

WHAT IS A SPECIAL NEEDS TRUST IN CALIFORNIA?

“There is the right tool for the right job as they say. This old saying is very applicable in the realm of estate planning.”



ROY W. LITHERLAND

SAN JOSE, CALIFORNIA ESTATE PLANNING ATTORNEY



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You should consider each and every person on your inheritance list. The best way to transfer assets to one person may not be the ideal solution for the next. If you look at your estate plan the same way you look at the slicing of a pie, you may wind up making mistakes that yield unintended consequences.

With the above in mind, we will look at the value of special needs trusts in this paper.

People With Disabilities

You may have someone with a disability in your family. A significant percentage of people with special needs rely on the Medicaid program. We practice in California, and in our state, the program is called Medi-Cal.

To qualify for Medi-Cal, you must have very limited financial resources. There are certain limits that you must stay within to qualify for coverage. Clearly, many people with disabilities cannot earn income, so they qualify for Medi-Cal.

Medi-Cal coverage is not a lifelong entitlement once you have obtained eligibility. If a Medi-Cal recipient was to hit the lottery, his or her financial status would change. As a result, Medi-Cal eligibility would be lost.

Most people are not going to hit the Powerball, but many people receive inheritances. If you were to leave a direct inheritance to a loved one who is enrolled in the Medi-Cal program, the inheritor could lose his or her benefit eligibility.



There is another government benefit program that is called Supplemental Security Income. The situation is similar with this program. SSI is a need-based program, and it provides income for people who have virtually no resources.

An influx of money can render a benefit recipient ineligible for SSI.

Special Needs Trusts

Now that we have provided the necessary background information, we can look at the value of special needs trusts. These trusts are alternately called supplemental needs trusts.

With this type of trust, you can set aside resources for the benefit of a loved one with special needs without impacting eligibility for Medi-Cal and SSI.

Here's how it works. You fund the trust, and you name the person that you want to help as the beneficiary. When you create the trust agreement, you also name a trustee to handle the trust administration tasks.

The trustee will be the person or entity who handles the assets. To make this strategy work, the beneficiary cannot have direct access to the funds.

There are limits to what Medi-Cal will pay for, and as you might imagine, Supplemental Security Income payouts are quite modest. The beneficiary is going to have additional needs that are not being met by these two programs. These are referred to as supplemental needs, and this is why this type of trust is sometimes called a supplemental needs trust.



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Medicaid (Medi-Cal in California) is a government funded program that provide financial assistance for seniors that need help paying for healthcare services such as a nursing home. People must meet certain criteria in order to receive Medicaid. In some cases, trying to meet eligibility for Medicaid can leave a person with nothing, often having to deplete their net worth, or give assets away in order to qualify for Medicaid. But with a little Medicaid Planning, you can use this government benefit and still retain your estate.

The trustee can use assets that you have conveyed into the trust to satisfy these supplemental needs, and these expenditures would do nothing to jeopardize eligibility for SSI and Medi-Cal.

When the funding is coming from someone other than the beneficiary, the trust is a third party special needs trust. Under these circumstances, the Medi-Cal program would not seek reimbursement for monies spent after the death of the beneficiary.

It is also possible to create a first party special needs trust. This would be a trust that is created with the beneficiary's own resources.

If this type of trust is in place, the beneficiary does not lose Medi-Cal eligibility. However, the state would seek reimbursement after the beneficiary's passing.

Summary

Eligibility for need-based government benefits can be lost if a benefit recipient was to experience a significant change in financial status.

You could use a special needs trust to improve a benefit recipient's quality of life without jeopardizing government benefit eligibility. These trusts are alternately referred to as supplemental needs trusts.

If you would like to include a person with special needs in your estate plan, you would do well to discuss the matter with a licensed estate planning attorney. Your lawyer will answer all of your questions, become apprised of your specific objectives, and make the appropriate recommendations.

ABOUT THE AUTHOR

ROY W. LITHERLAND



Roy Litherland has been providing legal services in Santa Clara and Santa Cruz Counties continuously since 1975.

Roy has an undergraduate degree in accounting from Indiana State University, and a Juris Doctor degree from Indiana University, where he graduated cum laude. In law school he was a recipient of the Dean Faust Award and received awards and honors in income taxation and estate and gift taxation.

Roy is certified as a Legal Specialist in Estate Planning, Trust and Probate Law by the California State Bar Board of Legal Specialization.

3425 S. Bascom Ave, Suite 240
Campbell, CA 95008
Phone: (408) 356-9200
www.attornevoffice.com



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