



The Benefits of Using a Corporate Trustee

This issue of The Voice® is by SNA member Thomas Smith of [Thomas Smith Law Firm](#) in Hot Springs, AR. Thomas provides special needs planning and estate planning for families throughout the state of Arkansas.

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You may already know what a special needs trust is. Many parents understand that its primary purpose is to retain assets for a child with special needs while preserving the child's means-tested benefits, such as SSI and Medicaid. Frequently, however, that's where a parent's understanding ends. When a parent asks if he or she has chosen their child's trustee, they don't have an initial response.

Initial Trustee Conversation

Inevitably, the parent starts the conversation wanting a friend or family member to "run" their child's special needs trust. This is understandable as they usually know and trust this person implicitly. Typically, this family member is already in their child's life and is already playing a supporting role. Most parents want this role to continue after their passing, and they want their child to have the continuity of working with a loved one. As a bonus, this friend or family member doesn't plan to charge for the service of being the child's trustee.

Here is an example of a typical initial conversation surrounding special needs trusts:

Attorney: *I'm glad you are learning about special needs trusts and how they can help your child. Have you taken the time to consider an appropriate trustee?*

Client: *What is a trustee?*

Attorney: *Well, a trustee is the person or entity that holds the title to the assets in the trust and uses them for your child's benefit. The role of the trustee is important; the trust is only as good as the trustee heading it up.*

Client: *No big deal; my Uncle Bob can manage it.*

Attorney: *Do you think your Uncle Bob understands the rules governing programs like SSI, Medicaid, and the disability waiver?*

Client: *Well, he knows how to use Google.*

Attorney: *I see. How old is Uncle Bob?*

Client: 78

Attorney: Does Uncle Bob have a good relationship with your child?

Client: Oh yes, they are good friends.

Attorney: Would Uncle Bob be willing to tell your child, “No,” to certain requests?

Client: That might get awkward.

Attorney: Does Uncle Bob know anything about investing assets?

Client: Not sure; I think he had a 401(k) at one time.

Attorney: Let me tell you about a thing called a corporate trustee. You might find this interesting.

Client: Don’t they charge?

As a parent of a child with special needs, I understand how the idea of a loved one acting as your child’s trustee could make perfect sense. I trust my son’s aunt and uncle to care for him should something happen to my wife and me. But that does not mean they have the knowledge and skill set to be successful trustees of a special needs trust. In fact, I may be setting them up for failure and damaging their relationship with my son.

The good news is there is a great way to 1) have a great trustee for my son’s trust; and 2) allow my family members to play a meaningful, indeed critical, role in my son’s life.

Corporate Trustees Set Your Child Up for Long-Term Success

A successful trustee of a special needs trust must be good at several things:

- **First, a trustee must understand the myriad of complex laws and regulations governing benefit eligibility.**

It is important to remember that state and federal laws and regulations are always changing. Trustees must continually immerse themselves in continuing education to understand the legal requirements applicable to the programs used by your child. This alone is a full-time job, not one in which a trustee should simply dabble.

- **Second, a trustee (or its investment department) must be able to invest assets appropriately for the benefit of the beneficiary**

Do not underestimate the weight of this task. Trust investing is unique and does not necessarily correlate with traditional retirement planning, etc. The trustee (even Uncle Bob) has a fiduciary duty to manage investments prudently.

- **Third, the trustee must be able to say, “No,” to your child.**

As much as we love our children, some requests should not be granted. For example, my son might need a new car, and he might want to use trust funds to buy a Maserati. The trustee must be able to disconnect emotionally and make a decision that is in the beneficiary’s best interest.

The reality is my son’s aunt and uncle probably do not meet these criteria. And frankly, they do not want to manage this stuff. What they really want is to simply love my son, take care of him, and make sure he’s leading the best life he can. In effect, they want to be his guardian not his trustee.

With that in mind, the conversation referenced earlier can end more like this:

Attorney: *You know, Uncle Bob might be getting up in age. What if something happens to him?*

Client: *We haven’t really thought about that.*

Attorney: *Can I introduce you to a corporate trustee that takes care of special needs trusts for a living? She really understands the Social Security rules and has an investment group backing her up. You won’t have to worry because she’ll make sure that your child retains Medicaid eligibility.*

Client: *Well, I’m not sure...*

Attorney: *We can still nominate Uncle Bob as your child’s guardian in your last will and testament. This will let him continue to play the caregiver role and be your child’s support system and advocate. While he’s doing that, the corporate trustee will watch your child’s money and make sure no benefits get canceled. It’s kind of like setting up a long-term team for your son’s care.*

Client: *Well, I kind of like the sound of that.*

Attorney: *Let’s set another appointment and help you find a trustee that you feel comfortable will look out for your child’s best interests long-term.*

I have found that once parents learn about the duties and obligations of a trustee, they start seeing the value in having a professional play that role. When they learn they can nominate their trusted loved one as a guardian (if one is necessary), they start to feel better. Having a “team” approach utilizing a corporate trustee and a family member guardian often brings comfort to families and is the best approach to ensuring successful outcomes for your child.

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