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LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE

IN THIS ISSUE
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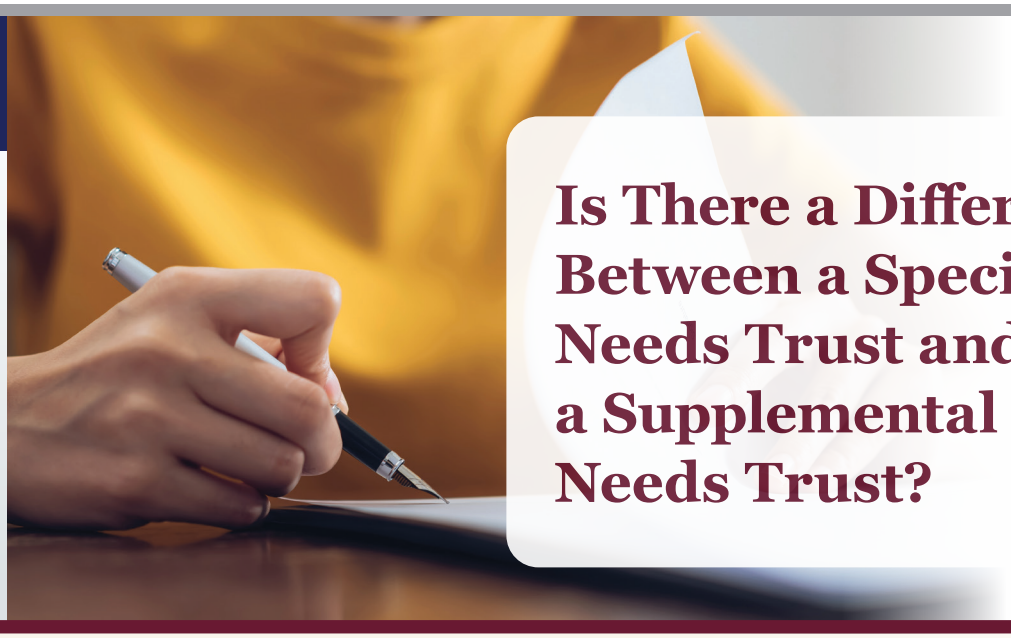

Is There a Difference Between a Special Needs Trust and a Supplemental Needs Trust?

Special needs planning is one of the more complicated areas of estate planning. Even the nomenclature can be confusing. The terms special needs trust and supplemental needs trust are often used interchangeably. First party special needs trusts (more about them later) are also known as d(4)(A) trusts or self-settled special needs trusts. There are also pooled special needs trusts in which funds from multiple sources are combined and spent on beneficiaries in proportion to their share of the total amount in the trust.

It will be helpful to begin by looking at what special needs trusts and supplemental needs trusts have in common. Both are intended to accomplish the same basic goal: provide a disabled person with funds for certain goods and services not covered by government programs like Medicaid and Social Security Income (SSI) while simultaneously protecting eligibility for these and other essential programs.

For example, special needs trusts and supplemental needs trusts both allow a trustee to authorize the distribution of funds to pay for personal care attendants, vacations, home furnishings, electronics, advanced medical and dental care, education, recreation, vehicles, physical rehabilitation, and more. As long as the trusts are properly designed, implemented, and funded, the money to pay for these goods and services will be available to enhance the life of a person with special needs without jeopardizing his or her eligibility for Medicaid and SSI.

So what is the difference between the two trusts? Basically, it comes down to a question of who owned the assets used to create the trust. In a first person special needs trust, the money came from the beneficiary, that is, the person with disabilities. Perhaps the person with disabilities received the money through a personal injury settlement or an inheritance. In a third party supplemental needs trust, on the other hand, the money typically came from the disabled person's loved ones, often a parent or grandparent.

(Cont.)

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Is there a difference between a special needs trust and a supplemental needs trust? *(Cont.)*

This has important ramifications for what will happen to any funds remaining in the trust after the primary beneficiary passes away.

