

PARENTS OF DISABLED CHILDREN REQUIRE SPECIAL PLANNING

While it is important for every individual to engage in Estate Planning, this planning needs to be tailored to each person's own unique situation. This is especially true for parents of disabled children because they have to think about both financially providing for the child and finding the right housing for the child.

With respect to financially providing for a disabled child who receives government benefits which are resource based, such as the Supplemental Security Income program (SSI) or Medicaid, it is especially important for the parents to engage in the proper Estate Planning. Oftentimes, a parent will decide to leave out the disabled child from his Last Will and Testament; instead the parent selects another child to receive the disabled child's share with the understanding the child receiving the extra inheritance will utilize these funds for the disabled child. Unfortunately, the child who inherited the funds could die, whereby the disabled child would not receive the benefit of the parent's funds or the child who inherited the extra funds from the parent may not utilize the funds as generously as the parent may have intended.

There is a way for parents to provide for a disabled child who receives Medicaid or SSI without the child losing his benefits. The parent can create a Special Needs Trust for the disabled child, which is a type of Trust that does not render an individual ineligible for the receipt of SSI or Medicaid. However, the Special Needs Trust must clearly define the intention of the Trust, which is to supplement rather than replace the government benefits of the child, that the authority of the Trustee to distribute funds is discretionary, and that the Trustee's discretion is limited in such a way that the funds are not "available" to the disabled child.

The purpose of the Special Needs Trust is twofold:

1. To prevent the recipient of public benefit programs from being disqualified by the receipt of assets that would exceed the resource limits authorized by statute or by earning income in amounts that would exceed the income limitations permitted by SSI Beneficiaries; and
2. To provide items that enhance the quality of life of the Beneficiary of the Special Needs Trust that would otherwise not be provided under public benefit programs.

In order to qualify for this narrow exception afforded by the use of Special Needs Trusts, the Trust or Will must meet certain statutory requirements and subsequently pass review by the Social Security Administration or the state agency responsible for administering the Beneficiary's public assistance benefits. However, a Special Needs Trust is an extremely important document because it guarantees the parent that the disabled child will receive the benefit of his inheritance and maintain his government benefits.

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