

Special Needs Trusts and Wills:

Why is it important to consider opening a Special Needs trust for my loved one?

- ❖ A Special Needs trust is a very specific trust for Special Needs beneficiaries which, in the case of Third-Party trusts, requires no minimum funding requirement and is protected from any government interference or pay-back
- ❖ Helps protect the future of loved ones with special needs without the penalty typically incurred by having assets above \$2,000 when they have SSI, Medicaid, a Medicaid waiver OR might have a need for any of these in the future
- ❖ First-Party vs Third Party
 - A First-Party trust simply means that the grantor (person funding it) can also be the beneficiary (helpful if the beneficiary was given a large sum of money in their name and needs to put it somewhere). In these trusts, the beneficiary must be under age 65 and have a large sum of money to fund the trust, and that there will be a Medicaid pay-back once the beneficiary passes away.
 - A Third-Party trust means that the beneficiary is not also the grantor (can't put their own money in the trust), though there are no other restrictions on who else is allowed to put money or property into the trust. The beneficiary can be any age and there is no Medicaid pay-back or minimum funding requirement to start the trust.
- ❖ Testamentary vs Stand-Alone
 - A Testamentary trust is a trust funded at the time of the grantor's death (i.e. a grandmother passes away and leaves money in trust to a grandchild). There is no disability or creditor protection for the grantor with this kind of trust.
 - A Stand-Alone trust is a trust funded at the time of execution and/or over time. This kind of trust *is* creditor and disability-protected.
 - Most families will want a Third party stand-alone trust, created by the parent/guardian with the special needs adult child as the beneficiary
- ❖ This trust is allowed to grow interest-free without counting against assets BECAUSE it is not used for the same items as covered by SSI and Medicaid.
- ❖ A Special Needs trust is supplemental to what Medicaid and SSI already cover, so it cannot pay for food and shelter without a partial reduction of the SSI payment (about \$282) This might be worth it if the beneficiary is able to cope with this reduction and if taking disbursements from the trust is to pay for higher quality housing, care, etc.
- ❖ It is also vital to understand that any asset like retirement accounts, 401Ks, life insurance, etc which list a special needs child as a beneficiary need to be changed to list a trust as a beneficiary so that the special needs child never exceeds the \$2,000 asset rule.
- ❖ If the family cannot afford an attorney to set up a trust, they can contact the Arc of Texas to look into a pooled trust [How We Help - The Arc of Texas \(masterpooledtrust.org\)](http://How We Help - The Arc of Texas (masterpooledtrust.org))

Why is it important to consider opening an ABLE account for my loved one?

- ❖ An ABLE Account is a tax-deferred savings account similar to a 529 college savings account for anyone with a disability diagnosis prior to age 26
- ❖ Any distribution taken out of the ABLE account does NOT count as income or affect SSI benefits.
- ❖ Anyone can contribute to an ABLE account, including the beneficiary, as long as the total in the account does not exceed \$100,000.
- ❖ If the ABLE account exceeds \$100,000, the beneficiary will lose SSI, but can keep Medicaid. If the account exceeds \$300,000, the beneficiary would then also lose Medicaid.
- ❖ Because these accounts are allowed to support beneficiaries who receive SSI and Medicaid, there is a medicaid pay-back rule at the time of death of the beneficiary. Any remaining funds will go to pay back the SSI and Medicaid benefits the beneficiary received.
- ❖ It can be good to have both an ABLE account for funds that can be easily accessed AND a Special Needs trust for larger, long-term support and protection.

Why is it important to consider creating a will?

- ❖ While it is always a good idea to have a will in place to ensure your wishes are fulfilled upon your passing, having a will when you have a child with special needs is particularly imperative.
- ❖ What works for “typical” families, often doesn’t work for a family with a loved one with special needs. This is because the way in which families and the state typically divide up assets upon one’s death can have a detrimental effect on the benefits and future financial stability of a beneficiary with special needs.
- ❖ It is strongly recommended that a special needs family hire an attorney who specializes in special needs to create a will which will preserve these benefits and protect the future of a loved one with special needs.

For Assistance with Special Needs Trusts and Wills for a Special Needs family:

Consolidated Planning Group

[Home | Consolidated Planning Group, Inc.](#)

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Information on ABLE Accounts:

[Disability Savings Account](#) | [ABLE Account](#) | [Eligibility Quiz & News](#) | [ABLEnow](#)