

SPECIAL NEEDS TRUSTS
Irrevocable Special Needs Trust
(Minn. Stat. § 501C.1205, subs. 3 & 4)

Trustee Instructions

Now that the special needs trust has been created. It is now important to review the general guidelines and instructions that you, as the Trustee(s), must follow when administering this Trust.

It is imperative that you closely observe the statutory requirements and guidelines as you administer the Trust. Failure to make disbursements according to the statutory requirements can result in a determination that the funds are available to the sole beneficiary. Needless to say, if the Trust funds are deemed available, continuance of some, if not all, of the sole beneficiary's public benefit funds may be denied due to an excess of available funds.

Keeping this in mind, please review the following:

1. Under NO CIRCUMSTANCES can the Trust assets be directly disbursed to the beneficiary. In other words, you cannot write checks or make payments directly to the sole beneficiary with a disability. All payments from the Trust should be made to the person or persons supplying goods or services to beneficiary.
2. If the sole beneficiary has established a qualified ABLE account, transfers of trust assets can be made directly to the qualified ABLE account.
3. Under NO CIRCUMSTANCES can you place any assets received from any government unit or agency "directly" into the Special Needs Trust, including Social Security payments, Veteran's Administration (VA) payments, etc.
4. Trust funds cannot be used to pay for items or services for the sole beneficiary with a disability that are already provided or could be provided by any governmental unit. Generally, the items and services provided by governmental units or agencies cover basic needs such as food, shelter, clothing and medical care. The Trust can provide for the sole beneficiary's reasonable expenses for the following needs only when benefits from publicly funded benefit programs are not sufficient to provide adequately for them or they are not available from public sources:
 - Special medical care, equipment, dental care, personal supervision, companion services, private room charges, counseling and treatment not covered by publicly funded benefit programs, and legal, accounting and other professional fees.

- The purchase, maintenance, repair or modification of a home suitable for a person having the beneficiary's disability. If any real estate is used for homestead residential purposes for the beneficiary, she shall have the unqualified right to reside in and occupy such property so long as the Trustee (or the guardian or conservator of the sole beneficiary) deems such residence to be desirable, practicable and safe.
 - Transportation or a suitable vehicle, and for comfort, convenience and reasonable luxuries which may include, but are not necessarily limited to, entertainment, education, vacations and travel, as the Trustee, in the Trustee's sole discretion, deem advisable.
5. Deposits to the Trust should generally consist of funds and assets belonging to the sole beneficiary with a disability or given to or awarded to the beneficiary to reaching age 65. Resources or income belonging to anyone other than the beneficiary generally should not be added to the Trust without further consideration.
 6. This Special Needs Trust is for the *sole benefit* of the sole beneficiary with a disability.
 7. The State of Minnesota will receive amounts remaining in the Trust when the sole beneficiary dies, up to an amount equal to the total medical assistance paid on the beneficiary's behalf.
 8. The Trustee must keep accurate records of money and/or property received into the Trust as well as payments made out of the Trust. The Trustee should also keep all financial statements and copies of canceled checks relating to any trust account. The county social services agency from which the sole beneficiary receives services, the Social Security Administration, and the State of Minnesota – Department of Human Services all have the right to examine the Trust Instrument and the Trustee's records relating to the administration of the trust.
 9. The Trustee has a fiduciary responsibility to make certain all necessary tax filings on behalf of the trust are made on time. The Trustee should check with a qualified tax professional to determine whether an income tax return must be filed on behalf of the Trust.

THE FOLLOWING PROVISIONS APPLY TO A NON-COURT SUPERVISED TRUST:

10. If the sole beneficiary with a disability receives Medical Assistance or other county funded services, the Trustee must report the existence of the Special Needs Trust to: Minnesota Department of Human Services, PO Box 64995, St. Paul, Minnesota, 55164-0995, and to the county providing social services to the sole

beneficiary. The Trustee shall also provide a copy of the Trust and the initial trust inventory to the Commissioner.

11. The Trustee must also submit an accounting of the beneficiary's trust account(s) to: Minnesota Department of Human Services, PO Box 64995, St. Paul, Minnesota, 55164-0995, at least annually or until the trust terminates in conjunction with the Beneficiary's application or renewal of medical assistance. The accounting must include: 1) an inventory of trust assets and value of assets at beginning of accounting period; 2) additions to the trust during the accounting period and source of the additions; 3) itemized distributions from the trust during the accounting periods, including the purpose of the distribution and to whom the distribution(s) were made; 4) an inventory of the trust assets at the end of the accounting period; and, 5) any changes made to the trust instrument during the accounting period.
12. Keep in mind that a trust that is not supervised may be placed under court supervision by petition of an interested party.

THE FOLLOWING PROVISIONS APPLY TO A COURT SUPERVISED TRUST:

10. The Trustee must report the existence of the Special Needs Trust to the Commissioner of the Minnesota Department of Human Services and to the county providing social services to the Beneficiary. The Trustee shall also provide a copy of the Trust and the initial trust inventory to the Commissioner.
11. The Trustee of a court supervised Special Needs Trust must file an initial trust inventory with the supervising court. Thereafter, the Trustee must file annual accountings with the Court within sixty (60) days of the anniversary date of the Trustee's confirmation by the court.
12. The Trustee must submit an accounting of the beneficiary's trust account(s) to the Commissioner of Minnesota Department of Human Services at least annually or until the trust terminates in conjunction with the Beneficiary's application or renewal of medical assistance. The accounting must include: 1) an inventory of trust assets and value of assets at beginning of accounting period; 2) additions to the trust during the accounting period and source of the additions; 3) itemized distributions from the trust during the accounting periods, including the purpose of the distribution and to whom the distribution(s) were made; 4) an inventory of the trust assets at the end of the accounting period; and, 5) any changes made to the trust instrument during the accounting period.
13. The Trustee should obtain court approval prior to selling any real property belonging to the Trust and prior to making any large expenditures from the trust. The purchase of a pre-paid burial plan, however, does not usually require Court approval prior to purchase.

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