

A Client's Questions About Setting Up a Special Needs Trust

We encourage readers to submit questions so that we may provide you with guidance on issues both of concern and interest. Below are some questions recently posed by a client interested in planning for a loved one with special needs, and our response thereto:

"How would I get started in making a special needs trust?"

The first step is to meet with an attorney who is well-versed in the mechanics of drafting and administering special needs trusts. Additionally, you should select an attorney who devotes a significant portion of his or her practice to staying abreast of the various state and federal laws that are relevant to special needs trusts. Determining whether a special needs trust even is advisable and precisely how the instrument should be drafted to meet the particular needs of a client and the family member for whom planning is being considered requires a thorough knowledge of public benefits (such as Medicaid, Supplemental Security Income, Medicare, and Social Security Retirement and Disability Income), as well as applicable federal and state laws relating to taxes and governing trusts and estates.

An attorney who is well versed on these issues generally will ask you to provide certain factual information at or before the initial consultation. For instance, the attorney may request (a) basic financial data relating to you and the individual for whom you are conducting disability or long-term care planning, (b) details about the individual's disability, (c) verification regarding any public benefits the individual currently may be receiving, and (d) any prior estate planning you personally have in place. Because this information is essential for proposing an appropriate plan for the individual with disabilities, many attorneys send out a client questionnaire prior to the initial consultation, while others simply may ask for this information over the telephone or at the consultation itself.

When you meet with the attorney, you should bring copies of all relevant documents and be prepared to discuss the information requested. Generally, the attorney will know by the end of an initial consultation whether a special needs trust is appropriate in your situation and may even have outlined a specific design for the document with you. At times, however, additional information is needed before the attorney is able to make specific planning recommendations. As a result, a second meeting may be necessary before a final determination is made to prepare a special needs trust or an alternative estate planning tool.

"Is it expensive to set up a special needs trust?"

The cost of a special needs trust will vary depending on several factors, including where you live, the drafting attorney's level of expertise, the type of special needs trust being established, the complexity of the trust design, and the overall estate plan of the individual creating the trust. Due to these variables, an attorney may be unable to provide an estimate until after you discuss your wishes during the initial consultation.



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At Butenhof & Bomster, PC, we focus our practice in the areas of elder law, estate planning, Medicaid planning, special needs trusts planning, guardianships, and probate and trust administration. Simply put, our philosophy is that each client's circumstances are unique and deserving of individualized attention and planning, regardless of whether such planning involves the creation of a complex trust structure or simply the execution of a health care power of attorney.