



Corporate Fiduciaries Are Shying Away From Special Needs Trusts

Here are four reasons behind this trend

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The Omnibus Budget Reconciliation Act of 1993 made it possible for disabled individuals to transfer assets to special needs trusts and remain eligible for means-tested public benefits. The distributions these individuals receive from such trusts may supplement government benefits such as Medicaid and Supplemental Security Income.

As the caregiver population ages, more institutional support is needed to manage funds in special needs trusts. Unfortunately, many corporate fiduciaries are moving away from this specialty.

Four Reasons

What's behind this trend? Here are four reasons corporate fiduciaries are shying away from administering special needs trusts.

1. Increased litigation and regulatory issues

The longer special needs trusts exist, the more scrutiny they receive from courts and government agencies. If a trust is established or funded by a court, additional requirements may be placed on the trustee, including limitations to the amount and permissible duration of certain expenditures. Trustees may also need to manage risk, expenses and potential liability associated with owning real estate and vehicles and medical costs for individuals who require long-term care.

2. Profitability concerns

Some fiduciaries view special needs trust clients as “high maintenance” and therefore unprofitable. Unfortunately, these trustees may not be equipped to manage such clients. They may be afraid to say “no” for fear of losing business. Giving in to client demands in the short term can be expensive in the long run, particularly if a trustee is surcharged for making improper distributions.

3. Lack of experience

Special needs trust administration isn't for the faint of heart. Many fiduciaries haven't gained the experience they need to administer these cases, simply because there aren't as many special needs trusts as there are other types of trusts. As a result of inexperience, these trustees may struggle to manage their clients appropriately while following the detailed rules and regulations governing special needs trusts.

Experienced trustees know how to ensure the health and well-being of their clients while meeting special needs trust administrative requirements. For example, a trustee may retain a dedicated credit card to use in emergencies. Imagine a situation in which a beneficiary has an elevator in their home because they're confined to a wheelchair. What if the elevator breaks down with the beneficiary trapped inside and the elevator maintenance company requires payment via credit card? The trustee of a special needs trust must have the flexibility to resolve the problem immediately, even outside normal business hours.

4. Lack of time and resources

When it comes to special needs trust administration, there's no "one size fits all" approach. It's a task that can't be automated. In fact, it frequently takes the same amount of time to administer one special needs trust as it does to administer several "low-maintenance" trusts. Special needs trusts require a very personal, hands-on approach.

For example, my team administered a trust for a young man who was wheelchair-bound and communicating only by computer. When his family wanted to build a new house to accommodate his physical requirements, we managed the logistics—from securing court approval to managing a team of architects, builders and building inspectors who completed the project on time and under budget. When the young man wished to marry, we worked with counsel to address guardianship, prenuptial agreement and estate planning issues. Cultivating intimate relationships with clients is the key to success in this specialty.

Where Do We Go From Here?

As corporate fiduciaries move away from administering special needs trusts, many families and individuals struggle to get the help they need.

How should we respond?

First, fiduciaries can start by expanding their education. There are many conferences and continuing legal education opportunities specific to special needs trusts; in fact, Stetson University hosts a [national conference](#) every year.

Second, attorneys who refer a special needs trust to a corporate fiduciary should make sure the trustee has expertise in this area. If your trust company is handling the trust, ensure your entire team is qualified to do so.

Special needs trust officers must possess both the expertise to navigate legal and regulatory issues and the sensitivity and compassion to give families peace of mind that their loved ones are well cared for.