

The Wealth Counselor

A monthly newsletter for wealth planning professionals

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Volume 2, Issue 2



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10 Tips for Helping Families with Special Needs

This month's issue of The Wealth Counselor examines the unique planning requirements of families with children, grandchildren or other family members (such as parents) with special needs. There are many misconceptions in this area that result in costly mistakes in planning for these special needs beneficiaries. It is therefore incumbent upon us - the client's advisors - to ensure that clients understand all of their options.

COSTLY MISTAKE #1: Disinheriting the child.

Many disabled people rely on SSI, Medicaid or other government benefits to provide food and shelter. Your clients may have been advised to disinherit their disabled child - the child who needs their help most - to protect that child's public benefits. But these benefits rarely provide more than basic needs. And this "solution" does not allow your clients to help their child(ren) after the client becomes incapacitated or is gone. When a child requires, or is likely to require, governmental assistance to meet his or her basic needs, parents, grandparents and others who love the child should consider establishing a Special Needs Trust.

Planning Tip: It is unnecessary and in fact poor planning to disinherit a special needs child. Clients with special needs beneficiaries should consider a Special Needs Trust to protect public benefits and care for the child during the client's incapacity or after the client's death.

COSTLY MISTAKE #2: Procrastination.

Because none of us knows when we may die or become incapacitated, it is important that your clients plan for a beneficiary with special needs early, just as they should for other dependents such as minor children. However, unlike most other beneficiaries, a child with special needs may never be able to compensate for a failure to plan. A minor beneficiary without special needs can obtain more resources as he or she reaches adulthood and can

work to meet essential needs, but a child with special needs may never have that ability.

Planning Tip: Parents, grandparents, or any other loved ones of a special needs child face unique planning challenges when it comes to that child. This is one area where the client simply cannot afford to wait to plan.

COSTLY MISTAKE #3: Failure to coordinate a planning team effort.

It is critical that the advisor assisting with special needs planning include in the planning team: an attorney who is experienced in this planning area; a life insurance agent who can ensure that there will be enough money to maintain the benefits for the special needs child; a CPA who can advise on the Special Needs Trust's tax return; an investment advisor who can ensure that the trust fund's resources will last for the child's lifetime; and any other key advisors that may support the goals of the trust going forward.

Planning Tip: Special needs planning dictates that the client's advisors work together to ensure that there are sufficient trust assets to care for the child throughout his or her lifetime.

COSTLY MISTAKE #4: Ignoring the special needs when planning for the child's benefit.

Planning that is not designed with the child's special needs in mind will probably render the child ineligible for essential government benefits. A properly designed Special Needs Trust promotes the special needs person's comfort and happiness without sacrificing eligibility.

Special needs can include medical and dental expenses, annual independent check-ups, necessary or desirable equipment (for example, a specially equipped van), training and education, insurance, transportation, and essential dietary needs. If the trust is sufficiently funded, the disabled person can also receive spending money, electronic equipment & appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality-of-life enhancing expenses: the sorts of things your clients now provide to their child or other special needs beneficiary.

Planning Tip: When planning for a child with special needs, it is critical that the client utilize a Special Needs Trust as the vehicle to pass assets to that child. Otherwise, those assets may disqualify the child from public benefits and may be available to

repay the state for the assistance provided.

COSTLY MISTAKE #5: Creating a "generic" special needs trust that doesn't fit.

Even some "special needs trusts" are unnecessarily inflexible and generic. Although an attorney with some knowledge of the area can protect almost any trust from invalidating the child's public benefits, many trusts are not customized to the particular child's needs. Thus the child fails to receive the benefits that the parent provided when they were alive.

Another frequent mistake occurs when the Special Needs Trust includes a "pay-back" provision rather than allowing the remainder of the trust to go to others upon the death of the special needs child. While these "pay-back" provisions are necessary in certain types of special needs trusts, an attorney who knows the difference can save your clients hundreds of thousand of dollars, or more.

Planning Tip: A Special Needs Trust should be customized to meet the unique circumstances of the child and should be drafted by a lawyer familiar with this area of the law.

