

SIMPLIFIED SAMPLE OF AN IRREVOCABLE SPECIAL NEEDS TRUST

ARTICLE I. AGREEMENT

This Trust Agreement is made this _____ (date) by _____ [Name of Settlor], of _____ [address], as Settlor, and _____ [Name of Trustee] of _____ [address], as Trustee. This is an irrevocable trust for the benefit of Settlor's _____ [indicate relationship], of _____ [address].

ARTICLE II. INTRODUCTION

The intent of this Trust is to supplement any benefits received (or for which _____ [Name of Beneficiary] may be eligible) through or from various governmental assistance programs and not to supplant any such benefits. All actions of the Trustee shall be directed toward carrying out this intent. _____ [Name of Beneficiary] shall not be considered to have access to income and/or principal of the trust and _____ [he/she] has no power to direct the Trustee to make distributions of income and/or principal to _____ [him/her].

You would describe the types of experiences and services that you hope that the trustee will provide for the beneficiary. Maybe summer camp, recreational clubs or events, social clubs, religious practices. It could be reasonable expenses to support life style as well. Again, this is when you need a special needs trust expert to assist you.

ARTICLE III. TRUST ESTATE

All property subject to this instrument from time to time is referred to as the "trust estate" and shall be held, administered, and distributed according to this instrument.

The trust estate consists of the property that is listed in Schedule A.

This is where you describe the property, cash, stocks, real estate, retirement plans etc that you are using to establish the trust. Remember that distributions from charitable remainder trusts and charitable gift annuities can be used for a special needs trust.

ARTICLE IV. DISTRIBUTIONS OF INCOME AND PRINCIPAL

A. Distribution

The Trustee shall, in the Trustee's sole and absolute discretion, distribute so much income and principal to or for the benefit of the beneficiary as the Trustee shall, in the Trustee's sole discretion, determine in order to provide supplemental benefits, as hereinafter defined, to the benefits receivable by the beneficiary through or from various governmental assistance programs. The Trustee is prohibited from making any distribution to any governmental entity to replace or reimburse or supplant any public assistance benefit of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities which are the same or similar to the impairment(s) of the beneficiary.

B. Supplemental Benefit/Special Needs

The Trustee shall pay to or apply for the benefit of _____ [Name of Beneficiary] for _____ [his/her] lifetime, such amounts of principal or income, up to the whole thereof, as the Trustee in its discretion may from time to time deem necessary or advisable for the satisfaction of _____ [Name of Beneficiary]'s special needs, and any income not distributed shall be added to the principal. As used in this instrument, "special needs" refers to the requisites for maintaining the beneficiary's good health, safety and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office or department of the State of _____ [indicate State], or of any other state, or of the United States.

C. Spendthrift Provision

No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary. It is Settlor's intent that because this trust is to be conserved and maintained for the special needs of

_____ [Name of Beneficiary], no part of the corpus thereof, neither principal nor undistributed income, shall be subject to the claims of voluntary or involuntary creditors for the provision of care provided by a governmental agency.

D. Public Benefits

_____ [Name of Beneficiary] is disabled and will be unable to maintain and support _____ [himself/herself] independently, the Trustee shall, in the exercise of its best judgment and fiduciary duty, seek support and maintenance for _____ [him/her] from all available public resources, including Supplemental Security Income (SSI), _____ [Medicaid or equivalent state program], and federal Social Security Disability Insurance (SSDI).

E. Commingling

No public assistance benefits for the beneficiary of this trust shall be added to this trust.

F. Supplemental

It is further Settlor's intention that no part of the interest earned by or the corpus of the trust created herein shall be used to supplant or replace public assistance benefits of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities.

Again, it is imperative that you consult an expert in your state about this provision. You need to understand how state and local laws affect your situation.

F. Termination

This trust shall cease and terminate upon the depletion of its assets or upon the death of the beneficiary of this trust. If terminating on the death of the beneficiary, the Trustee shall distribute any remaining principal and income to _____ .

The trustee may distribute the remaining principal and income to a charity. In some states, a charity may serve as trustee.

G. Ineligibility

In determining whether the existence of the trust has the effect of rendering said beneficiary ineligible for SSI, _____ [Medicaid or equivalent state program], or other public benefits, the Trustee is hereby granted full and complete discretion to initiate either administrative or judicial proceedings, or both, for the purpose of determining eligibility.

H. Expenses

Upon the death of _____ [Name of Beneficiary], the Trustee may pay all or any expenses of such beneficiary's funeral, and expenses related to administration and distribution of the trust estate. The Trustee shall make no payments for obligations incurred for said beneficiary's health, support and maintenance if the Trustee shall determine in [his/her] sole discretion that payment therefore is the obligation of any county, state, federal, or other governmental agency, which has a legal responsibility to serve persons with disabilities which are the same as or similar to the impairment(s) of said beneficiary herein.

ARTICLE V. DESIGNATION OF TRUSTEE

A. Trustee

_____ [Name of Trustee] shall serve as initial Trustee. In the event that _____ [Name of Trustee] ceases to act as Trustee, _____ [Name of Alternate Trustee], of _____ [address], shall act as Trustee.

B. Incapacity of a Trustee

C. Resignation

D. Bond

E. Reimbursement and Compensation

F. Report and Account

Carefully consider the trustee and the alternative trustee. Some nonprofits are well equipped to assist you with the options.

ARTICLE VI. TRUSTEE'S POWERS

Settlor grants to the Trustee discretion and complete power to administer the trust estate as a fiduciary. In addition to those powers now or subsequently conferred to the Trustee by law, such grant shall include without limitation the powers listed in this Article:

- A. To Receive Assets**
- B. To Retain Initial Assets**
- C. To Invest**
- D. To Manage Securities**
- E. To Handle Financial Accounts**
- F. To Make Contracts and Carry Out Agreements**
- G. To Borrow**
- H. To Determine Income and Principal**
- I. To Employ Agents and Delegates**
- J. To Litigate**
- K. To Prepare Tax Returns and Make Elections**
- L. To Carry Insurance and Collect Insurance Proceeds**
- M. To Seek and Maintain Public Benefits for a Beneficiary**

ARTICLE VII. ADMINISTRATIVE PROVISIONS

- A. Additions to Trust**
- B. Nonassignment**
- C. Perpetuities Savings Clause**
- D. Choice of Law**
- E. Claims of Creditors**
- F. Notice**
- H. Severability Clause**
- I. Survivorship Period**

Trustee powers and administrative provisions are determined by state law. Consult an expert in your state for more details.

ARTICLE VIII. NAME OF TRUST

ACCEPTANCE BY SETTLOR AND TRUSTEE

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

SCHEDULE A