



Attorneys for special needs planning.

# SELECTING THE TRUSTEE of a Special Needs Trust (SNT)



## Mary, age 18, was in an automobile accident and will recover \$1.5 million

Mary receives Supplemental Security Income (SSI) and Medicaid and lives in subsidized housing. SSI pays Mary \$710 per month, and Medicaid pays her medical bills. A subsidized housing program pays a significant portion of Mary's rent, and she would not be able to live where she does without that supplement. Mary's medical bills are expected to total approximately \$200,000 per year. If Mary receives the \$1.5 million net settlement from her automobile accident, she will lose her SSI. If she loses her SSI, she might lose her Medicaid, as well. She also will lose her eligibility for subsidized housing because of the income generated by the \$1.5 million settlement. Unfortunately, Mary's immediate family members have proven that they are not financially responsible individuals — her father's independent business is failing, her mother works part-time and has a substance abuse problem and her brother recently declared bankruptcy.



## » IN THIS SITUATION, THE IMPLEMENTATION OF A SNT IS WARRANTED

Family members frequently want to be named as the trustee; however, they must understand the need to comply with state laws that allow trustees to make only prudent investments; the Principal and Income Act or other state laws with respect to accountings; and be knowledgeable in the area of public benefits law so that the trust distributions do not disqualify Mary from her public benefits. In this case, none of Mary's family members appears to be qualified enough to serve in that role. Putting a family member in control of a sibling's funds can also cause serious disharmony and be a burden on the family trustee.

## » AN INDEPENDENT, NON-FAMILY MEMBER CAN SERVE AS THE SOLE TRUSTEE OR, AT A MINIMUM, AS A CO-TRUSTEE

An independent trustee can be objective, and usually has a public benefits background and investment expertise. Requiring the trust to have an independent trustee also prevents a family trustee from being caught in an endless series of conflicts of interest. The independent trustee, however, is allowed to receive a fee for serving as trustee, as allowed by state law. The independent trustee may be a bank, attorney, or other expert that specializes in SNTs. It may be appropriate to appoint a family member and an independent trustee as co-trustees. The trust document should clearly delineate the responsibility of each of the trustees. The appointment of the professional as the managing trustee with broad authority, including investment authority, should be considered.

## » TRUST ADVISORY COMMITTEE OR TRUST PROTECTOR

An alternative solution is to name a family member and/or independent trustee and appoint a trust advisory committee or trust protector in the document. The trust advisory committee or protector is typically comprised of a family member, an attorney, a social worker, an accountant and/or a nurse. The trust advisory committee or protector meets and recommends distributions to the trustee and can even be given the power to remove and replace the trustee.

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The best way to provide compassionate care and a comfortable life to your family member with special needs is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability attorneys are members of the Special Needs Alliance® (SNA).

As attorneys in the field of disability and public benefits law, we help to enhance your family member's quality of life. Every SNA member has the resources and legal expertise to help you maintain public benefits for your family member and develop effective estate plans and protect your assets.

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