



Special Needs Trusts



908-232-7400

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WHEN PARENTS can no longer care for their special needs children due to disability or death, caregiving responsibility falls on siblings, other family members, and the community. Expenses often increase dramatically when care previously provided by parents must instead be provided by professionals. The New Jersey Law Firm of Donald D. Vanarelli helps families plan for their loved ones with special needs by focusing on special needs trusts and securing available public benefits.

Parents of a disabled child wish to ensure that appropriate care is available over the course of their child's lifetime, even after they are no longer available to provide care themselves. When they are no longer able to provide care for their disabled child. If a loved one is receiving public benefits based upon financial need such as Medicaid, SSI, supportive housing or other services from New Jersey or the federal government, an inheritance or personal injury settlement or award could jeopardize those benefits. Proper planning with a knowledgeable legal professional is key to preventing the loss of those critical public benefits.

Questions Faced by Parents of Children with Special Needs

1. Who will care for my disabled child when I am no longer able to do so?
2. Will my own medical needs and the catastrophic costs of long-term care deplete my assets so that little or nothing will be left for my disabled child?
3. Can my child maintain eligibility for Supplemental Security Income (SSI), Medicaid, New Jersey community services for the developmentally disabled, housing subsidies and other need-based public benefits after I've passed away?



Trust Planning for a Disabled Family Member

Americans are living longer than they did in years past, and the life span of those with disabilities is also increasing. According to one estimate, 480,000 adults with mental and/or emotional disabilities are living with parents who are aged 60 or older. This figure does not include adult children with other disabilities and those who live separately, but still depend on their parents for vital support.

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Special needs trust planning by parents can make all the difference in the life of a child with a disability. Planning is also critical for the disabled child's siblings, who may be left with the responsibility of caring for the disabled sibling (in addition to managing a career and caring for their own families and, possibly, ailing parents).

The Critical Component: A Plan of Care

For a family with a special needs child, the goal of estate planning usually involves providing for the disabled child's needs without jeopardizing eligibility for needs-based governmental benefits.

Parents may wish to make outright bequests to their children in equal shares. However, this distribution plan may be detrimental to a disabled child. An inheritance could disqualify an adult disabled child from needs-based government assistance. Disqualification for public benefits may also occur if the disabled child is the beneficiary of a life insurance policy or retirement plan, or if the child owns a bank account individually or jointly with another.

A special needs trust is a much safer vehicle for providing funds to a disabled loved one. The properly drafted trust will protect assets from the claims of creditors and preserve the child's eligibility for the needs-based government assistance so vital to the child's continued well-being.



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Special Needs Trusts (also known as “supplemental needs” or “supplemental benefits” trusts) allow a disabled beneficiary to receive gifts, lawsuit settlements, inheritances, or other funds, without jeopardizing eligibility for government benefits based upon financial need. Such trusts are drafted so that the funds will not be counted in determining the beneficiary’s eligibility for public benefits. As the name implies, special needs trusts are designed to pay for comforts that could not be paid for by public assistance, as opposed to basic support. These trusts typically pay for goods and services like education, recreation, counseling, and medical attention beyond the basic necessities of life.

“Third party” special needs trusts may be created by a parent or other family member for a disabled child (even though the child may be an adult by the time the trust is created or funded). Such trusts also may be established in a last will and testament, in which a deceased family member leaves assets to a disabled relative.

In addition, a parent, grandparent, guardian, or a court can create a “self-settled” trust to protect assets that belong to the disabled individual. These self-settled trusts are frequently established for individuals who become disabled as the result of an accident or medical malpractice and later receive the proceeds of a personal injury award or settlement. Each public benefits program has restrictions that the special needs trust must meet so as not to jeopardize the beneficiary’s continued eligibility for public benefits.



The Parents' Estate Plan

IN ORDER FOR A PLAN involving a special needs trust to be effective, the parents' estate plan often must be modified. Any inheritance for the disabled child should be left to the special needs trust. Parents also must tell family members who might wish to gift assets during their lives, or leave assets upon their death, that gifts and bequests for the disabled child should be directed to the trust. Beneficiary designations on all life insurance policies, IRAs, retirement accounts, etc. must be changed so that the disabled child does not inherit directly. Instead, the non-probate assets should be directed to the special needs trust.

Plan ahead for your loved one's care with the assistance of the Law Office of Donald D. Vanarelli. As a Certified Elder Law Attorney and NJ Super Lawyer, Donald D. Vanarelli, Esq. has the knowledge, skill and experience necessary to effectively represent you and your loved ones in this complex area of law. Our wide range of service areas allow us to effectively navigate the legal hurdles you face. If you have questions regarding special needs planning and trusts, speak to a member of our team today.



About Donald D. Vanarelli, Esq.

AWARD-WINNING NEW JERSEY ESTATE PLANNING ATTORNEY

DONALD VANARELLI is a recipient of the Marilyn Askin Lifetime Achievement Award from the New Jersey State Bar Association's Elder and Disability Law Section. The Lifetime Achievement Award, the Elder and Disability Law Section's highest honor, is bestowed on an attorney with an established history of distinguished service who has made significant contributions in the field of elder and disability law throughout his or her career.

Qualifications Include:

- ▶ Recipient, Lifetime Achievement Award, by the NJ State Bar Association, Elder & Disability Law Section
- ▶ Certified Elder Law Attorney, National Elder Law Foundation, accredited by the ABA
- ▶ Named to the Super Lawyer list for the years 2007–present
- ▶ Rated "AV Preeminent" by Martindale-Hubbell, Signifying Professional Excellence
- ▶ Lead counsel in *In re Keri*, a landmark NJ Supreme Court case in which guardians, for the first time, were permitted to engage in public benefits planning to obtain Medicaid eligibility for their wards
- ▶ Lead counsel in *Saccone v. Police and Firemen's Retirement System*, in which the NJ Supreme Court, for the first time, permitted a special needs trust to be designated as the beneficiary of a state pension
- ▶ Co-counsel in *Galletta v. Velez*, in which a federal court, for the first time, held that VA pension benefits are not countable in determining Medicaid eligibility
- ▶ Past Chair, Elder and Disability Law Section, NJ State Bar Association
- ▶ Founding Member, Academy of Special Needs Planners
- ▶ Founding Member, Council of Advanced Practitioners, National Academy of Elder Law Attorneys
- ▶ Accredited by the Department of Veterans Affairs
- ▶ Certified as a National Certified Guardian by the Center for Guardianship Certification
- ▶ Selected as a panelist on the Union County Probate Early Settlement Panel
- ▶ Approved as a Mediator under the New Jersey Court Rules
- ▶ Recognized as an Accredited Professional Mediator
- ▶ Former Director, NJ Association of Professional Mediators
- ▶ Named to the list of Top Rated NJ Lawyers
- ▶ Trained as a Collaborative Law Professional
- ▶ Former Social Security Claims Representative for SSI and Medicaid claims
- ▶ The Law Office of Donald D. Vanarelli is [A+ rated](#) by the Better Business Bureau

Additional Information

FOR ADDITIONAL INFORMATION regarding Special Needs Trusts call us at **908-232-7400** or [click here](#) to contact us online.



242 St. Paul Street | Westfield, NJ 07090
Phone: 908-232-7400 | Fax: 908-232-7214
info@VanarelliLaw.com
www.VanarelliLaw.com