



Do I Really Need A Professional Trustee For My Special Needs Trust?

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Serving as a trustee requires administrative and technical skills in addition to strong interpersonal communication skills. Identifying the appropriate trustee is difficult in general; a Special Needs Trust (SNT) presents additional challenges. While most families will name a relative to serve as the trustee of their family's SNT, they are often unaware of the specialized knowledge needed to succeed in the role. In many cases, it makes sense to have a family member involved in some capacity in the care of the individual with special needs. However, the SNT beneficiary is almost always best served [when a professional trustee with the specialized skills](#) is named as the trustee or co-trustee.

In considering trustees to name for your SNT, we suggest evaluating your alternatives with respect to the following characteristics: administrative skills, communication skills, investment skills, knowledge of public benefits rules and regulations, available time to serve, desire to serve, and ability to stay informed of legal and policy changes as they relate to SNT administration.

All trustees owe a fiduciary duty to their beneficiaries. The fiduciary duty requires them to act in the best interests of the beneficiaries. The basic fiduciary requirements are as follows: maintain detailed records, never co-mingle trust assets with the trustee's personal assets, invest the trust assets prudently, and file all required income tax and distribution reports on time.

Most trustees retain the right to delegate certain obligations of the trustee. These include the preparation of income tax returns, the management of the investments, and the annual accountings. While these roles can be delegated, the trustee always retains the fiduciary responsibility to confirm that they are done correctly.

It is essential for families to discuss their intentions of naming relatives as trustees before the SNTs are implemented. The results improve significantly when candid conversations are held in advance rather than after the parents pass away and the family member is informed that he or she is the trustee with no time to prepare for the role.

The reality is that [few family members will possess all the necessary characteristics to be a successful trustee](#). Similarly, many large bank trust companies are not skilled in handling SNTs and are not structured to provide the level of care and contact most families want.

Often, the optimal solution will be to pair a family member who possesses a strong relationship with the beneficiary and a professional trustee.

In situations in which there is no family member who is willing and able to serve as co-trustee, [a recommended alternative is to name a family member, friend, or colleague as a trust protector](#). The [role of the Trust Protector](#) is to remove the existing professional trustee and replace them with a new professional trustee should the need arise. This removal power is not allowed to be granted to the beneficiary of a SNT.

A family should expect their SNT to pay fees to the trustee(s) of the SNT regardless of whether or not the trustee is a family member, a professional individual trustee, or a corporate trustee. Assuming that a family member will serve for free is a mistake. While some family members may initially serve as trustee for free, their opinions about fees often change once they fully understand the complexity and amount of work involved. In evaluating trustee fees, most often you get what you pay for. Professional trustees charge fees because they understand the importance of their roles and the value of their services. Saving hundreds of dollars in trustee fees may seem like a great strategy; however, losing governmental benefits because the trust was administered incorrectly can be a far more costly matter.

We believe there is a role for family members to play in the support and care of the family member with special needs. They can be companions, advocates, caregivers, or take on the legal roles of guardian or agent under various powers of attorney. While few family members possess all the skills required of a special needs trustee, many have the ability to be valuable in one or more of these other roles. If the trust beneficiary has difficulty communicating, it is essential to have a caregiver who can effectively communicate the needs of the beneficiary to the trustee. In discussing these various roles with family members, it is important to make sure that the family members you are considering for the roles are comfortable with what will be expected of them.

Communication among family members about the various support roles provides the opportunity for improved outcomes due to better coordination of efforts. In addition, collaboration with the fiduciaries who will provide the professional services allows the personal wishes of the family and the individual with special needs to guide the planning.

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