



SPECIAL NEEDS TRUSTS

What You Need to Know

MVLS serves low-income clients and handles many estate planning and estate administration cases, as well as custody matters, through our volunteer attorneys every year. We thought it might be helpful to highlight special needs trust options for clients with disabilities at risk of losing public benefits through inheritance or income.



Special Needs Trusts & MVLS Clients

A **special needs trust (SNT)** holds assets for a individuals with disabilities without being counted for means-tested benefits. Many MVLS clients receive means-tested benefits including Medicaid/Medical Assistance, Supplemental Security Income (SSI), food stamps, and housing and fuel subsidies. These public programs have strict limitations on the amount of income and assets a recipient can own. For example, the asset cap for Medicaid and SSI is \$2,000.

To illustrate, a young woman with mental illness, who is the beneficiary of a life

insurance policy, would be at risk of losing her SSI and Medicaid benefits, including pharmacy benefits which help her maintain her stability and independence.

As a result of these limitations, it is important to make sure no funds or resources pass directly to the individual with special needs and that all of his or her share of inherited property passes directly to the SNT. If assets pass outright to the individual with special needs, SSI, Medicaid, and other means-tested government benefits could be lost. Assets placed in the SNT can be used for the benefit of the individuals with disabilities throughout their lifetime and can be used for a variety of items including health care not covered by benefits (like physical therapy); medical equipment; house cleaning; bus passes; and personal items like computer, vacation, magazine subscriptions, etc.

Who is considered disabled for the purposes of setting up SNT?

Anyone that is mentally, physically or emotionally disabled, as defined by the Social Security Administration, would be eligible for establishing a SNT. If the individual has qualified for Social Security Disability Insurance (SSDI) then they would be able to meet the criteria for establishing a SNT.

Estate Planning and Administration

Preventative steps can be taken both during estate planning with clients to anticipate addressing the need to divert funds into a SNT or during estate administration by helping the individual set up a SNT before they take possession of any disqualifying assets.

When doing estate planning intake, it is important to ask if any family members are disabled, incapacitated or have special needs. You also will want to coordinate with other relatives' estate plans, as anything left to a disabled individual from any family member can trigger the means tested benefits issue. Estate plans can be set up using a third party SNT, which is supplemental funds set up by friends and family for the benefit of the individual with disabilities.

When assisting a client with estate administration, when they are at risk of losing their means-tested benefits, a first party self-settled pooled account can divert the triggering assets into the SNT to be used for their benefit over their lifetime.

There are a variety of possible assets that could trigger means-tested problems including IRA, 401k, other retirement benefits; life insurance; employer-provided death benefits including life insurance, final paycheck and vacation pay; accidental death and travel insurance benefits through a credit card; annuities; savings bonds; transfer on death provisions; joint accounts; jointly owned property; any other non-probate property; and the Uniform Transfers to Minors Act.

Assets that are not counted for means-tested programs include the home that the special needs individual resides in, household goods and personal effects (limited to those needed for the individual only); one automobile; burial plot; irrevocable burial fund; and a life insurance with a cash surrender value less than \$1,500, and all term life insurance.



Child Support

Child support can trigger means-tested disqualification as well. A first-party, self-settled SNT can be established to avoid this. Child support payments made directly to a custodial parent are factored as income for a means-



tested government benefit programs. Instead, the attorney can have the divorce decree order the noncustodial parent to make payments of a set amount to the custodial parent as trustee of a self-settled SNT for the sole benefit of the child.

For MVLS clients facing these issues, a possible resource is the First Maryland Disability Trust. It is a non-profit organization that has existed since 2005 and can set up pooled asset SNTs, so that the disabled individual's assets can be invested with other individuals as well. As a result, there is no minimum contribution to set up the SNT. To learn more about First Maryland Disability Trust, you can [visit their website](#) or contact [Denise Fike](#), Executive Director.

A promotional poster for a March Madness-themed annual benefit. The background is teal with white basketball court lines. At the top, a brown banner contains the text "SAVE THE DATE" in white, cursive font. Below this, the text "THURSDAY March 22, 2018" is displayed in white. The venue "M&T Bank Stadium Southeast Club Level" is listed in white. On the right, there is a circular logo for "MARYLAND VOLUNTEER LAWYERS SERVICE" with "EST. 1961" and "MVLS and Justice for All" inside. Below the logo is a basketball icon and the text "MARCH MADNESS" in large, bold, white letters, with "THEMED ANNUAL BENEFIT" written in a smaller font below it.

PURCHASE TICKETS

Maryland Volunteer Lawyers Service | 201 N. Charles Street, Suite 1400 Baltimore, MD 21201
410 539-6800 | 443 451-4081 | info@mvlslaw.org | www.mvlslaw.org

