

Special Needs Counseling



The Bible says, "Plans fail for lack of counsel, but with many advisors they

succeed." That verse has tremendous wisdom when it comes to Special Needs Planning.

As this publication was being developed, we recognized the need for specialized counsel in the area of special needs planning and decided to always have articles written both from a legal and financial perspective. This will give our readers an opportunity to learn about all aspects of special needs planning.

J.P. Collins & Associates

contributes an article detailing some of the financial nuances, while Herr, Potts and Herr's contribution focuses on the legal ramifications of planning for your child with special needs.

We hope you find the articles helpful!

All the best,

J.P. Collins & Associates, Inc.

AND

Herr, Potts, & Herr

SPECIAL POINTS OF INTEREST:

- ◆ There is a need for specialized counsel when it comes to special needs planning
- ◆ Each issue will have articles written from the perspective of a financial planner and an attorney

Using Life Insurance to Fund a Special Needs Trust

Written by J. Patrick Collins Jr., CFP

Often times we meet with clients who have created a Special Needs Trust (SNT) and therefore think that the planning stops there. Unfortunately, creating the trust is just half the battle. The next item to consider is how you are going to fund it. One of the most popular vehicles used to fund a SNT is a life insurance policy. While there are numerous other issues to consider when funding a trust, we are going to focus on life insurance for the purpose of this article.

Life insurance provides a payment of a specified amount at the insured's death, thereby allowing the insured to transfer the risk of dying prematurely to an insurance company for a certain cost (premium). Why is life insurance such a valuable tool in special needs planning? It can create an estate, or lump sum, where none exists. If a parent determines that a special needs trust must be funded with \$500,000 at their death (*determining that amount is a whole other article*), and they only have \$50,000 in assets, there will be a shortfall if they die tomorrow. While they may eventually accumulate enough assets to fund the trust, there is a major risk if they die prior to accumulating the assets needed. As shown by the chart below, if this individual would pass away prior to age 90, there would be insufficient personal savings to provide for their child with special needs.

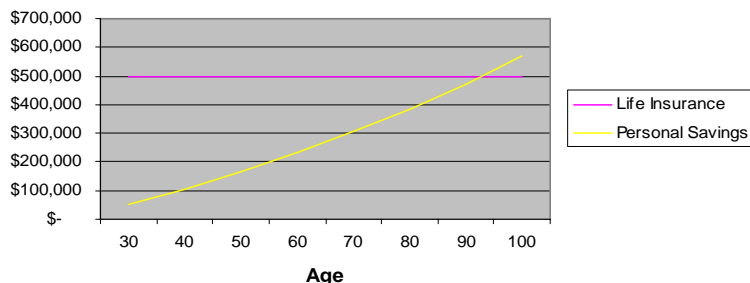


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Life Insurance (cont.)

Life Insurance vs. Personal Savings



There are two broad types of life insurance: term and permanent. Term insurance is a form of life insurance in which the death benefit is payable in the event of the insured's death, during a specified period, and nothing is paid if the insured lives beyond that period. Sometimes I equate it to renting a house. As long as you pay the rent, you can stay in the house. Similarly, as long as you pay the premium, you have life insurance coverage. The downside to term insurance is that it becomes extremely expensive as you get older and therefore is a poor choice to fund a SNT. Term insurance is an excellent alternative for families that are looking to protect an income for a specified period, but if you need the policy to stay in force for your lifetime, term is not a wise choice.

Permanent insurance has two components: a cash value and cost of insurance. For each premium you pay, a percentage goes to pay the cost of keeping you insured, and a percentage goes towards the cash value of the policy. Using the house analogy, this is more like owning, since you are building equity (cash value) in the policy. Most permanent policies can be designed to guarantee a level premium payment you will have to pay to keep the policy in force over your lifetime. Because of the way these policies are structured, they are typically the better choice when funding a SNT. As you might guess, these policies are more costly than their term insurance counterparts because of the guarantees and cash value buildup.

Unfortunately, the insurance industry has gotten a bad name, and in many cases, rightfully so. Most insurance salesmen earn a commission for the products they sell. No product sales, no commission. So, when you walk into their office and they recommend a policy to you, it's hard to determine if it is in your best interest, or if they just need to make their mortgage payment for that month. We always advise individuals to seek out a fee-only financial planner, who does not accept commissions, but charges an hourly or fixed fee. These planners can not only evaluate the myriad of choices surrounding insurance, but can also help you integrate the special needs plan for your child with your personal financial plan.

