



“Estate Planning for a Disabled Child: Coordinating Your Estate Plan with a Special Needs Trust”

By Lesley M. Mehalick, Esquire

Special needs trusts provide an invaluable option for parents who wish to leave an inheritance, whether large or small, to their disabled child while still preserving that child's necessary public benefits. Families with special needs children face unique and difficult issues when considering how best to plan for their child's future. When parents leave an inheritance outright to a special needs child, either by will or otherwise, they may unintentionally disqualify their child for crucial public benefits, such as Supplemental Security Income (SSI), a benefit that provides income to persons on the basis of disability and need, and Medical Assistance, which provides health insurance for low-income individuals. Both SSI and Medical Assistance are resource dependent, which means that a recipient of these benefits can have only extremely limited amounts of personal assets and income.

Before the advent of special needs trusts, families were frequently presented with the objectionable choice of disqualifying a disabled child for public benefits by leaving him an inheritance, or simply disinheriting the child. Some families chose to leave a disabled child's share to a close friend or relative, trusting that person to use the monies for the benefit of the disabled child. Special needs trusts now give families the important and desirable mechanism to both provide for the child and preserve his eligibility for public benefits. The fundamental purpose of special needs trusts is to allow disabled persons to continue receiving indispensable public benefits, while still maintaining some financial resources that can only be used for their benefit.

As crucial as it is for a family to have a properly drafted special needs trust in place, it is equally important that parents who have created a special needs trust for the benefit of a disabled child be sure to coordinate their entire estate plan, as well as the estate plans of their friends and family, with the special needs trust. This is essential, because even if a special needs trust is correctly drafted, if every source of funds that could eventually pass to the disabled child is not directed to the special needs trust, then the child may still lose his eligibility for public benefits. At the outset, the parents should name the special needs trust as a beneficiary in their will instead of naming the disabled child. Similarly, the parents may consider naming the special

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needs trust as a beneficiary of IRAs, retirement plans, or life insurance policies. Moreover, the parents should discuss their estate plan and the special needs trust with any friends or family members, such as grandparents, that may want to leave monies to the disabled child. Those persons may also name the special needs trust in their will or beneficiary designations.

With careful planning and coordination with an entire estate plan, a special needs trust can help parents with a special needs child craft a plan for their child that will provide care and resources for their child for his or her lifetime.

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