



Special Needs
Estate Planning
Taskforce

ATTORNEY INFORMATION

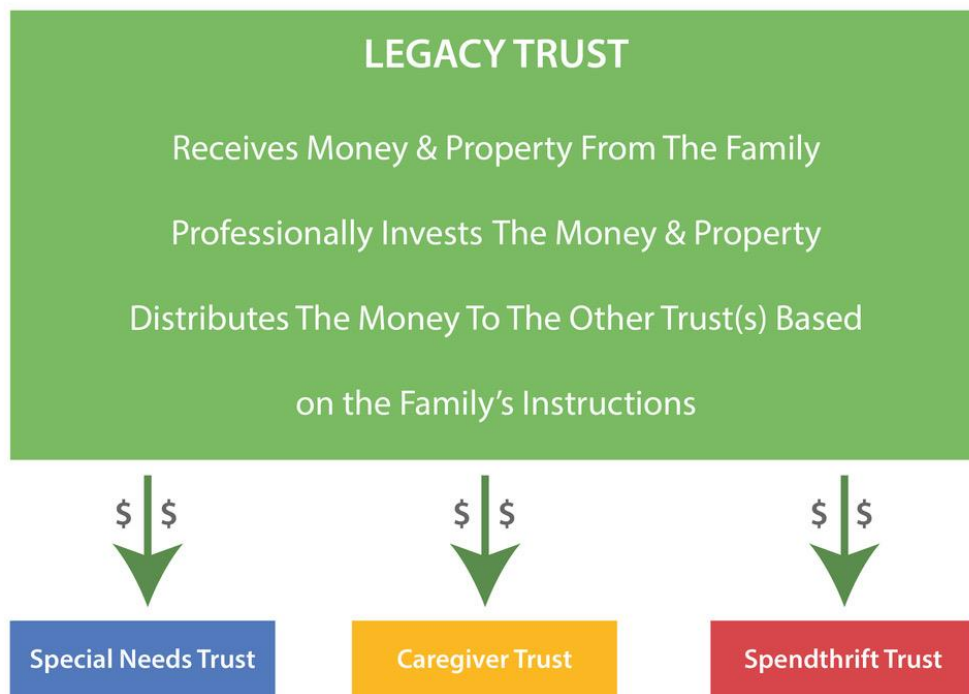
SPECIAL NEEDS TRUST SYSTEM

2021 EDITION

FOR ATTORNEYS

The Special Needs Trust System

- A system of trusts that allows ready access to special needs trusts, trusts for caregivers, and spendthrift trusts without referring your client to another attorney
- Allows for funding to be held in the beneficiary's Legacy Trust for periodic transfers into special needs trusts, trusts for caregivers, and spendthrift trusts
- Cost- and time-efficient solution for attorneys and their clients
- Client base: clients with objective of providing money for individuals who have a disability



LEGACY TRUST AND SUB-TRUSTS:

Legacy Trust:

This trust is the umbrella trust. Gifts or inheritances from the family go into an individual account for the person with a disability. The money and property are divided between the trusts described below according to the instructions given by the grantor. They can either direct all the money be transferred immediately to the other trusts or fund those trusts over time. and

The Trustee of the Legacy Trust is a professional trust department. The use of a professional trustee has two immediate benefits: it can relieve a family of the responsibility if there is not a suitable individual, and professional trustees are well-versed in the rules involved in these trusts.

The family would leave money or property to the Legacy Trust for the benefit of their loved one (the Beneficiary). The Legacy Trust can transfer money to:

- A Special Needs Trust,
- A Caregiver Trust,
- A Spendthrift Trust, or
- A combination.

Special Needs Trust:

There are two categories of special needs trusts: one that is funded with assets that belong to the Beneficiary, and one that is funded with assets from other people. They are called self-settled trusts and third-party trusts, respectively. The Special Needs Trust System allows for either type.

