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ESTATE PLANNING LIBRARY

Number Twelve

Protecting the Inheritance of a Special Needs Child

AN OVERVIEW

1. What type of client might use this technique?

In the purest sense, a Special Needs Trust is generally used for children, or other family member of a client, that may or already does, qualify for need based government benefits.

As examples:

- **A child has a severe physical or mental illness and qualifies for Medicaid or SSI benefits that would be lost if the child received an inheritance.**
- **A parent who is receiving Medicaid benefits that would be lost if the children provided in their revocable trusts that their parents, if living at the death of the surviving spouse, receive an inheritance.**
- **An heir that needs protecting against an unforeseen event that could make them ineligible for need based government benefits. Protecting against unforeseen events that would make an heir ineligible for need based government benefits.**

The examples of a child or parent already qualifying for Medicaid or SSI are fairly common, easy to understand, and protect against. However, assume no Special Needs Trust or other special needs language is included in the parents' revocable trust. Further, the parents' revocable trust provides that, after the death of the surviving spouse, each child receives

their share of the trust property when that child attains age 35. Assume all of the children are healthy and there is no consideration given to the potential for Medicaid benefits for any of the children. The surviving spouse dies when the youngest child is 30. That means the youngest child's share will be held for 5 years and then distributed outright to the child at age 35. What happens if the child is seriously injured in an accident and qualifies for Medicaid benefits? When the child attains age 35, the child's share of the trust will terminate and the inheritance will be lost to medical expenses prior to Medicaid payments beginning.

2. How does a Special Needs Trust work?

Medicaid benefits are based on the applicant's total assets and income. The rules are very state specific, so this estate planning brochure deals in a very general sense and should not be relied upon as legal advice. The typical Special Needs Trust provides that the trustee has total discretion as to making distributions that benefit the special needs beneficiary. What this means, is that neither the assets of the trust nor the income of the trust are treated as "owned" by the special needs beneficiary. Medicaid will pay for the medical expenses and basic living costs, but the assets in the special needs trust can be used to provide the beneficiary with dignity and some of the nicer benefits of life. An example might be a wheelchair more expensive than the government will provide or trips that the government will not provide. The trust property can also be used to allow the beneficiary to stay in a single room rather than a group room.

3. How does the client benefit from a Special Needs Trust?

The client knows that a properly prepared revocable trust will protect a child's inheritance from being consumed by medical expenses even if the need is not currently known, as in the accident example. This is a great sense of relief for many of our clients who are concerned about their children when the clients are no longer there to protect and care for them. The

special needs trust enables a special needs child to use their inheritance for the nicer things in life after Medicaid has paid for the necessary support items.

4. What does the estate planner do in these types of engagements?

That really depends on the estate planner. Our firm can include “backup” special needs language that protects beneficiaries who are known to need a special needs trust as well as a beneficiary that becomes “needy” in the future through some unfortunate circumstance. In effect, our firm’s revocable trusts provide protection if it is needed and no limitations on the clients’ goals if special needs protection is not needed. For families that have members with current special needs we can provide customized directions for those individuals. In fact all families who have special needs members need planning that clearly provides the appropriate level of care without causing the individual to lose the available government benefits. A Special Needs Trust is the only way such a beneficiary’s inheritance can be protected and still be available to help them live.

5. What are the clients’ responsibilities?

Primarily, clients need to alert the estate planner to the potential special needs of a beneficiary they want to benefit.