COSTLY MISTAKE #6: Failure to properly "fund" and maintain the plan.

When planning for children with special needs, it is absolutely critical that there are sufficient assets available for the special needs beneficiary throughout his or her lifetime. In many instances, this requires utilization of a funding vehicle that can ensure liquidity when necessary. Oftentimes permanent life insurance is the perfect vehicle for this purpose, particularly if the clients are young and healthy such that insurance rates are low.

Also, because this is an ever-changing area, it is also imperative that the clients revisit their plan frequently to ensure that it continues to meet the needs of the special needs beneficiary.

Planning Tip: Clients should consider permanent life insurance as the funding vehicle for special needs beneficiaries, particularly when the beneficiary is young given the often staggering costs anticipated over that beneficiary's lifetime.

If the client may be subject to estate tax, consider having an Irrevocable Life Insurance Trust own and be the beneficiary of the policy, naming the Special Needs Trust as a beneficiary. Alternatively, in a non-taxable situation, consider naming the client's

revocable trust as the beneficiary to help equalize inheritances if that is the client's objective.

COSTLY MISTAKE #7: Choosing the wrong trustee.

During your client's life, he or she can manage the trust. When the client is no longer able to serve as trustee, they can choose who will serve according to the instructions that they have provided. They may choose a team of advisors and/or a professional trustee. Whomever they choose, it is crucial that the trustee is financially savvy, well-organized, and, of course, ethical.

Planning Tip: The trustee of a Special Needs Trust should understand the client's objectives and be qualified to invest the assets in a manner most likely to meet those objectives.

COSTLY MISTAKE #8: Failing to invite contributions from others to the trust.

A key benefit of creating a Special Needs Trust now is that the beneficiary's extended family and friends can make gifts to the trust or remember the trust as they plan their own estates. For example, these family members and friends can name the Special Needs Trust as the beneficiary of their own assets in their revocable trust or will, and they can also name the Special Needs Trust as a beneficiary of life insurance or retirement benefits.

Planning Tip: Creating a Special Needs Trust now allows others, such as grandparents and other family members, to name the trust as the beneficiary of their own estate planning.

COSTLY MISTAKE #9: Relying on siblings to use their money for the child with special needs' benefit.

Your client may be relying on their other children to provide for their child with special needs from their own inheritances. This can be a temporary solution for a brief time, such as during a brief incapacity if their other children are financially secure and have money to spare. However, it is not a solution that will protect the child with special needs after your client has died or when siblings have their own expenses and financial priorities.

What if the inheriting sibling divorces or loses a lawsuit? His or her spouse (or a judgment creditor) may be entitled to half of it and will likely not care for the child with special needs. What if the sibling dies or becomes incapacitated while the child with special needs is still living? Will his or her heirs care

for the child with special needs as thoughtfully and completely as the sibling did?

Siblings of a child with special needs often feel a great responsibility for that child and have felt so all of their lives. When your clients provide clear instructions and a helpful structure, they lessen the burden on all their children and support a loving and involved relationship among them.

Planning Tip: Relying on siblings to care for a special needs beneficiary is a short-term solution at best. A Special Needs Trust ensures that the assets are available for the special needs beneficiary (and not the former spouse or judgment creditor of the sibling) in a manner intended by the client.

COSTLY MISTAKE #10: Failing to protect the child with special needs from predators.

An inheritance from parents who fund their child's special needs trust by will rather than by revocable living trust is in the public record. Predators are particularly attracted to vulnerable beneficiaries, such as the young and those with limited self-protective capacities. When you plan with trusts rather than a will, your client decides who has access to the information about their children's inheritance. This protects their special needs child and other family members, who may be serving as trustees, from predators.

Planning Tip: A Special Needs Trust created outside of a will ensures that information about the inheritance is not in the public record, protecting the special needs beneficiary from predators.

Conclusion

Planning for special needs beneficiaries requires particular care and the participation of all of the client's wealth planning advisors. A properly drafted and funded Special Needs Trust can ensure that the beneficiary has sufficient assets to care for him or her, in a manner intended by the client, throughout the beneficiary's lifetime.

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matters relating to estate planning.

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