Special needs trusts are designed to allow families to leave money for the Beneficiary *without* jeopardizing eligibility for programs like Medicaid and SSI. The money can be used to enhance the life of the Beneficiary, paying for things such as travel, specialized therapies, education, transportation, haircuts, furniture, entertainment, etc. But the rules are strict on how that money can be used, and it can only be used to help the named Beneficiary.

Caregiver Trust:

Many of our loved ones will always needs some level of supervision and support. The caregiver is who replaces the parent in providing that support. It can be a stressful task. The purpose of the Caregiver Trust is to attract and retain successor caregivers. It provides money that can be used to help the caregiver and the caregiver's family, whether that be respite care, vacations, or whatever can give the caregiver ways to recharge and avoid burnout.

Spendthrift Trust:

This trust is available for Beneficiaries who may not ever qualify for programs like Medicaid, but will always need some level of financial supervision. The assets of a spendthrift trust are used for the health, education, maintenance and support of the Beneficiary, but the Beneficiary is not the Trustee and does not have control of the checkbook. Unlike the special needs trust, there are few restrictions on what the money can be used for - the Trustee decides if the expenditure is appropriate. An additional benefit is that this trust can't be seized by creditors of the Beneficiary.

SPECIAL NEEDS TRUST SYSTEM:

The Special Needs Trust System, with special needs trust, caregiver trust, and spendthrift trust options, gives you and your client the flexibility to incorporate these specialized trusts into the client's estate plan or financial plan without requiring you to research and draft the trusts, and without the need to refer the client to another attorney. *(For a description of each trust, please review the information available on the website under "Sub-Trusts".)*

The Legacy Trust Agreement, the Special Needs Trust, and the Caregiver Trust are all completed, executed trust agreements. The Grantor, your client, names the Beneficiary, and designates when and how the trusts are funded. Funding can be immediate, upon the death of the Grantor, or at any time in between.

By completing the Joinder Agreement, your client signs on as Grantor and creates a Legacy Trust specific to the person with a disability - the Beneficiary. In the Joinder Agreement, the Grantor specifies:

- The Beneficiary
- The trusts to be created, i.e., special needs trust, caregiver trust, spendthrift trust, or a combination
- Trustees of the created trusts
- Successor beneficiaries

The Trustee of the Legacy Trusts is Merchants and Planters Bank, Newport, Arkansas. If no trustees are named or available for a special needs trust, caregiver trust, or spendthrift trust, Merchants and Planters is named as the default trustee. This provision can be a huge relief for families who do not have an appropriate family member to serve as trustee.

WHO CAN BENEFIT FROM THE SPECIAL NEEDS TRUST SYSTEM:

Following are some scenarios where the Special Needs Trust System can help:

+Grandparent wants to leave the proceeds of a life insurance policy to help with the care of their grandchild who is on Medicaid. Grandparent completes the Joinder Agreement, and names the Beneficiary's Legacy Trust as designated beneficiary of the life insurance policy. If the circumstances change during the lifetime of the Grandparent, the Joinder Agreement can be amended, or the Grandparent's life insurance policy can be changed.

+Sibling wants to leave money to help with the care of a person with a disability who is not, and never will be, on Medicaid. An example is a military veteran with a traumatic brain injury. Sibling feels that the veteran will always need someone to take care of the money. Sibling completes the Joinder Agreement, names the Beneficiary's Legacy Trust as beneficiary in a Will, trust, life insurance policy, investment account, etc., and chooses the Spendthrift option on the Joinder Agreement. If the circumstances change before the trusts are funded, Sibling can amend the Joinder Agreement, or the Sibling can amend their estate plan.

+Parent wants to leave money after their death to help whoever provides the hands-on, day-to-day care for their child who is on Medicaid. Parent chooses the Caregiver Trust, perhaps in combination with a special needs trust, and determines the allocation of funds between the two trusts. During the lifetime of the Parent, the Joinder Agreement can be amended.

