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Third-Party Special Needs Trust helps care for loved ones

This article is Part 3 of a series exploring the various types of trusts that may benefit your clients. Today's topic is Third-Party Special Needs Trusts.

Caring for children is a full-time job, especially when that child has special needs. To provide for the child, one of the most helpful trusts you can recommend for your clients is the Third-Party Special Needs Trust (in some states referred to as a Supplemental Needs Trust).

Federal law specifically authorizes this trust, which can provide for your clients' child without penalty. This means that creditors have no right to the trust's funds because the third-party special needs trust owns the assets instead of the child owning them.

Getting started

Your client, not your clients' child, must establish and fund a third-party special needs trust and name a trustee. The trustee can invest the funds any way she sees fit because the federal statute makes no limitations.

This type of trust is irrevocable, and once they set it up it's out of your clients' hands. It is set up specifically to hold assets for a beneficiary so that the funds do not disqualify the recipient from needs-based government benefits. This is especially beneficial if the child has a debilitating illness - such as schizophrenia - or needs round-the-clock hospital care.

To keep the child's Medicaid (MediCal in California) benefits, a typical irrevocable trust would disqualify the child. However, a third-party special needs trust allows the child to keep using government assistance. Your clients might fund the trust with cash, stocks, bonds - anything that has monetary value. The trustee will invest the funds to provide care for your clients' child's needs, such as nutritious food, secure and stable living arrangements and travel to family events.

Other thoughts

At the beneficiary's death, the trust funds pass to whomever your clients name. The beneficiary has no say in giving the remainder to someone as part of their will.

Assume the trust still holds \$200,000 when your clients' child dies. Your clients drafted the

trust, so the remainder is split among their other children. Even though the deceased child may have been in debt, the \$200,000 passes to the other children without creditors coming after it.

One major drawback of a third-party special needs trust is its inability to hold funds belonging to the person with special needs. If your clients' child receives an inheritance that wasn't specifically placed into the trust, or if she settles a personal injury case, the funds should not be placed in the trust. For this set of circumstances there are other options such as a First Party Special Needs Trust, a Pooled Fund or an Able Account established in 2014.

It's important that parents let friends and relatives know about the Special Needs Trust they formed for their child, and that any contributions they wish to make should go into that trust. That way, the child's access to public benefits won't be jeopardized.

We hope this information is useful to you and helps your clients and their families. If you have a specific case or question, please don't hesitate to call our office.

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