

Family Members Should Consider Trust Protector Role

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For family members wishing to participate in the care of a loved one with special needs, the role of trustee isn't always a good match. Family members may not be particularly familiar with investing, accounting and tax returns. They may not have time to handle ongoing disbursements, or they may be uneasy about managing the large investments held by a special needs trust (SNT). They may also worry about straining their relationship with their family member—particularly if they have to say no to an unreasonable request.

A better fit can often be found in the role of trust protector, someone who monitors the trustee's activities and often has authority to amend the SNT or approve specific distributions. This can be particularly useful in situations involving a corporate trustee, assuring that the beneficiary is treated as more than a case number and that financial decisions are made with sensitivity and insight. That way, they can help guarantee the beneficiary's quality of life without being on the front line for daily, possibly awkward, decision-making.

What can a trust protector do?

The authority wielded by trust protectors can vary significantly, depending on terms of the SNT and state law. They're often empowered to replace trustees whose performance (financial or personal) is unsatisfactory. They may also have the right to approve, or even to compel, financial distributions, which can be especially helpful in cases involving large purchases (like a vehicle or a home).

Trust protectors can also be authorized to amend the SNT in response to altered circumstances. Shifts in state law, for instance, might make it advantageous to move administration of the trust to a different jurisdiction. New tax statutes, evolving public benefit programs and changes in the beneficiary's situation all might make adjustments to the original trust advisable.

Depending on state law and provisions within the SNT, trust protectors may also have fiduciary responsibilities, which could require them to monitor the trustee's investment decisions. This is a controversial issue, and it's advisable to consult a special needs attorney regarding specific situations.

Trust protectors can play an invaluable role. They can reassure others that the terms of the SNT and ongoing financial decisions are truly in the beneficiary's best interests. At the same time, they can remain free to focus on the equally important role of loving family member.

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