

**SPECIAL NEEDS TRUSTS:
WHAT EVERY PRACTITIONER SHOULD KNOW**

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Tresi Moore Weeks is an attorney and founder of The Weeks Law Firm, PLLC in Plano, Texas, where she assists clients with estate planning, special needs planning, probate and guardianship. After 11 years as a trial attorney, she opened her own law firm 14 years ago so that she could practice her favorite area of law, estate planning. As an advocate for her own child's special needs, she became active with the disability rights and advocacy community.

Tresi serves as an officer of the Collin County Bar Association Probate Section. In October she will begin serving on the Board of Directors of Disability Rights Texas, and as chair of DRTx's PAIMI council (protection and advocacy for persons with mental illness). She has served on the PAIMI council of DRTx for 4 years. She also serves on the Board of Directors for the Association for Independent Living ("AFIL") in Dallas, and volunteers for the Dallas Volunteer Attorney Program.

Tresi is a frequent speaker on special needs trust for groups of parents of children with special needs, and on basic estate planning for women's and church groups. She lives with her husband and daughter, and enjoys hiking, organic gardening, music, literary fiction, scuba diving and socializing with friends. She is a member of the Watermark Community Church.

EDUCATION

Baylor University School of Law
J.D., 1987

Baylor University
B.A. in Foreign Service, 1984

LICENSES

Ms. Weeks became licensed to practice law by the Supreme Court of Texas in 1987. She is also licensed in the U.S. District Court, Northern District of Texas, and the U.S. Court of Appeals, Fifth Circuit.

AWARDS, ACTIVITIES, MEMBERSHIPS

State Bar of Texas: member of the Real Estate, Probate and Trust Section. Mentor Program for Lawyers Committee 1994-98, Local Bar Services Committee 1994-96
Collin County Bar Association: Officer of the Estate Planning and Probate Section
Dallas Bar Association: member of the Probate, Trusts and Estates Section
National Academy of Elder Law Attorneys: member
Disability Rights Texas: board member-elect, chair-elect of the PAIMI advisory council
Association for Independent Living, Dallas: board member
Legal Services of North Texas: volunteer, Pro Bono Service Award 1989-91
Dallas Women Lawyers Association: President 1993, Vice President 1992, Board of Directors 1989-94, member 1988-95

SPECIAL NEEDS TRUSTS: WHAT EVERY PRACTITIONER SHOULD KNOW

By Tresi Weeks

What is a Special Needs Trust?

A Special Needs Trust (“SNT”) is created and administered for the benefit of a person who is or will be unable to support him or herself due to a serious disability. The trust provides for the care of the beneficiary, while preserving the beneficiary’s option to receive assistance funded by government agencies.

Many government services essential to persons with disabilities are subject to strict asset and income limitations. Supplemental Security Income (SSI) and Medicaid, for example, provide for the basic bare necessities of food, housing and medical care. To qualify for these benefits a single individual can have little more than \$2,000 in assets and minimal monthly income.

This presents a problem for most families who do not have enough assets to provide for all of their loved one’s lifetime care, yet want to provide more than the mere subsistence level provided by public aid. It also presents a problem when the individual receives a personal injury recovery or child or spousal support.

Funds placed in a properly drafted and administered SNT, however, are not considered an asset or resource for eligibility purposes. The trustee disburses funds to take care of the beneficiary’s needs not provided for by government programs, with the intent that the beneficiary remain eligible for public aid if needed.

Even a well drafted SNT can cause disqualification when administered incorrectly. For example, if the trustee gives cash or a debit card to the beneficiary, the beneficiary can lose eligibility for critical government aid. The trustee should obtain legal advice before making distributions.

Wills and Estate Planning

An SNT may be established to provide for the care of a child with special needs after the parents’ death. It may be a testamentary or inter-vivos trust in which the parents are the grantors and the child is the beneficiary. The parents’ wills are drafted to distribute that child’s portion of their estate to the trustee of the SNT.

Many parents fund the SNT by designating the trustee as a beneficiary of their life insurance. The child’s grandparents and other relatives can also contribute to the child’s care by gifting, or naming the SNT as a beneficiary of their will or life insurance proceeds. Naming the trust as a retirement account beneficiary can result in the loss of eligibility for government assistance if drafted incorrectly.

Failure to establish an SNT can be highly detrimental to the child’s future. An outright inheritance can result in the child’s loss of essential government aid. Without medical care and food and shelter, the effects can be devastating.

Some parents believe they should disinherit their child with special needs, leaving their assets to their non-disabled child with the hope that they will use it for the child with disabilities. This is rarely a good option. The assets can be lost to the non-disabled child's judgment creditors or estranged spouse, or can be used for purposes contrary to the parents' wishes. This option also places an unfair burden on the healthy child and strains the sibling relationship.

Divorce Proceeds

Child support and spousal maintenance paid directly to a child or spouse with disabilities may reduce the recipient's government benefits or may completely disqualify the recipient from receiving those benefits. To preserve eligibility, counsel should consider creating an SNT funded by the support. Attorneys should obtain an irrevocable court order requiring that the support be paid directly into the SNT.

Personal Injury Recovery

Personal injury proceeds can be used to fund an SNT for the plaintiff with disabilities who may need to rely on SSI and Medicaid now or in the future. Funding an SNT with a structured settlement annuity can cause disqualification, and must be prepared with great care.

Elder Law

An SNT can help spouses in Medicaid planning for long-term nursing home care.

Conclusion

An attorney who is not experienced with SNTs is wise to seek counsel from one who is. Although planning with special needs trusts can be daunting, it can be rewarding to reassure worried clients that you can provide solutions to care for their special loved one when they are no longer able to.

Tresi Weeks is the mother of a child with special needs and the managing attorney of The Weeks Law Firm, PLLC in Plano, where she assists families with estate and special needs planning. www.weekslawfirm.com.