

Planning for the Future of a Special Needs Child

By: Casey W. Pope, Esq.

I am a planner. I admit that I love to make lists, organize, and have a plan in place for just about everything, from my future retirement, to my annual vacation, to my outfit for the next day. In fact, I've chosen a profession where my job is to help my clients create a plan for their families' futures.

While I believe that planning is important for all families, it is perhaps most important for those with special needs children. These children depend on their parents throughout their lives, so it is critical that parents plan ahead to provide for and protect these children after they're gone. Although mom and dad can never be replaced, by having a plan in place for their special needs child, parents can rest assured that their child will continue to live a happy, healthy, abundant life.

Caring for a special needs child is a tremendous job. It takes a lot of time and a lot of resources. An estate plan must ensure that the child is provided adequate financial support to sustain them for the rest of their lives. This must also be balanced with the need to maintain any federal or state benefits that the child receives. Many special needs children receive government assistance in some form, whether it is Social Security Disability, Supplemental Security Income, military survivor benefits, Medicare, or Medicaid. Eligibility for these may be based on financial factors.

The problem is, if mom and dad leave a large sum of money to the child as an inheritance, the child may then become ineligible for this government assistance. Many of these benefits cannot be replaced by private funding. But, at the same time, parents do not want to disinherit their child.

The solution is to create a Special Needs Trust to hold the child's inheritance. A Special Needs Trust is a particular type of trust which will hold the money, life insurance proceeds, and/or real estate that the parent wishes to leave for the child. A trustee is named to manage the trust funds and make distributions for the benefit of the special needs child. The trust gives explicit directions to the trustee about the types of distributions that can be made. These directions allow the trustee to supplement the child's lifestyle without the assets in the trust being considered for government benefit eligibility purposes. In other words, eligibility for benefits is not compromised as long as the trustee follows the directions in the trust document.

In order for the Special Needs Trust to work correctly and most efficiently, parents need to put it in place as part of their estate planning before they pass away. Although it is not impossible to do, it creates many more issues to create a Special Needs Trust after the parent has died and the money has gone to the special needs child. Once the Special Needs Trust is set up, the parents' Wills and beneficiary designations should direct all assets they wish to leave for their child to the Special Needs Trust. Again, if any assets end up in the hands of the child at the parents' death, rather than in the trust, it will be more difficult to correct.

As with most things in life, a little planning now will save a lot of time and money later. This is especially true when you're talking about the future of a special needs child. Although you can't be there to care for your child forever, with some advance planning, you can ensure that they live a healthy and comfortable life for years to come.

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