QUALITY OF LIFE FOR LOVED ONES LIVING WITH A DISABILITY

VistaPoints
The Special Needs Trusts & Resource Center

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AGENDA

1

Prepare for a loved one's future through financial planning and the use of a professional trustee to manage a special needs trust.

2

Safeguard individual's needed government benefits while protecting financial gifts, lawsuit settlements, inheritances, and personal savings.

3

Control potential mismanagement of finances by establishing a special needs trust with a professional trustee.

4

Provide quality of life for a loved one, living with a disability, while achieving your own peace of mind.

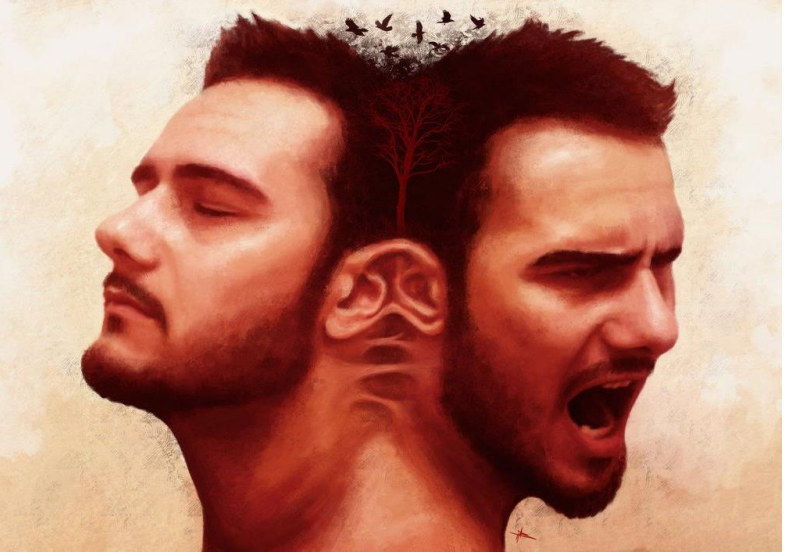
SENIORS: SPECIAL NEEDS

Scams

Gifts to Strangers

Donations

Abuse



Adults: Physical & Mental Illnesses

- Mismanagement of financial assets:
  - Overspending in manic phases
  - Giving items away to please others
  - Losing, hiding, misplacing money

CHILDREN:
BIRTH DEFECTS & ACCIDENTS

Every 4.5 minutes, a baby is born with a birth defect in the United States.

That means nearly 120,000 babies are affected by birth defects each year.

Centers for Disease Control and Prevention. Update on Overall Prevalence of Major Birth Defects–Atlanta, Georgia, 1978-2005. MMWR Morb Mortal Wkly Rep. 2008;57(1):1-5.

Down Syndrome (Trisomy21) is the primary birth defect.

Cleft Palate, Atrioventricular Special Defect (Heart), and Spina bifida just to name a few.

https://www.cdc.gov/ncbddd/birthdefects/data.html

Prevailing Types of Disabilities in Adults

Tennessee- One of highest states in country with:

- **Vision - 2.0% of the population**
- **Cognitive - 4.4% of the population**

- *(2015 Disability Status Report- United States, Cornell University)*

1 Person is diagnosed with dementia every 56 seconds.

44 Million people worldwide – Only 1 in 4 people who have Alzheimer's is diagnosed

https://www.alztennessee.org/info/research-statistics/statistics

Definition And Usage:

Pooled Special Needs Trusts

First Party Special Needs Trusts

Third-Party Supplemental Needs Trusts

Special Needs Trusts

Pooled Special Needs Trusts

Pooled Special Needs Trusts

Legal contract under Federal law.

Beneficiary – person living with a physical, mental or intellectual disability.

A Third Party (trustee) agrees to hold assets for the beneficiary's use.

The Trust must be operated by a non-profit organization.

An attorney-in-fact (family member, conservator, guardian or Power of Attorney) is responsible for overseeing the welfare of the beneficiary.

