

**Mary, age 18, was in an automobile accident and is going to recover \$1.5 million.** Mary receives SSI and Medicaid, and lives in Section 8 housing. SSI pays Mary a monthly income. Medicaid pays her medical bills, and funds from the federal housing program pay a significant portion of Mary's rent. She would be unable to live where she does without that supplement.

Mary's father, Harry, operates a septic cleaning service of which he is the sole employee. But business has been declining since their town recently installed public sewers. Mary's mother, Brandy, works in a department store part time, and has a minor cocaine addiction. Mary's brother, Paul, has his own business plowing roads for the state as a private contractor and has recently been discharged from bankruptcy.

Mary's medical bills are expected to total approximately \$200,000 per year. If Mary receives the \$1.5 million net settlement from her automobile accident, she will lose her SSI. If she loses her SSI, she will lose her Medicaid. She will also lose her eligibility for Section 8 housing program, because of the income the \$1.5 million would generate.

**The solution to this problem is the use of a special needs trust.** Family members frequently want to be named as trustee. None of Mary's family members appear to be well-qualified to serve as the trustee.

The family member must understand that they will be responsible for compliance with the Prudent Investor Act or the Prudent Man Rule with respect to investments and with the Principal and Income Act, or other state law, with

respect to accountings. They must also be knowledgeable in the area of public benefits law so that the trust distributions do not disqualify Mary from public benefits.

**Sometimes, it is advisable to have an independent, non-family member serve as the sole trustee or, at a minimum, as a co-trustee.** An independent trustee can be objective, and usually, has knowledge, such as investment expertise and a public benefits background, which family members lack. Requiring the trust to have an independent trustee also prevents a family trustee from being caught in an endless series of conflicts of interest.

**In some situations it is appropriate to appoint a family member and an independent trustee as co-trustees.** The trust document should clearly delineate the

responsibility of each of the trustees. Perhaps the appointment of a managing trustee with broad authority, including investment authority, should be considered.

An alternative solution might be to name an independent trustee and appoint a trust advisory committee in the document. The trust advisory committee could be comprised of a family member, an attorney, a social worker, an accountant and/or a nurse. The trust advisory committee would meet and recommend distributions to the trustee and could even be given the power to remove and replace the trustee.



*Special needs require special lawyers.*

**Special Needs Alliance members are available nationwide.**  
To contact a member in your area, call **877-572-8472**, or visit us online at **[www.specialneedsalliance.com](http://www.specialneedsalliance.com)**.



## Providing the best quality of life requires informed decisions.

The best way to provide your special needs child with compassionate care and a comfortable life is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability lawyers have combined their talents to create the Special Needs Alliance.

As lawyers in the field of Disability and Public Benefits Law, we help to enhance your child's quality of life. Every member of the alliance has the resources and legal expertise to help you maintain public benefits for your child and develop effective estate plans that protect your assets.

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This brochure is provided as a service of the Special Needs Alliance and is informational only. It is not intended to serve as legal advice or replace the advice of a legal professional.

## Selecting the Trustee of a Special Needs Trust



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