

One Trust, Multiply Beneficiaries: Creating a Trust for Caregivers and Care Recipient

When a family member has special needs, often a special needs trust is recommended as part of the family's overall financial strategy. But in certain circumstances, creating one trust to include all children in the family may be a smarter tactic.

"It's definitely something to consider," suggests Joshua A. Hazelwood, JD, LL.M¹, Vice President of Advanced Planning Markets for Massachusetts Mutual Life Insurance Company (MassMutual), "if your children are nearing adulthood and it's likely that one or more of your children will be directly or indirectly responsible for the future care of your child with special needs."

General information about trusts

A trust is an agreement written by an attorney that details how assets held for the benefit of one or more individuals will be distributed. The assets help with certain living expenses such as food, shelter, clothing, utility bills, medical care, education, transportation, special equipment, entertainment, and more. "The purpose of the trust and use of funds would be clearly outlined, with the trust carefully worded by an attorney," says Hazelwood. "Precise wording is always important, but especially so if the trust will benefit a person with special needs."

There's a great deal to know about trusts. They can be first party, third party, or pooled trusts; living or testamentary trusts; revocable or irrevocable trusts; marital and non-marital, generation-skipping... The list goes on, which is why it's important to use an attorney who'll take the time to thoroughly understand your needs and financial situation. When the trust will benefit a family member with special needs, the attorney¹ you choose must also have experience serving families like yours, with comprehensive knowledge of the laws that relate to trusts for people with special needs.

Additionally, the attorney you select will help you decide who will manage your trust – one or more friends or family members, a bank or trust company, or a combination of both. Your attorney will also help you select the remainder beneficiary(ies), the person(s) or charity(ies) who'll receive any remaining trust funds when the individual(s) for whom the trust benefited has died.

One trust to benefit all your children

Let's take a look at a life insurance trust that's written to primarily benefit a child with special needs (in this example, let's say it's a daughter), but also provides for other siblings (let's assume two sons). This trust would be funded with proceeds from a life insurance policy that insures the life of a parent. The trust could be written now, so parents can ensure it reflects their wishes for their daughter. When the life insurance policy benefits are paid, the trust is funded; there will be money to help support her needs during her lifetime. Including their two sons as trust beneficiaries ensures they'll have money they need to take care of their sister.

Why include the sons in the trust?

Why not leave money to the sons in a separate trust or bequeath it in a will? Either of these options may work, depending on the family's particular situation, but there are some benefits to creating one trust for all siblings.

- It ensures that money left to the sons for the purpose of caring for their sister is actually used for that purpose. Without the legal restrictions of a trust, money bequeathed directly to them might be used for other personal purposes and could be considered community property in a divorce settlement (half of it taken by an ex-spouse).



- “Very often, we don’t know what amount of money a person with special needs will consume in a lifetime,” explains Hazelwood. “This type of trust provides some flexibility by putting all the money together, with the trust set up to meet the daughter’s needs first.”
- It will minimize the risk of the sons being denied requests for funds. “For example, one son may decide he wants to add an apartment to his home so his sister can live with him,” Hazelwood explains. “She’ll have some independence, but he can still be there to oversee her care.” Since he’s included in the trust, which would have wording to support this type of request for funds, the request would likely be approved.

“In effect, having multiple trust beneficiaries can make this kind of request easier to approve without a governmental agency interfering,” says Hazelwood. For example, without the trust structured in this way, a judge or a trustee might interpret the son’s request to be for his own benefit (upgrading his own property) rather than for his sister.

Trust language is critical

The trust can include language so the trustee(s) will clearly understand how the parents intended the trust funds to be used. Among other things, wording would:

- put the daughter’s needs first,
- take precautions to prevent the distribution of funds to the sons if it would not benefit the daughter,

- help ensure that indirect caregiving expenses would be covered (such as gas and vehicle maintenance for any travel to visit their sister to check on her wellbeing or to transport her to appointments, school, or social events; increased utility and food costs as a result of including her as a household member; the expense of hiring a temporary caregiver and taking a vacation to get away from daily caregiving; and reimbursement for lost income because of time off from a job),
- and stipulate how the funds would be distributed to the sons if their sister should predecease them (for example, divided equally or a larger percentage given to the son who was the primary caregiver).

continued on page 12