Pooled Special Needs Trusts

- Assets are preserved for "special needs" not covered by public benefits.
- The beneficiary can be of any age.
- If the beneficiary is 65 years of age or older, a Pooled Special Needs Trust must be used.
- There must be a provision for Medicaid Payback.

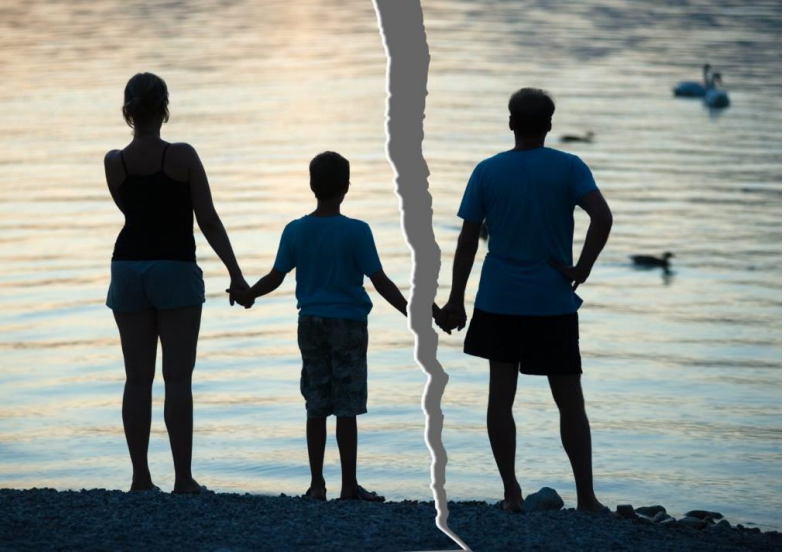
Third-Party Supplemental Special Needs Trusts

Third-Party Supplemental Needs Trusts

- A special needs trust funded exclusively with property given by people other than the beneficiary.
- These trusts are typically designed as part of the donor's estate plan to receive gifts that can help a family member with special needs while the donor is still living.
- Manage an inheritance for the person with special needs when the donor dies.
- Upon the beneficiary's death, the assets in a Third-Party special needs trust can pass to the donor's other relatives or anywhere else

THIRD-PARTY SUPPLEMENTAL NEEDS TRUSTS

- Anyone other than the beneficiary can set up a third-party special needs trust.
- Third-party trusts do not have age limits.
- Drawback: Third-party trust has the inability to hold funds belonging to the person with special needs.



FIRST PARTY SPECIAL NEEDS TRUSTS

First Party Special Needs Trusts

- A first party/self-settled Special Needs Trust is funded with assets belonging to the person living with a physical or intellectual disability — the beneficiary.
- If person living with a physical or intellectual disability owns any significant amount of property outright, eligibility for government benefits will be affected. Instead of owning the property outright, the person with special needs establishes a First Party Special Needs Trust and puts the property into the Trust.
- A person with special needs might acquire assets through a:
    - Personal Injury Award
    - Retirement Plan
    - Divorce Settlement
    - Life Insurance Policy
    - Inheritance

First Party Special Needs Trusts

The beneficiary can apply for or continue to receive public benefits and use the assets in the Special Needs Trust to pay for supplemental items or services not covered by public benefits. First party/self-settled Special Needs Trusts have special requirements, such as:

- The beneficiary is to be under the age of 65 when the trust is being established.
- There is a mandatory Medicaid payback provision recognized by Federal law since 1993 under 42 USC 1396p(d)(4)(A).
- A parent, grandparent, guardian or the court may establish this type of trust for the beneficiary. Only the person with the disability can be the beneficiary.
- Upon the death of the beneficiary, the State will be reimbursed from the remaining trust assets up to the amount of public benefits expended on behalf of the beneficiary.
- Any assets remaining in the trust after the Medicaid payback will pass according to the trust provisions.

