

Wills and Special Needs Trusts

A will is the document that controls the distribution of your property at death and serves several important purposes.

First, if you have minor children, a will allows you to select a guardian for them.

Second, your will can contain a special needs trust, which allows a person with disabilities to inherit money or property without becoming disqualified for public benefits like Medicaid and SSI. In Washington, if a parent dies without a will and is survived only by his or her children, the parent's estate will be divided equally among those children. For individuals with disabilities, the direct inheritance of money may disqualify them from Supplemental Security Income (SSI), or needed Medicaid services, like housing and job coaches, and from other benefits. While this problem can often be fixed after a parent dies, it is a cumbersome process and persons may be disqualified from benefits until the problem is remedied. Parents of children or adults with disabilities should therefore have a will which directs all funds for the person with disabilities into a Special Needs Trust. A Special Needs Trust can provide funds for items not covered by government benefits such as clothes, vacations, and gifts. Proper language in a Special Needs Trust is important and an attorney should be consulted.

Third, when setting up your will with special needs trust, you can select the trustees to handle funds inherited by minor children and adults with disabilities. When a person with a disability inherits money, it may leave that individual vulnerable to exploitation; a trust with a chosen trustee helps safeguard this vulnerability. The choice of a Trustee is very important. The Trustee is the person who manages the assets of the Trust and decides when distributions should be made for the beneficiary with disabilities. Without a will, the parent will have had no say in who this Trustee is. Because the trust may continue for many years, it is good to select a trustee who understands the beneficiary's needs and who is roughly the same age as the beneficiary. A professional Trustee may be chosen if the estate is large or if there are no family members that are able to serve as Trustee. The Special Needs Trust operated by the State of Washington Developmental Disabilities Endowment Fund is another option to consider, particularly for families who cannot think of someone who is trustworthy and knowledgeable enough to serve as trustee.

If a will with a Special Needs Trust is created, it is important to change bank accounts, life insurance policies, and retirement benefit beneficiary designations to specify the Trust as the beneficiary for the portion of funds left to the person with disabilities.

While some special needs trusts are used for bequests in wills, other special needs trusts can be set up immediately. Relatives and friends who may consider naming your disabled child in their wills should be advised that such a bequest must be done properly to avoid disqualification of benefits. Any such bequest should be made to a Special Needs Trust. If you know that someone is planning such a gift, you can set up a Special Needs Trust right now, of which you could be the Trustee while you are alive. In addition, people with disabilities can save funds in excess of Medicaid asset limits by setting up a Special Needs Trust to protect their wages or settlements. The trust can purchase a condo, a house, a specialized vehicle, or other things that a person wishes to save money to buy.

This is general information that may be useful to caregivers and family members of persons with disabilities. It is not legal advice on individual cases which may have particular characteristics that alter the best choices. It was originally drafted by attorneys Karen Thompson and Suzanne Howle; it has been revised by the Law Offices of Larry A. Jones.

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