



# HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

## FAQ: Special Needs Trusts

Planning for a loved one with a disability or special needs takes extra care and precaution. You want to ensure their needs are met and they are well-cared for, but you do not want them to sacrifice their public benefits that provide them with a routine, living arrangements, and even health care. Today, we are going to review some common FAQs when planning for a loved one with special needs.

**Q: How can you ensure your loved ones with special needs are protected and provided for if something happens to you?**

A: There are a few different planning tools estate planners may use to provide for individuals with special needs or disabilities. Able Accounts and Special Needs Trusts (also called Supplemental Needs Trusts) are common options to explore that allow the beneficiary to benefit from your assets while still preserving their eligibility for essential public benefits.

**Q: What are the different types of Special Needs Trusts?**

A: Two different types of Special Needs Trusts (SNT) exist.

1. Third-Party SNTs—typically established by a third party such as a parent, grandparent, or sibling of an individual with special needs and funded with assets from those third parties (not the beneficiary's own assets).
2. First-Party SNTs—typically established by the special needs individual to hold their own assets usually obtained from a court settlement, an inheritance, or assets that were accumulated prior to a disability.



**Q: What is the biggest difference between the different types of SNTs?**

A: The biggest difference is what happens to any remaining property in the trust when the beneficiary passes away. First-Party SNTs have "claw-back" provisions and any remaining funds are payable to the state to reimburse for care and Medicaid benefits. Third-Party SNTs are NOT required to reimburse the state upon the death of the beneficiary and you can instead direct the assets to stay in your family.

**Q: Do I have to wait until I die to create a Special Needs Trust for my child?**

A: No. Special Needs Trusts can be established as a stand-alone trust and be utilized immediately for the beneficiary's benefit. Special Needs Trusts can also be established as a "testamentary" trust (only created through your will or living trust when you pass away).

### DID YOU KNOW?

Over 75% of adults with special needs or disabilities do not have a job or a way to support themselves. Planning for your loved one's long-term financial security is essential to ensuring they are taken care of in the event of your death or disability.

See Disability and American Families, US Census Bureau Report.



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**Q: Do I need a stand-alone Special Needs Trust (SNT) for my disabled son?**

A: This depends on your goals and intended use for the trust. Here are just a few of the questions you should discuss with your attorney to help you make this determination.

- Is your son able to care for himself?
- Does he need assistance with daily tasks?
- Is your son able to work and make a livable income?
- Do you want to provide your son assets during your lifetime?
- Do you only plan on gifting to him when you pass away?
- Do other people plan on gifting assets to your son?
- Is he currently on Medicaid, SSDI, or SSI?
- Is there a possibility he will need to be on SSDI, SSI, or Medicaid if you become disabled or pass away?

**Q: Can other people use the same SNT to give gifts to my daughter?**

A: Yes, if you set up a stand-alone SNT, then multiple donors can use the same trust. This is very helpful when you consider that your child’s grandparents and maybe even aunts or uncles may want to name her in their will or trust or give her a Christmas gift or birthday gift. Having one trust helps streamline administration costs, setup costs, and is easier to manage long-term.

This also helps ensure that a good intentioned gift won’t interfere or disrupt your daughter’s benefits. Remember, you live in this world and have some familiarity and knowledge that special rules exist. Your family may not understand this and may not be working with an attorney who knows how to accomplish their goals without disqualifying your daughter from much needed programs.

**Q: What if I change my mind later? Can I amend an SNT?**

A: Although the beneficiary cannot have the ability to control or modify the trust, there are ways to amend the trust if you are the one that establishes the trust or if you are the trustee in charge of administering the trust.

SNTs are complex and today we just scratched the surface. Planning for a loved one with special needs or a disability takes extra care and skill. Make sure you are working with a focused estate planning attorney who understands the federal and state public benefits and how those interact with your goals. The smallest mistake can have a devastating effect on your planning. If you need help planning for your family or would like a second opinion, call us today. Peace of mind is worth your time. 605-777-1772.

*\*This article is for general informational purposes and is not intended to give legal advice. Please consult with an attorney about your situation.*