

Estate Planning and the Special Needs Trust

Protect the Future of Your Special Needs Child

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Introduction

The goal of these materials is to inform you about the importance of planning now for your special needs child's future in the event of your death or incapacity. As well as to explain how your proper planning can aid in protecting your child's personal and financial future and increase his quality of life. Although all families should create an estate plan, proper estate planning is crucial when you have a minor or an adult child with special needs, particularly one who currently receives needs-based government assistance (such as SSI or AHCCCS) or may receive such benefits in the future.

There are two essential concerns which you must consider and plan for when you have a special needs or disabled child:

1. **The care of your child.** Who will care for your special needs child if you are unable?
2. **Maintaining your child's eligibility for needs-based government benefits.** If your special needs child (whether adult child or minor child) receives an inheritance at your death, it could impact his ability to qualify for government benefits and assistance programs, particularly SSI and Medicaid.

Take control of your child's future. With the proper planning you can provide a higher quality of life for your child.

Who Will Care For Your Child If You Are Unable?

Designating a guardian for your child in the event of your death or disability is one of the most important decisions any parent should consider. It is difficult to think about who will care for your child if you are unable to do so yourself. But it is even more heart wrenching a thought if your child has a disability. Parents of special needs children should take extra care in choosing a guardian. Depending on the degree of your child's disability, he or she may have greater needs and require particular care and attention through adulthood.

If you do not designate a guardian for your child, the court will step in and appoint one. Take control of this decision. You know your child and his needs better than anyone.

The choice of who to designate as guardian should not be made lightly. You need to consider not only your child's particular needs, but also the individual circumstances and personality of your designated guardian and his or her own family structure. You should choose someone who will have the time, patience, and love to give your child the special care he requires.

It is also important that you talk with the relative or friend you choose to make sure that they are willing and able to except this responsibility if a tragedy occurs. Additionally, you should talk with other family members and let them know why you chose the person you did. Although it may be difficult to tell a sibling or a grandparent why you chose someone else, it will spare or at least minimize additional hurt feelings when they are also dealing with their grief over losing you.

Protect Your Child's Eligibility for Government Assistance

Even a small inheritance or minimal proceeds from a life insurance policy could disqualify your child from much needed government benefits, particularly needs-based benefits such as SSI (Supplemental Security Income), Medicaid/AHCCCS, and Section 8 housing.

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If your disabled child has money and assets in his name over that allowed (currently \$2,000), he will be ineligible for SSI. Qualifying for SSI can be critical for a disabled individual because other government and charitable programs use the SSI eligibility requirements. For example, if an individual qualifies for SSI, he automatically qualifies for Medicaid/AHCCCS. If your child becomes ineligible for SSI, he will also lose his Medicaid benefits and government provided housing or group home.

If your disabled child receives an inheritance or life insurance proceeds at your death¹, in order to qualify of government benefits, he will be forced to spend almost all of the money you left to him. If he was already receiving SSI and Medicaid, he may become ineligible and stop receiving his benefits, which is particularly devastating if he does not have any other medical coverage. He will then have to reapply once he has spent the money and assets left to him. Applying or reapplying for government benefits is often a lengthy process. This is also a great waste of your assets or life insurance proceeds, which could have been better used to supplement the government benefits and provide a better quality of life for your child.

So what do you do? You could leave all of your money and assets to your other children with a verbal understanding that they will care for their disabled sibling. Although your other children may have the best of intentions, there is no guarantee that they will spend the money on their disabled sibling and the law will not protect this money for your disabled child. This approach will not give you the security and comfort to know that your disabled child will be provided for.

The better approach is to establish a Special Needs Trust for your child's benefit. If you properly plan, with the use of a Special Needs Trust you can preserve your money, assets, and life insurance proceeds to be used for the benefit of your disabled child, while still maintaining his eligibility for government benefits and assistance.

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¹Generally you should not name your special needs child as the beneficiary of your life insurance policy, retirement plans, payable on death accounts, or other financial instruments or accounts. Consult with an experienced estate planning attorney.

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With a Special Needs Trust, you appoint a person or financial institution to act as Trustee of the Trust. The Trustee has a duty to ensure that the disabled individual is cared and provided for while still maintaining his eligibility for government assistance programs. The Special Needs Trust directs the Trustee to use your money and assets left to the Trust to provide your child the extras that government benefits do not cover. Things such as uncovered medical and dental expenses, travel, entertainment, books, magazines, cable TV, computer, internet service, clothing, transportation, and hobbies. These extras can greatly enhance your child's quality of life.

A special needs trust generally should not provide for shelter or food. These are considered basic needs which SSI, in theory, provides. Shelter includes, rent and utilities such as electric, water and trash pick up. You can, however, leave your house in the Special Needs Trust for your child to live in during his life. If the Special Needs Trust provides food or shelter to a disable individual, it will reduce the amount of the government benefits he receives. Therefore, it is important when choosing a Trustee of your child's Special Needs Trust that the Trustee understands the Social Security Administrations eligibility requirements and the importance of maintaining your child's government benefits.

A Special Needs Trust also protects your assets from you child's bad decisions. Depending on the severity of your child's disability, he may be able to make some financial decisions. But he may also spend foolishly or be easily taken advantage of.

The Special Needs Trust is for the benefit of your disabled child during his life and at the death the Trustee will distribute the remaining trust assets, if any, pursuant to your direction – such as to your other children, grandchildren, or charity.

Take Control!

Through proper advanced planning and the use of a Special Needs Trust, you can provide a better quality of life for your child, even after you are no longer with him. Special Needs Trusts must be carefully drafted. If you have a disabled child, consult with an experienced estate planning attorney to learn more about the benefits and requirements of a Special Needs Trust and to determine if a Special Needs Trust is right for your child.



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