

LIFETIME PLANNING

Potential Planning Pitfalls



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Planning for families with a special needs individual requires a specific understanding of the needs and resources of the special needs individual as well as how available resources can be impacted if a proper plan is not in place. As such, the assistance of advisors with experience planning for special needs individuals should be utilized to ensure that any estate or financial plan implemented aligns with the goals and objectives of the family. Following are some examples of planning mistakes that often occur when families with a special needs individual fail to adequately plan.

- 1. Failure to Plan:** Often, caregivers of special needs individuals spend a significant amount of time, energy and money managing the day-to-day needs of their family. Considering the additional stress and demands placed upon families with a special needs individual, it is understandable that these families put off developing a formal plan until “later.” However, without a plan, a special needs individual could become disqualified from government benefits or may have insufficient assets to provide for his/her needs.
- 2. Distribution Scheme:** Even if a plan is put in place, often the distribution provisions included in Wills/Trusts unintentionally jeopardize a special needs individual’s support. If assets are left to a special needs individual outright or if assets can be used to provide a special needs individual with food or housing, his/her eligibility for government benefits could be compromised.
- 3. Improperly Drafted Special Needs Trust:** To ensure a special needs individual maintains access to government benefits, it is important that assets are left to a Special Needs Trust, instead of to the individual outright. A Special Needs Trust can provide for a beneficiary’s ongoing needs in a manner that will not disqualify him/her from available government benefits. However, if the Special Needs Trust is not drafted properly, assets of the trust could be considered a resource of the special needs individual, frustrating the purpose of the trust.
- 4. Funding Special Needs Trust with Wrong Assets:** Since Special Needs Trusts are used to provide a beneficiary with support not otherwise provided through government benefits, funding the trust with the wrong type or amount of assets could impact the beneficiary’s ongoing care. For example, where a trust will be funded with life insurance, consideration should be given to the type of product as well as the insured individual. Since the beneficiary’s need is often permanent, term insurance may not be appropriate. Though insurance is often considered for the primary income earning spouse, where the other spouse is the primary caregiver of the beneficiary, insurance on the caregiver spouse should also be considered.
- 5. No Letter of Intent:** Caregivers of special needs individuals use Wills/Trusts to provide direction to a fiduciary regarding the individual’s assets and financial support. However, a Will/Trust will not provide fiduciaries and successor caregivers with the necessary information to help maintain the individual’s day-to-day needs. A Letter of Intent is a powerful tool to educate others on the special needs individual’s daily routines, behaviors, medical background, ongoing medical needs, and most importantly, the caregiver’s expectations and wishes for the child. Failing to provide such information often puts the successor caregivers in the impossible position of making decisions regarding every aspect of the beneficiary’s life with no direction as to how the beneficiary’s primary caregiver would act.
- 6. No Financial Plan:** Financial planning for a family with a special needs individual often requires a “two generation” plan. Failing to engage in the financial planning process may result in the caregivers of a special needs individual underestimating the assets and income that will be required for the individual’s support. Engaging in the financial planning process can enable the caregivers of a special needs individual to implement a strategy to provide for their own retirement income as well as the special need individual’s lifelong support.

Potential Planning Pitfalls (continued)

- 7. Failure to Coordinate Beneficiary Designations with Estate Plan:** A well thought out estate plan will be ineffective if beneficiary designations are not reviewed and updated to coordinate with the plan. If a beneficiary designation leaves assets to a special needs individual outright the individual could become ineligible for government benefits. Beneficiary designations typically control the distribution of qualified plans, IRAs, life insurance and annuities.
- 8. Wrong Fiduciaries:** Naming the right team of individuals to manage a special needs individual's assets and care may be the most important component of the plan. Designated trustees and advisors should have experience with Special Needs Trusts and should be sympathetic to the circumstances of the special needs individual. Building a team of fiduciaries to support the individual's day-to-day needs will be crucial to protecting his/her lifelong support.
- 9. Failure to Coordinate Plan with Family:** Failure to consider the impact of another family member's estate plan could jeopardize the special needs individual's eligibility for government benefit. If family members or other benefactors are not alerted to the risks of leaving assets outright to a special needs individual, a generous gift or bequest could unintentionally terminate the special needs individual's access to government benefits.
- 10. No Guardianship:** When a child reaches the age of majority he/she is considered an adult and therefor will be able to make his/her own decisions regarding care and asset management. Children who have suffered disability often have guardianships established for them to appoint a legal guardian to act on their behalf upon the child reaching the age of majority. Without such guardianship, a parent may lose the right to control decisions pertaining to the special needs individual and may lose access to the special needs individual's health information.

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