



## SPECIAL NEEDS TRUST CHECKLIST

When reviewing Special Needs Trusts, here are a few things that are common attorney mistakes that could allow Social Security and/or Medicaid to potentially disqualify the Special Needs Trust. In other areas there are clauses that make the trust more flexible. If you can respond to each question with a “yes” response, you know that the trust appears appropriate.

### Yes No

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Have family members been instructed to leave personal property specifically to the Special Needs Trust instead of directly to the individual with special needs?   |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Does the Special Needs Trust specifically state that the beneficiary cannot receive direct distributions (cash) from the Special Needs Trust?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. A Special Needs Trust should be for only one person with a disability. Each person with a disability should have their own Special Needs Trust. Was the Special Needs Trust created for only one person with a disability? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Is the Special Needs Trust irrevocable?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Does the Special Needs Trust grant the authority for the trustees to amend the trust to keep current with the law?   |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Has language been added that defines the law and allows the Special Needs Trust to be “grandfathered?”   |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Has language been written into the trust to allow the trustees to make “corrections?”  |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Has an automatic “fix-it” clause with a retro date been written into the Special Needs Trust?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Does the Special Needs Trust include a “strike this” clause which may be used if there is anything that would disqualify the trust?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Does the Special Needs Trust have a “kick out” clause (keep your fingers crossed)?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Does the Special Needs Trust include successor trustees?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Does the Special Needs Trust include limited powers for the future trustees to be changed or added?   |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. Does the Special Needs Trust remain active no matter how low the amount is in the Special Needs Trust goes? (i.e., there should <u>not</u> be a Small Trust Termination Clause in the Special Needs Trust.)               |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. Does the Special Needs Trust specifically state that it is not to be used for anything that would be covered by government benefits (i.e., basic support)?  |
| <input type="checkbox"/> | <input type="checkbox"/> | 15. Does the Special Needs Trust provide the beneficiary with limited power of appointment?   |

**Protected Tomorrows® Advocates are not attorneys. This form is for Advocate’s use only and not for use with the public.**