The author, J. Patrick Collins Jr., CFP® is the President of J.P. Collins & Associates, Inc, a fee-only financial planning and investment management firm located in Towson, Maryland. They specialize in working with business owners, retirees, and families of children with special needs.

Special Needs Trusts

Written by Stephen D. Potts, Esq.

The primary goal of a Special Needs Trust (SNT) is to provide additional resources to special needs persons while ensuring they are receiving the maximum governmental benefits available to them. When establishing a SNT, it is the duty of the Settlor (the individual who creates the SNT) and Trustee to understand how to keep the special needs person (the beneficiary) eligible for those governmental benefits. The Settlor, when drafting the Trust document, should use specific language authorizing the Trustee to supplement the beneficiary's governmental benefits, otherwise it is



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Special Needs Trusts (cont.)

possible that the trust assets could be considered an "available resource" for purposes of determining the beneficiary's eligibility for medical assistance, and thus disqualify the beneficiary from receiving governmental benefits. It is also important that the Trustee of a SNT understand that there are many regulations (State, Federal, and case law) that govern what supplemental services the SNT can provide.

I. Keeping the Special Needs Person Eligible For Governmental Benefits

Courts and state regulatory agencies look at the language of the SNT and the intent of the Settlor to determine whether trust assets are an available resource to the special needs person. If Trust assets are considered an available resource, they may disqualify the special needs person from receiving governmental benefits. It is crucial that the SNT state that the Trust will only be used to supplement and not supplant government benefits available to the special needs person. The intent of the Settlor must be clear that the Trustee must consider other available assets, resources and benefits available to the beneficiary before using the SNT assets. Governmental benefits should provide the primary means of support for the beneficiary. The Trust language should give discretion to the Trustee to provide for the beneficiary in ways that the governmental benefits are not able to do.



“BY FAILING TO
PREPARE, YOU ARE
PREPARING TO FAIL.”

II. Supplemental Services Allowed

Assets in the SNT should be used to assist in the treatment of the beneficiary and increase his or her quality of life. It is the Trustee's duty to understand what services the SNT can pay for and what services could cause the beneficiary to become ineligible for governmental benefits. The Trustee should consult with an attorney in his or her state because Federal and State law and case law come together to create the governing regulations.

In Pennsylvania, for example, the following have been approved by the Pennsylvania Department of Public Welfare (the state regulatory agency) as permitted services: medical expenses, nursing and custodial care, psychiatric/psychological services, recreational therapy, occupational therapy, physical therapy, vocational therapy, durable medical needs, prosthetic devices, special rehabilitative services or equipment, programs of training, education, transportation (including the purchase of an accessible/adapted vehicle), and travel expenses, telephone equipment, cable television and internet access as directly related to the disability, dietary needs and supplements, insurance, professional expenses, architectural modifications to permit access to a residence, and the purchase in the name of the SNT of appropriate housing together with costs of repair and maintenance.

In conclusion, both the Settlor and the Trustee must be aware of the many rules and regulations that cause the special needs person to become ineligible for governmental benefits. When setting up the SNT, the Trust language must clearly state that the SNT's assets will be used to supplement and not supplant the governmental resources available to the special needs person. The Trustee should consult with an attorney and the regulatory agency in his or her state to ensure the Trustee's actions do not cause the beneficiary of the SNT to become ineligible for governmental benefits.

This is a complex area of the law. You should always consult with an attorney familiar with SNTs in your state to determine what plan is best for your situation.

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J.P. Collins & Associates, Inc is a fee-only financial planning and investment management firm located in Towson, Maryland. The firm specializes in working with business owners, retirees, and families of children with special needs.

The firm's principal, J. Patrick Collins Jr., has extensive knowledge of the issues surrounding special needs planning and is a frequent guest lecturer on the topic. Mr. Collins is a Certified Financial Planner™, a NAPFA Registered Financial Advisor, and is active within several financial planning organizations. He is a member of the Board of Directors of the Abilities Network and Senior Citizens, Inc.

Herr, Potts, and Herr

Herr, Potts, and Herr is a law firm located in Wayne, Pennsylvania. The firm specializes in estates and trusts (specifically special needs planning), income tax, and real estate matters. One of the firm's partners, John H. Potts, Esq., is considered a pioneer in the field of Special Needs Planning in Pennsylvania

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