

Estate Planning for Beneficiaries with Special Needs

In general terms, estate planning is the process of developing a plan for the effective management, enjoyment, and distribution of your property at the least possible cost to your survivors. For most people, this is accomplished through a simple will and a few other standard legal documents. For families that include an individual with disabilities, however, traditional estate planning tools are ineffective.



Families of individuals with special needs should think in terms of “future planning” rather than simply estate planning. Future Planning is more encompassing and includes the goal of establishing a lifetime personal support system for your child with special needs as well as providing financial security. A conventional estate plan will rarely meet the needs of an individual with disabilities and may even prove to be detrimental by causing a loss of federal and state assistance, residential services, or health care benefits. The following hypothetical examples show possible consequences of utilizing traditional estate planning methods:

Mrs. H's will provides that her estate be divided equally between her three children. At the time of her death, her estate contained \$240,000.00. Mrs. H's youngest daughter has special needs and has lived in a Medicaid funded group home for the last three years. Her \$80,000.00 inheritance is immediately attached by the federal government to pay for her past cost of care, which is more than \$5000.00 per month. The daughter receives nothing from her mother's estate.

Grandmother T wants to do something special for her grandson Jack, who has special needs. At the time of her death, Jack's parents are surprised to learn that Grandmother T has left Jack a specific bequest of \$15,000.00 in her will. Although Jack lives at home, he receives health insurance coverage under the Medicaid program that pays for his many therapies and doctor visits. Jack is now ineligible for Medicaid until all his funds above \$2000.00 are spent.

Aunt Susan does not have any children and wants her nephew Sam, who has special needs, to be her sole beneficiary. Sam has constant medical needs and is a recipient of Supplemental Security Income (SSI) and Medicaid. Aunt Susan knows that Sam is not capable of handling money, so she sets up a trust with \$50,000.00. The trust document provides that the funds are for Sam's “care and maintenance.” Ruling that this language creates a support trust, the court allows the state to cease SSI and Medicaid payments on behalf of Sam until the entire trust fund is spent. The funds are depleted within a year to pay for Sam's medical needs.

Thankfully, there are specialized future planning methods to help families avoid unintended pitfalls such as these examples. A good plan will allow an heir with disabilities to preserve government benefit eligibility, provide for supplemental needs, and allow for a successful transition in caretakers. Wills, trusts, guardianship plans, letters of intent, and communication amongst family members are all essential elements of good future planning.