

# Special Needs Answers

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## Choosing a Trustee for a Special Needs Trust

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Choosing a trustee is one of the most important and difficult issues in creating a special needs trust (SNT). Trustees must have the necessary expertise to manage the trust, including making proper investments, paying bills, keeping accounts, and preparing tax returns. But the SNT trustee must also have an understanding of how each distribution he or she makes will affect the beneficiary's public benefits. Very few people have this knowledge, so it is important to choose a trustee who can hire and supervise benefits experts.

The law isn't very strict about who may serve as your trustee, as long as the person is legally competent, meaning he or she is over 18 years of age and is capable of managing his or her own affairs. To ensure that your beneficiary's eligibility is never compromised, a trustee's knowledge of public benefit programs, such as Social Security and Medicaid, is crucial. If no one comes to mind, a popular alternative is to select an independent trustee. This is an individual or institution who has no beneficial interest in the trust and is not related or subordinate to the trust beneficiary. Some examples include: a bank or trust company, a professional trustee, an investment advisor or manager, an investment banker, an accountant or a lawyer. Many families, recognizing the benefit of a team approach, combine these various roles like pieces of a puzzle to fit together a whole care system for the beneficiary.

For those who are uncomfortable with the idea of an outsider managing a loved one's trust, it is possible to appoint a family member and an independent trustee as co-trustees. By doing so, you can rest assured that there is a person who is familiar with the beneficiary and has her best interests at heart *and* that the public benefit programs' requirements are being met. Another option is to simultaneously appoint a trust "protector," who has the powers to review accounts and to hire and fire trustees, and a trust "advisor," who instructs the trustee on the beneficiary's needs.

If the trust fund is small, do not be surprised if some types of independent trustees, like a professional trustee or a bank, are not interested in serving in the role of trustee. Typically, a professional trustee will charge a fee equal to 1 percent of the overall trust fund. As a result, a **pooled trust**, which is administered by a non-profit corporation, may be a better option. But make sure that whomever you choose as trustee is financially savvy, well-organized, and, most important, ethical.

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