



Living...Not Just Surviving

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Life Planning for
Special Needs Children
A Division of KFDE

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KFDE Activities

- Disability & Systems Change Legislation
Special Needs Trust Planning and Advisory Services
Financial Planning for Special Needs Children
Disabilities & Life Planning Consulting
Personal Assistance Services (a.k.a. care aide assistance) Consulting
Life Outside of Nursing Homes Through Independent Living Advocacy
Planning for Success in Education & Employment for Students with Disabilities
Consulting on Marriage & Family with Disabilities
Consulting on Accessible & Affordable Housing Through Universal Design
Assistive Technology Resources Consulting
Consulting on the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act
Consulting on Work Incentives for Persons with Disabilities Seeking Employment
Seminars and Workshops on Disability Subjects

SPECIAL NEEDS TRUST

Trustee(s)/Successor Trustee(s) – Who will manage the Resources in the Future?

A good synonym for Trustee would be agent or, better yet, super agent. Our law refers to super agents as "Fiduciary." The trustee is responsible for managing the Special Needs Trusts on behalf of the person with the disability. When a trustee is named, that trustee is given, both by the maker and by operation of law, massive rights and powers to be exercised on behalf of the trust's beneficiaries.

Becoming or naming a trustee is serious business for both the beneficiary (person with the disability) and the trustee. The quality of the person with the disability's future is dependent on the integrity and ability of your choice. On the other hand, the trustee is super liable for their actions, and failures to actions when they are not beneficial to the beneficiary. For a long time, trustee's actions have been measured by what the courts have referred to as the "Prudent Man Theory: this rule asks the question, "Would a similar, reasonably prudent person acting in the same capacity, in the same or similar circumstances, have made the same judgment?" If the answer is no, the trustee will be held liable for the consequences of their actions.

It is very wise to appoint a trustee who is not the guardian/advocate of the person with the disability. The trustee should manage the trust and the finances while the guardian/advocate should look after the welfare of the person. In this way, there is a "checks and balances" system whereby these two individuals will work together to look after the best interests of the person.

Some families prefer to choose siblings or relatives to manage the trust while others prefer a bank or trust company to do so. In either situation, the trustees receive a fee. Many financial institutions may not accept trusts less than \$150,000. There are non-profit Master Trusts run by charities that may allow smaller amounts.

You may wish to consider the following when selecting trustees.

POSSIBLE PERSONAL TRUSTEES

Pros

Cons

FAMILY MEMBERS

- Family Knowledge
Personal
Investment
Business
Empathy, loving
Bright
Good common sense
Personally involved

- Indecisive and insecure
No track record or experience
Too emotionally involved
Unskilled at business
People Prejudiced
Uncollectible as to mistakes

Pros

Cons

FRIEND OR BUSINESS ASSOCIATE

Family Knowledge
Personal
Investment
Business
Empathy
Good business person
Good common sense
Tough, honest, hardworking

Human
May embezzle
Speculate poorly
Die
Not enough time-burden
May play favorites

PROFESSIONAL ADVISERS
(Attorney, CPA, Investment Adviser)

Family Knowledge
Personal
Investment
Business
Tough, honest, hardworking
Trained Professional

Human
May embezzle
Speculate
Be too conservative
Is also mortal
Not enough time
Conflicts of Interest
Limited investment knowledge

THE INSTITUTIONAL TRUSTEE

Professional
Experienced
Established track record
Collectible
Will always be there
Not emotionally involved
Objective

Dispassionate
Ignorant of family affairs
Poor investment performance
High turnover among staff
Hard to reach
Too conservative
Slow to act

Please list in priority order your proposed Successor Trustees. We realize most of your successors will be human beings subject to death so unless the first Successor Trustee is a financial institution, please list one as your last choice.

1. _____

2. _____

3. _____

4. _____

5. _____ **Financial Institution**