

“An effective plan today is better than a perfect plan tomorrow.” JSB

The Importance of Special Needs Trusts

For the parents of individuals with special needs, the proper implementation of a special needs trust is critical to ensuring the long term financial success of their special needs child. Specifically, proper planning helps ensure that their child will continue to be eligible for government assistance programs in the event of the parent's untimely death or incapacitation. Unfortunately, many individuals with a special needs family member do not fully understand how their estate planning inaction can potentially disqualify their special needs family member from government assistance programs.

Key Point - It is important to be aware that the naming of a special needs family member as a beneficiary in an estate plan can actually disqualify that special needs family member from receiving government assistance and/or supplemental security income.

Special Needs Planning Topics

While the complexities in the drafting requirements for a Special Needs Trust are beyond the scope of this article, the important topics to be discussed by the attorney with family members confronted with this situation include:

- 1) the severity of the special needs person's disability;
- 2) the special needs person's living requirements;
- 3) the special needs person's activity/social requirements;
- 4) determining who would act as trustee, guardian or power of attorney for the special needs person in the event the parent is not able to care for them;
- 5) who would be willing to maintain the record keeping and reporting requirements associated with the administration of a Special Needs Trust; and
- 6) who would receive the excess proceeds from the Special Needs Trust in the event the special needs person does not exhaust the trust funds during their lifetime.

To further put the importance of special needs planning in context, consider the following:

A single mom does not have an estate plan. She is raising two children, one of which has special needs, when she is unexpectedly killed in a car crash.

The two children split their mother's estate per intestate succession laws.

Unfortunately, if the special needs child's inheritance exceeds certain financial limits, that special needs child may no longer be able to qualify for governmental assistance.

As a result, the inheritance of the special needs child may be exhausted to pay for expenses that otherwise could have been paid by the government.

Solution: *If the mother would have executed proper estate planning documents, the special needs child would have been able to maintain their eligibility for governmental assistance while preserving their inheritance.*

As this example demonstrates, planning for families with special needs is very important and should not be delayed.

About the Author
Scott F. Burns, Esq.

Scott F. Burns, Esq. is an Arizona attorney whose clientele includes professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

For Additional Information, Contact:
www.B-BLAW.com

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