excellent vehicle to ensure your loved one with special needs is cared for should something happen to you. However, they can be difficult to set up as they must comply with New York State laws. An experienced elder law attorney can evaluate your specific situation and make sure your loved one has the care and support he or she needs throughout his or her lifetime.

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Angiuli & Gentile, LLP, Attorneys at Law, can be trusted to answer your questions, advise you on your rights, and help you with elder law, estate planning and probate, family law, social security disability, personal injury, business law, and commercial and residential real estate. If you find yourself facing a life-changing event, we will help you make informed decisions every step of the way.

**Contact us today to  
schedule an appointment.  
We're in this together.**

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