

Unique circumstances

Leaving an inheritance to a child with a disability

Estate planning for a child with a disability requires thoughtful consideration. Parents must consider not only how much money to leave their child, but how the assets will be protected and who will manage and distribute the funds for their child.

“Parents with children who are unable to support themselves and depend on disability benefits should consider leaving assets to a Third-Party Funded Special Needs Trust,” says Alissa B. Gorman, J.D., LL.M., an attorney at Semanoff Ormsby Greenberg & Torchia, LLC.

Smart Business spoke with Gorman about the trusts, commonly referred to as Supplemental Needs Trusts (SNT), and how to ensure they provide the most help to a child with a disability.

WHAT IS A SNT AND WHY IS IT USEFUL?

A SNT is established in connection with a will to hold assets for the child with a disability. It is the only type of trust that will allow the child to receive disability-related benefits. The trust serves as a money management tool that lodges management and investment responsibilities in someone other than the child and allows the child to have a fund of money to use for their supplemental needs.

Inheritance monies left directly to a child on disability benefits may have disastrous results where the child depends on those benefits to provide medical care, therapies and residential care. That’s because a child who directly receives inheritance monies becomes ineligible for disability benefits until the funds are spent down on their medical care or other expenses.

Parents may create a SNT under their will or as a separate trust document. A SNT

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created under a will comes into existence when the parent dies, while a separate trust document is established and funded during the parents’ lifetimes.

WHO WILL MANAGE AND DISTRIBUTE THE SNT FUNDS?

The will must pay the inheritance monies directly to the trustee, who is a person or financial institution that will hold, invest and distribute the funds for the benefit of the child. Trustee selection depends on the value of the trust and availability of a trusted family member or friend who has the time, background and commitment to manage the trust. Financial institutions are a good choice if the trust will be funded with a significant amount of assets because SNTs have certain distribution restrictions that must be followed to maintain the child’s eligibility for disability benefits. SNT trustees will have total and absolute discretion to pay income and principal of the trust for the child’s special needs, but must make all purchases directly and may not give cash to the child.

Trust funds may pay for any expenses related to the child’s disability, such as clothing, transportation, education, entertainment, non-essential household expenses (cell phone service, for example) and household items, but may not purchase food or shelter for the child without reducing or totally eliminating certain disability benefits. The SNT may even own

a home for the child with special needs but should not pay for heat, electric, water and sewer. When the child dies, any remaining funds in the trust get paid to whomever the parents have named in the document to receive such funds.

HOW ARE BENEFICIARY DESIGNATIONS BEST HANDLED?

Beneficiary designations for retirement accounts and life insurance intended to benefit the child should be made payable to the trustee of the SNT and not to the child directly. Tax-deferred assets payable to a SNT may qualify to stretch the required minimum distributions over the lifetime of the child.

The trust must accumulate the required minimum distributions within the trust to avoid benefits ineligibility that would occur if the trustee paid the cash directly to the child. Using trust income throughout the taxable year to directly purchase goods and services for the child will reduce the trust’s income tax liability by causing the income attributable to the required minimum distributions to be included on the child’s tax return and taxed at a lower rate.

Parents of a child with a disability should not delay creating their estate plan to ensure that a Special Needs Trust is properly created and inheritance monies will be appropriately managed for their child. ●