

What Every Family Needs To Know About Special Needs Trusts for Individuals with Developmental Disabilities: Part Two of Two



Hinkle Prior Fischer & Oberweis
Attorneys at Law

Representing people with disabilities and their families since 1974

Thank You



<https://www.thearcfamilyinstitute.org/welcome.html>

A Quick Review from Part 1

Why are Special Needs Trusts Important?

There Are Two Types of Special Needs Trusts

2

- Third Party
 - “Supplemental Benefits Trust”
- First Party
 - “Payback” Trust
 - “OBRA 93” Trust
 - “(d)(4)(A)” Trust

Third Party Trust

3

- Holds funds belonging to someone other than the individual with a disability
- There is no payback requirement
- At the end of the beneficiary's life, the remaining funds are distributed as the Settlers (usually the parents) decided
- Less regulatory oversight
- Usually part of a comprehensive estate plan

First Party Trust

1

- Holds funds belonging to the individual with a disability
- At the death of the individual with a disability, the funds must first satisfy any Medicaid lien
 - DDD may hold a separate lien
- New Jersey regulations require, among other things:
 - Annual accountings
 - 45 day notice prior to any expenditure greater than \$5,000
- More Regulatory Oversight

Sharing Your Special Needs Trust

When do you need to share a copy of your Special Needs Trust with the Social Security Administration, Medicaid or other government agencies?

Only when the trust is funded



Spending The Money

- Generally, you can spend money on anything needed or wanted as long as it's not provided by or available from the government and does not jeopardize government benefits

Can be spent on:

- Vacations
- Furniture
- Extra therapies
- Electronics
- Entertainment



First and Third Party Trust:

- Will not jeopardize Government Assistance Benefits
 - SSI: funds in trust cannot be used for shelter
 - Medicaid: funds in trust cannot be used for food, clothing or shelter

Why?

Funds available to the individual for these purposes will be deemed as income

First and Third Party Trust:

- Must supplement, not supplant, what is provided by government benefits
 - Additional caregiver services



Spending The Money

First and Third Party Trust:

- Sole Benefit Rule
 - What if another person receives “some” benefit



Spending The Money: First Party Trusts (only)

- Annual Accounting
- 45 days notice on an expenditure of more than \$5,000.00



Is There a Way to Save For Shelter?

- ABLE Accounts
 - Limitations: Similar to First Party Trusts
 - Payback provision
 - You can only contribute \$19,000/year into the account
(If the individual is working, additional funds may be deposited into the ABLE account)
 - Disability must manifest before age 46
 - Benefit of ABLE Accounts: Funds can be used for housing



Shelter & Housing Alternative

- Funds can be transferred from a First or Third Party Special Needs Trust to an ABLE account
 - Then the funds can be used to pay rent or housing costs
 - Remember if transferring more than \$5,000 from a First Party Special Needs Trust, you must provide DMAHS with 45 days notice



The Secure Act

- Signed on December 20, 2019 (effective January 1, 2020)
 - Changes rules for the required minimum distributions for IRA'S and other Qualified Retirement Plans when inherited by someone other than a spouse



The Secure Act

Effective January 1, 2020

- All IRA and Qualified Retirement Plans must be distributed within 10 years of inheritance
 - Can be made all in year 10

OR

- A portion each year for 10 years
- Creates a greater tax liability for the recipient of the IRA or Qualified Retirement Plan



The Secure Act And Special Needs Trusts

- Special Needs Trusts “Stretch” the minimum required distributions based on the lifetime expectancy of the trust beneficiary
- So long as the secondary beneficiary is a person – not a charity

STRETCH

Thank you!

Questions?

- We offer free articles and information
- Free speaking events and workshops
- Locations throughout New Jersey

Please visit our website www.hinkle1.com

Or call

609-896-4200



Hinkle Prior Fischer & Oberweis
Attorneys at Law

Representing people with disabilities and their families since 1974