WHY ESTABLISH A SPECIAL NEEDS TRUST?

PROTECTION

Special Needs Trusts:
Protects personal assets

Provides Three-way Protection

- Protects "Quality of life"
- Protects government benefits
- Protects "peace of mind" for everyone in the family

- Education
- Alternative Therapies
- Pre-paid funeral arrangements
- Non-medical companion services
- Electronics
- Entertainment

Now, What Do You Think?

GIFT SCENARIO

Adult Son wants Motorcycle

Father is living with a disability and has a Special Needs Trust.

Son's 30th birthday is approaching.

Son wants father to purchase a beautiful, brand-new motorcycle.

Son says he will take father to doctor on motorcycle. Will install special seat and seatbelt if father's Trust will pay for his birthday gift.

Is this a qualified expenditure from the Trust?

Yes, father and son will enjoy the ride.

No, the motorcycle must have a sidecar for the father.

No, gifts cannot be purchased from the trust.

Yes, purchasing the motorcycle will make the father happy.

Personal Injury Case:

- My husband was killed in an automobile accident less than two miles from our home.
- Our Personal Injury Attorney got us a Settlement which will help with the loss of income and expenses but will never replace the loss of a husband and father.
- I have an adult child with Autism who is twenty years old. He receives services through TennCare.
- I want to be sure my son is taken care of should anything happen to me.

DO WE NEED A SPECIAL NEEDS TRUST?

A. No, you can spend the money however you want. It doesn't matter.

B. Put money in a bank account under someone else's name to hold for you.

C. Put child's portion of award in a Certificate of Deposit.

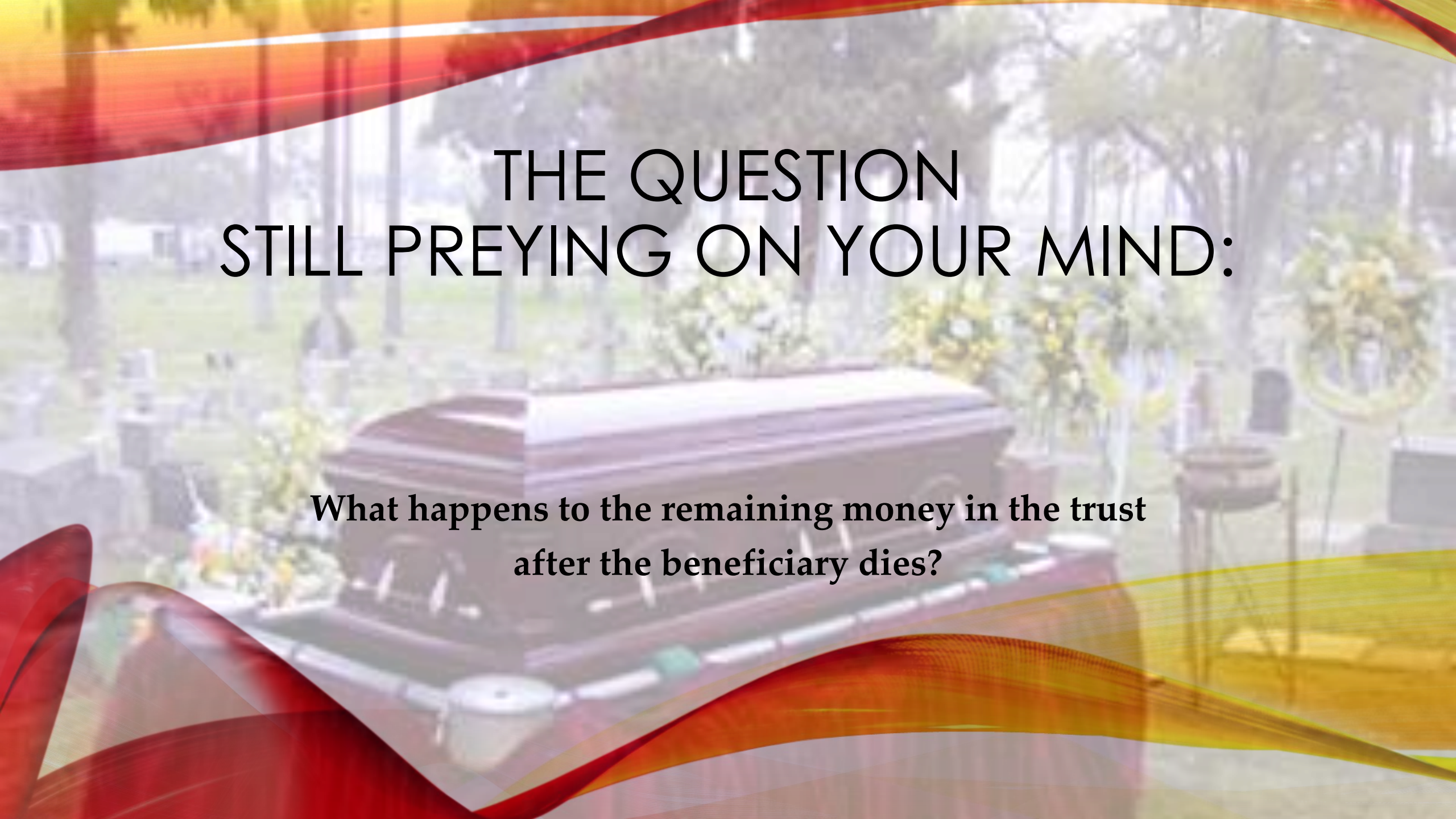
D. Yes, a Special Needs Trust will protect the assets while maintaining government benefits for your son.

