

SPECIAL NEEDS TRUST



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Q: What is a Special Needs Trust?

A Special Needs Trust is a trust that is established for individuals that receive government benefits. The essential purpose of the Special Needs Trust is for the beneficiary to receive their entitled government benefits, while still receiving funds from the trust. There are two types of trusts that are usually considered a Special Needs Trust. First is the Self-Settled Special Needs Trust. The second is the Third-Party Special Needs Trust.

Q: What is a Self-Settled Special Needs Trust?

A Self-Settled Special Needs Trust is established by the beneficiary or someone acting on their behalf, with the beneficiary's funds for the purpose of retaining or obtaining eligibility for public benefits. The common source of funds for this type of trust, can be either proceeds from a lawsuit, a direct inheritance, or winning the lottery. The key test in determining if the trust is a self-settled special needs trust is to determine whether the beneficiary had the right to outright possession of the proceeds prior to the act establishing the trust.

Q: What is a Third-Party Special Needs Trust?

A third-party special needs trust is one established by someone other than the person with disabilities with assets that never belonged to the beneficiary. Meaning that it was established by and funded with assets belonging to someone else, other than the beneficiary. It is often used when proper planning is done for a disabled person's family, to hold an inheritance or gift.

Q: What are the differences between the two trusts?

There are two important differences between a Self-Settled Special Needs Trust and a Third-Party Special Needs Trust. The first important difference is that a Self-Settled Special Needs Trust must include a provision directing the trustee to pay back anything the state Medicaid program had paid for the beneficiary. The second important difference is that in many states, the rules governing permissible distributions for Self-Settled Special Needs Trust are significantly more restrictive than those controlling Third-Party Special Needs Trust.

Q: What are the eligible government programs?

There are two types of government programs that a beneficiary may be eligible to receive. The first type does not impose financial eligibility requirements or not “means-tested”. The second type of government program does impose financial eligibility requirements or is “means-tested”. The primary “means-tested” program is the Supplemental Social Income (SSI). Meaning that majority of the time, the SSI rules will be the most important to follow.

Q: What are the non “means-tested” government programs?

GOVERNMENT PROGRAMS NO FINANCIAL ELIGIBILITY REQUIREMENTS NOT “MEANS-TESTED”

Name of Government Program	Defining the Program	Impact on the Trust	North Carolina Specific
Social Security Disability Insurance (SSDI)	Supports individuals who are disabled and have a qualifying work history, either through their own employment or a family member.	It may be unnecessary to create a special needs trust for someone who receives benefits only from these two programs. If a trust is created, the use of broad language, giving more discretion to the trustee, is better.	N/A. Just need to meet the federal requirements.
Medicare	Federal government program that provides health care coverage if you are 65+, under 65 and receiving Social Security Disability Insurance (SSDI) for a certain amount of time, or under 65 and with End-Stage Renal Disease.	It may be unnecessary to create a special needs trust for someone who receives benefits only from these two programs. If a trust is created, the use of broad language, giving more discretion to the trustee, is better.	N/A. Just need to meet the federal requirements.

[Link to Chart](#)

Q: What are the “means-tested” government programs?

GOVERNMENT PROGRAMS FINANCIAL ELIGIBILITY REQUIREMENTS NOT “MEANS-TESTED”

Name of Government Program	Defining the Program	Impact on the Trust	North Carolina Specific
Supplemental Security Income (SSI)	A federal income supplement program funded by general tax revenues. It is designed to help aged, blind, & disabled people, who have little or no income; & it provides cash to meet basic needs for food, clothing, & shelter. It factors in things such as income, assets, mortgage/rent, & utilities.	May need more restrictive language in the trust documents	N/A. Just need to meet the federal requirements.
Medicaid	A federal & state program that helps with medical costs for some people with limited income & resources.	May need more restrictive language in the trust documents	Be a resident of North Carolina and provide proof of residency.
Subsidized Housing	<u>HUD</u> : the U.S. Department of Housing & Urban Development (HUD) provides opportunities to low-income individuals & families to rent property at a cost that they can afford <u>Section 8</u> : a voucher program that is administered by HUD but managed by local public housing authorities or metropolitan housing authorities.	<u>HUD</u> : Two issues to consider: (1) the initial eligibility for subsidized housing & (2) the rent determination. <u>Section 8</u> : May be possible for a family member to serve as a Section 8 landlord.	<u>HUD</u> : depends on the size of your family, & the family's annual income. <u>Section 8</u> : depends largely on income. Need to be considered low-income. Low-income is usually less than 30% of the state's median income.
Temporary Assistance for Families (TANF)	A federal program that is administered locally by states to provide assistance & work opportunities to needy families.	Distributions from the trust may be counted as income & will impact eligibility for TANF.	North Carolina program is called Work First (WF). WF services for low-income families whose income is below or at 200% of the federal poverty level, employment services for non-custodial parents & other supportive services.

[Link to Chart](#)

If you are considering creating a special needs trust, or if you have questions about what trust is right for you, feel free to reach us at www.smithdominguez.com. We're happy to help!