



*Transferring  
wealth & wisdom  
from generation  
to generation*



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# PREPARING FOR DISABILITY

## Special Needs Trusts

In some families there are individuals with special needs whose future must be planned for in different ways. Whether they cope with a physical disability or face other challenges such as autism, it is especially important to insure that optimal care will continue after the passing of their guardians. Selecting the best trust for each unique situation will make a huge difference for your loved one's future quality of life.

There are several different types of trusts that can be administered in Florida which protect public benefits eligibility while offering additional financial stability. Some common topics of concern when drafting disability trusts are funds availability, asset transfers, payback requirements, tax considerations, and other risk factors. A summary of the most common trusts used when planning for disability are below.

### ABLE ACCOUNT

An ABLE Account (Achieve a Better Living Experience) is a new type of tax-favored savings account created to benefit those disabled at a young age (under 26 years). It is similar to a Section 529 account for education; while it grows tax free, it is limited to a maximum value of \$100k. The administration costs and complexity are less than a Special Needs Trust; however, upon death of the beneficiary, the ABLE account must be used to repay any government benefits previously received.

### SPECIAL NEEDS TRUST

This is a superior option if you plan on placing a significant amount of money aside for disability care. There is no cap on amounts gifted to this type of trust. The costs and complexities of administration are offset by benefits such as continued qualification for government assistance and other supplemental needs-based programs. If properly structured, excess assets or income will not impact the recipient. If substantial assets are involved, use a **fully discretionary trust**.

### FIRST PARTY VS. THIRD PARTY TRUSTS

The main difference between these two types of arrangements comes down to the funding source. First Party Trusts consist

of the disabled individual's personal assets while Third Party Trusts are funded through other means such as family members or income from a settlement. The first party trust must have a provision that repays any government benefits that were previously received prior to the balance passing to the remainder trust beneficiaries.

### FULLY DISCRETIONARY TRUST

An excellent alternative to a Special Needs Trust is the much less restrictive and more flexible Discretionary Trust. While your child will be the beneficiary, a trustee is appointed who has unilateral control over asset distributions. In Florida, this trust is typically used when there is significant wealth involved. Because the trustee has full control, the beneficiary is still eligible to apply for government funded financial and medical support programs.

It is easy to become intimidated by the complexities of making financial preparations for those with special needs. However, the biggest mistake you can make is not making plans in advance. In a perfect world, siblings, other family members, and government agencies would all "do the right thing." In reality, this strategy is risky at best. Your trusted legal adviser can help you navigate the often murky waters of disability planning. Ensuring your loved one will have access to all possible resources for their future well-being and happiness is a priceless legacy.

Visit [www.probate-florida.com](http://www.probate-florida.com) to read more about this subject and other estate planning matters.

*Ed Wollman is a Florida Bar Board certified Attorney specializing in wills, trusts, and estates with over 26 years of experience practicing in the state of Florida.*

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