In the case of first person special needs trusts, Medicaid must be reimbursed for the benefits it paid to the beneficiary. With a third party supplemental needs trust, this is not the case. Instead, remaining funds can be passed to other beneficiaries named in the trust, such as the disabled person's siblings. Which brings us to another significant distinction: first person special needs trusts can only have one beneficiary, whereas third party supplemental needs trusts can have multiple beneficiaries.

In addition, a first party special needs trust requires the trustee to get government approval to authorize a payment in excess of $5,000 to any one entity during a single calendar year. First party special needs trusts are also more complicated to establish and administer than third party supplemental needs trusts.

As you can see, special needs planning is indeed quite complicated. Given the possibility that an improperly designed special or supplemental needs trust can put the primary beneficiary's eligibility for government benefits at risk, it is vital to work with a qualified estate planning attorney who has experience in this area of the law.

The Benefits and Importance of Designating Beneficiaries in Your Retirement and Other Accounts

One of the many benefits of estate planning is that it allows you to control how your assets are distributed after you pass away and to formally communicate your wishes to loved ones. Naming specific beneficiaries in your retirement, investment, and other accounts is part of this process… a relatively simple but extremely important part. Here are some of the primary reasons to designate beneficiaries in your accounts and update them when changes take place in your life and in the law itself.

Your Beneficiaries Will Keep a Larger Portion of Their Inheritances and Receive Them Faster

If you have made beneficiary designation in your investment and retirement accounts, the assets will pass directly to your beneficiaries. Without beneficiary designations, the assets might have to go through probate. The probate process can last a long time—several months or even years depending on the laws in your particular area, the complexity of the estate, the probate court's caseload, and more. During the probate process your heirs will be unable to receive their inheritances. There are also court costs and other fees associated with probate, meaning less of your estate will be available to your heirs.

The Benefits and Importance of Designating Beneficiaries in Your Retirement and Other Accounts *(Cont.)*

Less Stress is Placed on Your Heirs

When an investment and retirement account provider is notified of the account holder's death, the provider generally notifies beneficiaries. This means your heirs will not have to search high and low for your various accounts. While your beneficiaries will still need to provide necessary documentation, such as a death certificate, this is significantly less expensive and time-consuming than going through probate. Transferring retirement and investment accounts to heirs named as beneficiaries in the accounts typically costs no more than the price of the death certificates and takes only six weeks to two months. Anything you can do to simplify the estate administration process will spare your loved ones from additional stress while they are mourning your death.

Beneficiary Designations Typically Override Wills

The people you have named as beneficiaries in your accounts will generally inherit account assets even if other beneficiaries were named in your will. This can have unintended consequences and prove disastrous for the beneficiaries named in your will. For instance, let's say you got divorced, remarried, and changed your will to make your new wife your primary beneficiary. If your first wife is still named as beneficiary in your retirement and investment accounts, she, not your second wife, will inherit the funds in your accounts even though your will states otherwise.

It is Easy to Make and Update Beneficiary Designations

When you open a retirement account, such as an IRA, the provider usually offers a beneficiary designation form within the account itself. You can name your beneficiaries when you create the account and change your beneficiaries whenever you wish (with one possible exception, which we'll discuss momentarily). As for investment and bank accounts, making beneficiary designations will likely require you to request a transfer on death (TOD) form. This is easily accomplished.

It is important to note that certain laws govern the leaving of retirement accounts to spouses. Your spouse will generally inherit your 401(k), for example, unless he or she signs a consent form waiving his or her right to it. Therefore, if you wish to leave your 401(k) to your children, your spouse will have to agree to it in writing. Simply designating your children as beneficiaries of your 401(k) will not be enough.

The bottom line is this: beneficiary designations are an important component of proper planning, as is keeping your designations up-to-date.

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A Personal Note From Kimberly

Dear Clients and Friends:

I hope this newsletter finds you safe and healthy. As we slowly return to the "new normal," I hope you will find the information contained in this newsletter helpful. During the time of uncertainly, it is even more important to make sure your estate plan is up to date. If you have not yet had your estate plan reviewed in the last three years, please give us a call to schedule a review meeting. We're here to assist you.

I look forward to hearing from you.