



## SPECIAL NEEDS OR DISABILITY TRUST

### What is a Special Needs or Disability Trust?

Under federal and state law, individuals with disabilities who have more than \$2,000 in available assets are not eligible for means tested public benefits such as Medicaid and Supplemental Security Income (SSI). “Means testing” is a determination by the government of whether an individual is eligible for public assistance based on his or her income and assets. Typically people with disabilities, with assets more than \$2,000 must “spend down” their assets before they can apply and receive public benefits.

With a traditional trust, like a revocable living trust, assets are countable and may prevent the disabled person from qualifying for means-tested public benefits. However, under the Medicaid law, there is a statute that allows the creation of a Special Needs Trust (SNT). Assets in a SNT are not countable under the rules that apply to Medicaid, and the assets in a SNT will not affect the beneficiary’s ability to receive public benefits.

### Why set up a Special Needs Trust?

Because of the limitations on assets to qualify for means-tested public benefits (primarily Medicaid, SSI), a person with a disability with assets of more than \$2,000 only has two choices: immediately spend all the money, or put the money in a Special Needs Trust.

With large sums (e.g., from an injury settlement), it is often impractical to spend all the money. Gifted assets have a five-year “look back” restriction. However, by putting their assets into a Special Needs Trust, a person with a disability can receive public benefits and conserve his or her assets. These assets can be later used to pay for certain expenses which will improve the quality of their life.



LIVING BEYOND LIMITATIONS

## Are there restrictions on a Special Needs Trust?

There are five general restrictions on a SNT:

- The SNT must be an irrevocable trust (i.e., the funds cannot be returned).
- The funds can only be spent for the sole benefit of the Beneficiary.
- Depending on the type of means-tested public benefits received, there may be restrictions on what expenses the SNT can pay for.
- The funds may not be paid directly to the Beneficiary (i.e., the Beneficiary cannot receive cash).
- The Beneficiary must be disabled as defined by the Social Security Administration

## How is a Special Needs Trust Created?

In its simplest form, a Trust account application form is completed and signed off by a licensed Wisconsin attorney. The trust application form is submitted to Wispact for review and to resolve any issues. If the application meets the requirements for a Special Needs Trust, it is forwarded to the Trustee, and the trust is created. It usually takes one to two weeks to create a Special Needs Trust.

## How does a Special Needs Trust Work?

When a Beneficiary needs something to be paid for, a Request for Distribution (RFD) form is completed and sent into Wispact. Then Wispact reviews the RFD to ensure the distribution is legal and will not interfere with the Beneficiary's ability to receive means-tested public benefits. The RFD is then sent to the Trustee (Capital First) for payment to the approved service or product provider.

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