Life Trust for Disabled (Special Needs) Person / Supplemental Needs Trust

The Supplemental Needs Trust is designed, to the extent possible under current law, to protect each Beneficiary's eligibility, if any such eligibility exists, for governmental benefits such as Supplemental Social Security Income, Medicaid, and state cost of care benefits. To be eligible for such benefits, a handicapped or disabled person must meet very restrictive income and resource level requirements. In most instances, the principal of a trust to which a person's access is restricted is not considered a resource for purposes of determining eligibility for such benefits. The Trustee of this trust has broad discretion to determine when distributions should be made to any Beneficiary or for his/her benefit, and in what amount(s).

You should bear in mind that government regulations with respect to disability benefits are becoming more and more restrictive. It is possible that a totally discretionary trust such as the Supplemental Needs Trust created in your Wills eventually may be considered to be a source of income that could prevent government benefits from being available to the disabled beneficiaries of such a trust.

Background on the General Nature of Trusts

A trust is a legal entity created by a grantor. The "trustee" takes legal title to the property transferred by the grantor to the trust. The "grantor" is an individual who wishes to have the trust manage property on behalf of the trust beneficiaries. The beneficiaries are said to hold the equitable or beneficial title to the trust property. That means they are generally entitled to the income and/or principal of the trust.

The trustee, as legal titleholder, can exercise most of the usual rights over trust assets. For example, he or she can usually invest or sell the assets. But trustees cannot act in their own interest; they must act in accordance with the trust terms and their fiduciary responsibilities to the trust beneficiaries.

The revocable living trust may be contrasted with both an irrevocable trust--also a trust created during life but which can't be changed--and a testamentary trust--a trust established by the decedent's will to take effect after death.

The management provisions of the trust will address the following key issues:

- Who (if anyone) is to receive the trust income, and how long do these income payouts (or the accumulation of income) last?
- Who is to receive distributions of trust principal and at what times?
- When will the trust terminate?

Typical Features of the Trust

Typically, the first part of the trust instrument will direct how the trust is to be managed during life. The second part will deal with the management and disposition of trust properties after death.

The trust agreement will generally provide that, during the grantor's life:

- the grantor is to receive all trust income;

- the grantor may add property to the trust or take property from the trust at any time; and
- the grantor can change any of the trust provisions--or cancel the whole arrangement-for any reason and at any time.

The grantor can name himself or herself as the sole trustee of the trust. However, if the grantor wants to avoid day-to-day investment responsibility, a bank or some other person can be named trustee.

The second part of the trust instrument will direct exactly how the trust properties are to be used and disposed of after the grantor's death. In this sense, the revocable living trust is like a will. It can be changed at any time during life, but the terms of the trust instrument become unchangeable at the grantor's death.

Typical Features of a Special Needs Trust

Distribution by Trustee's sole and absolute discretion for the beneficiary's extra and supplemental needs over and above the benefits that the beneficiary may otherwise receive as a result of a handicap or disability from any local, state, and/or federal government and/or private agency or other entity, any of which provide services and/or benefits to handicapped or disabled persons:

Such needs of beneficiary include, but are not limited to:

(1) expenses related to health services and medications not provided by any Agency,
(2) occupational or physical therapy,
(3) supplementary educational aid, entertainment and recreation, postage and writing supplies,
(4) hair and nail care, grooming and personal care products,
(5) camping, vacations,
(6) transportation,
(7) protective or criminal proceedings
(8) expenses of a person to accompany the beneficiary to providers, to employment, on vacations, recreational outings, cultural experiences, or visits to the beneficiary's family members or friends,
(9) travel expenses of the beneficiary's family members related to visits to the beneficiary; provided, however, the Trustee <u>shall be under no obligation to expend principal or income for such purposes</u>.

In addition, the Trustee may:

(1) seek the appointment of my Trustee or any other person as the beneficiary's personal representative for the purpose of receiving and managing governmental financial assistance payments
(2) appoint or hire an advocate to represent and advance the beneficiary's interests in daily, community, and national affairs, and
(3) expend principal and/or income of this trust for the expenses incurred with the appointment or hiring and the compensation of such a personal representative, advocate, and/or placement advisor.