

Estate Planning Is Especially Important For Individuals With Special Needs

Unless you have firsthand experience, it is difficult to understand all that is involved in the daily life of a person who has special needs. The family of a special needs child must often adopt a “*one day at a time*” approach because of the various challenges, often unanticipated, that each day presents. Yet, even though it is difficult to plan for the future, these families urgently need a comprehensive estate plan that looks beyond *one day at a time*.

A number of important questions face the parents of a child with special needs. They include the following:

1. WHO will care for and support the child after the parents’ deaths?
2. WHERE will the child live after the parents’ deaths?
3. HOW will the child’s medical expenses be paid after the parents’ deaths (i.e., where will the needed funds come from)?

Parents need to address these and other important questions now, in advance, and not leave them to chance.

Accidentally Leaving Property Directly To The Special Needs Child. The estate planning that is necessary for a family with a special needs child differs from traditional estate planning in that much more attention must be devoted to ensuring that the special needs child will have a comfortable and fulfilling life while still remain eligible for as many long-term care governmental programs and benefits as possible. It is critical to avoid leaving any property *directly* to a child with special needs and instead to leave such property in a way that provides an *indirect* benefit to the special needs child so that his/her eligibility for such programs and benefits will be preserved and maintained.

In general, a person living in California who has special needs is eligible for most long-term care governmental programs so long as s/he does not *directly* own property whose cumulative value exceeds \$2,000. Yet, we find time and again that parents with a special needs child did not think twice about including that child as a primary beneficiary of the parents’ life insurance policies, retirement plans, and annuities. Parents want all of their children to have comfortable and fulfilling lives – but often do not realize the problems they create for the special needs child simply by including him/her on a beneficiary designation form. By that simple act – done out of love – a parent can inadvertently disqualify a special needs child from most governmental long-term care programs and benefits. Indeed, the child may even be required to re-pay benefits that s/he received before s/he received his or her inheritance from the parent’s estate! Certainly, no parent intends for this to happen.

Use Of A Special Needs Trust Avoids This Problem. Fortunately, there is a way to help avoid this potentially devastating situation. We can draft a trust for the child with special needs which will hold the property a parent (or any other family member) intends to leave to the special needs child. This important estate planning device allows a family member to leave property, including cash money, proceeds from insurance policies, or even real property, to the trust rather than directly to the child with special needs. The trust contains certain provisions that, if worded correctly, will enable the child

to receive the benefit from the funds in the trust while maintaining his/her eligibility for long-term care governmental benefits. Such a trust is often referred to as a “***SPECIAL NEEDS TRUST***.”

For example, a parent may purchase a life insurance policy and designate the ***SPECIAL NEEDS TRUST*** as the beneficiary to receive the proceeds of the policy upon the parent’s death. The Trustee of the ***SPECIAL NEEDS TRUST*** (who could be a close relative of the child with special needs such as a sibling) could then manage and invest the life insurance proceeds in a way that will ensure the child’s needs not covered by governmental long-term care programs and benefits will be satisfied. Life insurance is often a cost-efficient way to ensure that the child with special needs receives the financial support that is necessary to maintain, or even enhance, the level of care and quality of life that is hoped for by the child’s parent in case of the parent’s death.

[The Special Needs Trust Provisions Can Include The Parent’s Intentions For The Child.](#) A parent probably provides information to caregivers or family members about their child either verbally or in writing countless times. Yet, if the child survives his parents, there is often no clear direction provided to caregivers or surviving family members regarding the parents’ intentions for the child with special needs. The provisions governing the ***SPECIAL NEEDS TRUST*** often are drafted to include such information. Parents have a valuable way of communicating various objectives and directions to those who care for their child with special needs. Such objectives and directions can serve as a “*blueprint*” of a parent’s hopes and intentions by detailing the child’s history, daily needs, likes and dislikes, and the parent’s specific wishes and expectations as they relate to the child’s future.

[The Importance Of Relying On A Team Of Experts.](#) It is important for the family with a special needs child to seek guidance from a number of advisors who have expertise in special needs planning, including financial, legal and social services professionals. Professionals with expertise in the disability & special needs planning arena are more likely to help parents of special needs children obtain additional resources and services as well as to continually provide up-to-date information on legal or governmental agency-based changes in the field.

Unfortunately, a parent’s love alone will not protect the future of child with special needs. But early planning, now – before it’s too late – can ensure that the special needs child has the support and resources that are necessary to lead a comfortable and fulfilling life. Such planning can also provide parents with the comfort of knowing that s/he has done something wonderful for their special child.

Contact [Creighton Law Offices](#) (Tel: 650/344-0700 or info@creightonlaw.com) for assistance in helping your family address the many issues involved in planning for a lifetime of support for a special needs child.