



Siblings Don't Always Make the Best Trustees

By [Robert B. Fleming, CELA](#)

As the parent of a child with disabilities, you may already know that you have to establish a trust to handle any inheritance you leave for your son or daughter. But do you know the most important question? Selecting your trustee is at least as critical as getting the trust itself prepared.

The selection of trustee is the most important part of your special needs trust. The trustee will, after all, be “you” after your death. The trustee will make decisions about distributions, will keep track of accounts and investments, will file tax returns and provide account information to your child, your family and the beneficiaries of funds that remain upon your child's death.

Who can be trustee? The good news is that you can select pretty much anyone you wish. The bad news is that the obvious choice may not be the best.

Most people name one or more of their other children as trustees to manage things for their child with a disability. The job can be complicated, though, and close family members are sometimes, well, too close to do the job well.

Here's another reality you need to keep in mind: putting your older son or daughter in charge of payments for the benefit of your child with a disability might just change their relationship. While you can gently reason with your child about why a given distribution is not appropriate, your other children do not enjoy your authority as parent. Sometimes already-strained relationships are further burdened by the addition of this role.

If you think it might be better to leave your other children in the role of brother/sister, rather than trustee, you do have some alternatives. Banks, trust companies, and even national brokerage houses might be available (though they generally require large accounts – sometimes in excess of a million dollars or more – before they will act). Financial institutions also tend to be an expensive choice; they usually charge an annual fee calculated as a percentage of assets in the trust.

Sometimes other professionals (your accountant, your lawyer, a care manager) might be a good choice to serve as trustee. Again, they will charge a fee – though often considerably less than a bank or financial institution. But they are more likely to be familiar with the accounting, care management and public benefits aspects of acting as trustee.

In some families, more distant relatives make the best trustees. Perhaps you want to let your daughter continue to be a good sister to your child with a disability, and let your niece (you know – the one with the accounting degree) act as trustee.

You might consider appointing two or more people to act as co-trustees. That permits the work to be shared, and the responsibility for making difficult decisions to be diffused, among the trustees. One caveat, though: co-trustees don't always get along, or see things the same way. When they don't, it can create unnecessary conflict and strife. Be very careful about co-trusteeships.

Whoever acts as trustee will need to have some guidance and direction. You should write a separate letter to your trustee, explaining what you hope to accomplish and how you wish the trustee to handle decision-making. I also recommend that trustees review the Special Needs Alliance's handbook for trustees ([Administering a Special Needs Trust](#)), which is available, for free, online.

One other item you should consider is not really about trustees at all, but about who can manage, oversee and (if necessary) replace the trustee. You might want to consider [naming one or more of your children as a "trust protector,"](#) with the authority to review accountings, fire the trustee and/or approve (or reject) specific distributions. Consider naming a professional (the accountant, lawyer or case manager) as trustee, and naming one of your children as the [trust protector](#) – leaving them in the role of protecting your child with special needs, rather than directly controlling them.

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