+Others who may benefit:

- Families with limited resources, below typical professional trust department minimums
- Clients who already have estate plans that would require significant modification to incorporate these provisions, and it is cheaper, more efficient to choose the Special Needs Trust System
- Planning is time-critical, perhaps due to illness or imminent deployment
- Families with uncertain outcomes for young children – they don't know if a special needs trust will be needed, but if it isn't, they feel their child will need a spendthrift trust

FEES:

To participate in the Special Needs Trust System, your client pays:

- * Enrollment fee of \$750 (nonrefundable one-time fee)
- * Annual fee of \$25 until funding of the special needs trust, caregiver trust, or spendthrift trust
- * After funding of special needs trust, caregiver trust, or spendthrift trust, monthly fee of \$10, paid by the trust

Trustee agreements between grantors and professional trustees are decided by the parties and are not included in the above fees.

HOW IT WORKS:

The most common process will be as follows:

1. You and your client identify a need for a special needs trust, a caregiver trust, a spendthrift trust, or a combination, to provide care for *John Doe*, an individual with a disability.
2. Your client, the Grantor, submits a completed Joinder Application and fee to Special Needs Trust Administrative Services, LLC.
3. Following approval of the application,
 - a. Your client makes appropriate beneficiary designations or bequests, naming the "John Doe Legacy Trust" as beneficiary.
 - b. Merchants and Planters secures a tax ID for the John Doe Legacy Trust and sets up administrative and accounting records.
 - c. If the John Doe Special Needs Trust, or the John Doe Caregiver Trust, or the John Doe Spendthrift Trust are funded immediately, the trustee of each trust is responsible for securing the tax ID and maintaining all financial records, managing investments, approving expenditures, etc.
4. Your client may amend the Joinder Agreement *up to funding of the special needs trust, caregiver trust, and/or spendthrift trust*. Each of those three trusts are irrevocable.
5. If funding occurs at the death of the Grantor, the distributions or bequests left to the John Doe Legacy Trust will be transferred to Merchants and Planters as Trustee of the John Doe Legacy Trust. Merchants and Planters will distribute funding to the John Doe Special Needs Trust, or the John Doe Caregiver Trust, or the John Doe Spendthrift as directed in the Joinder Agreement, after the trustee of each trust has provided a tax ID.
6. Investment of the assets of each trust is the responsibility of each trust's trustee.

SERVICES:

The Special Needs Trust Administrative Services, LLC has responsibility for any amendments to the trusts that are required by changes in federal or state statutes or regulations. The Special Needs Trust Administrative Services, LLC will also maintain contact with the Grantor until the trusts are all funded, and will update address and contact information for the Grantor, the Beneficiary, trustees, and contingent beneficiaries.

Special Needs Trust Administrative Services, LLC does not provide legal services or give individual legal advice. Clients will be referred back to the referring attorney for legal assistance. At the request of referring attorneys or their clients, the Special Needs Task Force will make a referral to an attorney who is knowledgeable in the area of special needs trusts.

ADMINISTRATIVE NOTES:

- ✓ Approvals required:
 - Joinder Agreement reviewed by Special Needs Trust Administrative Services, LLC for qualification and completeness
 - Acceptance by Merchants and Planters, Newport, Arkansas as trustee of the Legacy Trust
- ✓ Separate joinder agreements are required for each Beneficiary (person with disability).
- ✓ Joinder agreements are amendable UP TO funding of the special needs trust, caregiver trust, or spendthrift trust
- ✓ Tax ID:
 - Merchants and Planters will establish tax ID for each Legacy Trust
 - Upon funding, the trustee of the special needs trust, caregiver trust, or spendthrift trust is responsible for all the duties of a trustee, including establishing tax IDs, opening bank accounts, investment accounts, etc., managing disbursements, and filing tax returns.

To review the Special Needs Trust System trust documents, email your request to:

harry@specialneedstaskforce.com

You may also request a download of the joinder agreement and instructions.

For legal questions, please contact Margaret R. Ward, JD, at

margaretsntllc@gmail.com