



TRUST

Parent places property in a trust for use by the family member with a disability



What is this?

Parents can set up a separate trust for specific purpose of holding the property (home) along with sufficient resources or assets that are readily available to cover property upkeep, such as repairs and maintenance of the property (home). The parent(s) can purchase a second home and place it in a trust, or the parent(s) can leave the family home to the trust upon their death. Seek the counsel of an attorney who is experienced in trusts, Medicaid, and Social Security. (see list attorneys: [Attorneys with an interest in Estate Planning](#))

Establishing a separate trust for the property (home):

- ✓ allows for the preservation of the property (home) for the benefit of the family member with a disability after the death of the parent(s).
- ✓ gives the parent(s) control over the manner in which the trust and property (home) are maintained.
- ✓ provides the parent(s) the opportunity to outline specific conditions, such as the conditions under which the family member with a disability can move from the home.
- ✓ provides the parent(s) the chance to stipulate who becomes the beneficiary of the assets/home after the home is no longer in use by the family member with a disability.
- ✓ requires the parent(s) to name a trustee to oversee the trust. The trustee will need to make provisions for the day-to-day management of the property after the parent(s) are deceased.

Property that is owned by a trust does not eliminate the SSI requirement that a family member with a disability must pay fair share rent. If a family member with a disability receives SSI, they may be required to pay a fair share rent for living in the house owned by the trust.

The parent(s) should investigate establishing a *separate* trust to hold the property (home) and assets for upkeep based on their particular family situation and upon advice of competent legal counsel. It may be ill-advised to have a *single* trust to hold the property and provide financial resources for the family member with a disability.

If a family member with a disability does not receive SSI but receives SSDAC (SSDI), they are NOT required to pay a fair share rent for living in the home owned by the trust and a second trust may not be necessary. (See [Information and Resources](#) for more information)

View stories of families who have established trusts to hold the property:

<http://hamiltondds.org/news/309/40/The-Brown-Family/d.News%20Detail%20Sample>

<http://hamiltondds.org/news/308/40/The-Molloy-Family/d.News%20Detail%20Sample>

What Circumstances Make This a Possible Fit?

- ✓ The parent(s) owns a property (home) and wants their family member with a disability to live in the home after they die. This property (home) could be the family home, or another property (home) that the





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family has purchased.

- ✓ The parent(s) also has assets for property upkeep that they can put in the trust.
- ✓ The parent(s) wants to be able to preserve the property (home) and assets for the benefit of other family members (e.g. siblings of the family member with a disability) once it is no longer being used by the family member with a disability.

What Does This Mean to My Family Member with a Disability?

Placing the property (home) in a trust provides the continuity of use of the home for the family member with a disability. A properly worded trust outlines steps to take if the home can no longer meet the needs of the family member with a disability due to his/her deteriorating health or deteriorating conditions in the neighborhood.

What Does this Mean to My Estate?

This will provide for fast transfer of assets from the estate of the deceased parent(s) to the trust for the benefit of the family member with a disability.

Where Do I Get More Information?

- ✓ [Hamilton County Developmental Disabilities Services](#) and the [University Center on Excellence in Developmental](#) host regular free sessions on trusts and financial planning.
- ✓ For more information on trusts: <https://oh.db101.org/oh/situations/workandbenefits/assets/program2d.htm>
- ✓ If the parent(s) is over age 60, [ProSeniors, Inc.](#) may be able to offer limited free legal advice: 800-488-6070.
- ✓ The [Community Fund Management Foundation](#) offers pooled trusts and has tools to assist in decision making about the proper set up of trust funds to accomplish specific goals. They can be reached at 513-967-5612. CFMF is a free initial resource for parent(s) who have questions about trusts.
- ✓ [National Academy of Elder Law Attorneys](#) can also be contacted for locating Medicaid planning attorneys for setting up these trusts.
- ✓ See Information and Resources: [Legal Resources](#) for additional information.
- ✓ Families within and outside of Southwest Ohio can use www.naela.org or <https://www.specialneedsalliance.org/>.





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	Pros	Cons
Extent of Control	<ul style="list-style-type: none"> ✓ A trust provides the ability to set parameters under which the housing is maintained for the family member with a disability. ✓ The grantor (parent) names a trustee to oversee the trust. The trustee can be an individual or an institution, such a bank. ✓ If the family member with a disability has a service provider, changing provider is relatively easy. 	<p>The trustee is responsible for ensuring oversight of the day-to-day property management. The trustee may choose to hire a property management company to provide this service.</p>
Effects on Public Benefits	<p>If the trust is properly set up, it will not impact benefits.</p>	<p>If not set up properly, it may be deemed an asset of the family member with a disability and impact their access to benefits.</p>
Longevity	<ul style="list-style-type: none"> ✓ A well-drafted trust can address longevity issues to ensure the proper housing over time for the family member with a disability. ✓ A properly worded trust can reduce the risks associated with naming a sibling(s) of the family member with a disability as both heir and beneficiary. ✓ The trust can address the specific conditions under which the family member with a disability can move from the home (e.g. can no longer live there due to health reasons). ✓ The property (home) and assets can be preserved within the family. ✓ The trust can stipulate who becomes the beneficiary of the property (home) and asset after it is no longer in use by the family member with the disability. 	<ul style="list-style-type: none"> ✓ If not properly worded, it could be very easy for heirs to sell the property (home), without following the parent's intent. ✓ If there are changes requiring a need to transition out of home (i.e. health, deterioration of neighborhood) it may be more difficult to sell the home unless proper provisions for this are included in the trust. ✓ If a sibling of the family member with a disability is the trustee as well as the beneficiary of the trust, there may be a conflict of interest. Since the beneficiary stands to gain financially if the property (home) and assets pass to them, there is a risk that they may evict the family member with a disability. ✓ Someone who is a “good sibling” today may face financial hardships in the future, or marry someone who does not have the best interest of the family member with a disability at heart. The couple may become divorced and legal issues may impact the housing.
Property Management Responsibility	<p>This responsibility is transferred to the trustee or their designee.</p>	<p>If the sibling(s) of the family member with a disability is the final beneficiary and also the trustee, then there is a conflict of interest (see above) that may impact decisions about investing funds in property management and capital improvements.</p>
Financial Considerations	<ul style="list-style-type: none"> ✓ Neither the property (home) nor the trust assets/funds are subject to Medicaid Estate Recovery. ✓ The family can seek guidance from a professional about the projected cost of upkeep over the period of projected occupancy. 	<ul style="list-style-type: none"> ✓ The trust should include liquid assets (assets that can be converted into cash in a short time, with little or no loss in value) for improvements and upkeep for a home. ✓ The property is subject to liability claims. Insurance can mitigate this risk.
Long Term Flexibility	<p>Properly drafted and funded trusts can provide long-term use of the home by the family member with a disability.</p>	<p>The trust must be properly worded or the home could be construed as an asset or make it very difficult to sell.</p>
Tax Issue	<p>Parent(s) can make arrangements to set up private trusts or join pooled trusts. Pooled trusts often include tax preparation as part of the service package.</p>	<p>Tax returns for trust will need to be filed. The net income of the trust is taxed at the trust's tax rate.</p>



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