

Setting Up the Trust, Part I: First and Third Party Trusts vs. Pooled Special Needs Trusts

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## An Introduction to Special Needs Trusts

University of Texas School of Law  
Essentials for Special Needs Planning  
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## What is a Special Needs Trust?



A Special Needs Trust is...

1. A trust
2. That has a special needs distribution clause
3. That allows assets to be held and used for the benefit of a person (“beneficiary”) without causing the trust’s assets to count towards the maximum amount of “available” or “countable” “resources” the beneficiary can have at the end of any month in order to qualify for means-tested (needs-based) public benefits



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## What is a Special Needs Trust?



### A Special Needs Trust...

- Allows trust assets to be used for the benefit of the beneficiary without disqualifying the beneficiary from Medicaid, SSI, and any other means-tested (also known as “needs-based”) public assistance programs.
- Trust assets are used to supplement, not replace, the public benefits the beneficiary is receiving.



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## Why Use a Special Needs Trust?



Allow the trust beneficiary to qualify for means-tested public assistance, which provides...

- small amount of income, basic health care, and some needed services



While trust assets are used to provide services and items that will help the beneficiary, but are not adequately provided by public assistance programs

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## Two Times to Consider Using a Special Needs Trust

1. Someone wants to give or leave assets for the benefit of a person who has a disability
  - Ex: Parent for child, Grandparent for grandchild, child for parent
2. Person who has a disability and eligible for means-tested public assistance has, or is about to receive, assets
  - Ex: Personal injury award, inheritance, disability happening to a person who has assets, child with disability turning age 18



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## What is Means-Tested Public Assistance? ???? ?

There are two types of public assistance programs

### Not Means-Tested

To qualify for these, a person must be

- blind,
- sufficiently old, or
- have a permanent and total disability,

AND be able to connect to Social Security or Railroad Retirement benefit programs

### Means-Tested (Needs-Based)

In addition to requiring a person to be blind, have a permanent and total disability, or be sufficiently old, a "means-tested" public assistance program bases eligibility on financial need, such as:

- Low income, and
  - Low assets ("available resources")
- Do not need a connection to Social Security or Railroad Retirement programs



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