Special Scenario: What Is The Solution? Inherit Or Renounce

- **Young man has Cerebral Palsy.**
- **His grandfather dies. Man inherits $100,000.**
- **His government benefits pay for all of his medical care – totaling over $85,000 per year.**
- **If man accepts the inheritance, he will lose his government benefits.**
- **He will use the $100,000 to pay for his food, clothing, shelter, and all health-related needs.**
- **Man will have a waiting period, after the money is spent, to qualify for government benefits again.**
- **Other Option – Renounce the inheritance and keep his Medicaid.**

Question:
What is the Right Thing To Do?

Accept	Accept inheritance.
Renounce	Renounce inheritance.
Establish	Establish a Special Needs Trust for the inheritance.
Have	Have the attorney give it to a friend to hold for you.



THE QUESTION
STILL PREYING ON YOUR MIND:

What happens to the remaining money in the trust after the beneficiary dies?

Pay-Out Scenarios
Pooled and First Party Special Needs Trusts

- After the beneficiary dies, a claim is filed with the state for “Estate Recovery”.
- A state Affidavit will be issued for the beneficiary declaring one of the following:
  - Pay the state all incurred expenses.
  - Process a “Release”. Money is given to remainder beneficiaries.
  - Upon specific circumstances: Trust money is retained to be used for charitable donations to others who are living with a mental, intellectual or physical disability.

Pay-Out Scenario Third Party Supplemental Special Needs Trust

- After the beneficiary dies, and all outstanding expenses are paid, any remaining money is given to the remainder beneficiaries.

- There is **No** Payback to Medicaid!

CLOSING THOUGHTS

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SUMMARY

It is important to prepare for a loved one's future

Financial planning can make the world of difference

Use a professional trustee to manage a Special Needs Trusts

Safeguard government benefits

Protect personal assets

Control potential mismanagement

Why Utilize a Special Needs Trust?

- Minimum amount to open. No hidden fees.
- Sensitively navigates issues surrounding the beneficiary's disability.
- Diligently advocates for all qualified public benefits.
- Prudent investment of special needs trust funds.
- Timely reporting of the trust's financial accounting and tax documentation.
- Personal yet professional relationship with office staff.

VistaPoints

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