

Disability Planning for a Special Needs Child

As the costs for caring for family members with a disability becomes more and more expensive and as the requirements for qualifying for government benefits becomes more strict, it is important for family members to carefully plan their estates. Social Security Income (SSI) or Medicaid type benefits are rarely sufficient to cover many of the comforts and/or needs that someone with a disability may face. However, leaving money outright to a child or family member with a disability could effect his or her right to receive government benefits. In fact, if a disabled individual were to receive an inheritance outright, that individual could loose all government benefits immediately. The inherited assets would have to be used to pay for the things that SSI and Medicaid covered and once the inherited funds are depleted the disabled individual would be forced to go back and reapply for government benefits. Leaving money outright to a disabled individual who is receiving government benefits is almost the equivalent of giving the money to the government.

Fortunately, there are ways to leave money for the benefit of a disabled individual without giving them the money outright. A Living Trust can be set up by a family member (Trust Creator) and the Trust can provide that upon the death of the Trust Creator, the assets or a portion of the assets can be held in a Special Needs Trust for the benefit of the disabled individual. The Trust provides for the Special Needs of the disabled individual, but it does not provide for outright distribution to the disabled individual.

The Trust can provide that money can be used for such things as private rehabilitation, schooling or recreation. It can even cover special trips and/or other comforts and luxuries that the disabled individual would not otherwise be able to afford. In other words, the Trust can cover all of the “extras” that the disabled individual could not otherwise afford based on the fact that SSI and Medicaid place the individual at the poverty level. The key to this “Special Needs” Trust is that the disabled individual has no control over the money. The Trust provides that a successor Trustee or money manager has full discretion with regard to distribution of Trust assets. The Trustee does not own the money, but neither does the disabled individual. The Trust is its own separate entity with a separate tax identification number and does not appear under the disabled individual’s social security number. Since the disabled individual does not own the money, the assets in the Trust do not put the disabled individual over the allowable asset limit.

With the “Special Needs” Trust the disabled individual can continue to use SSI or Medicaid to pay for any food, clothing and shelter. If the disabled individual has any needs not covered by SSI or Medicaid, the Trustee can use Trust assets to pay for the needs of the disabled individual. The Special Needs Trust must provide that the Trustee can only use Trust assets for those items. Additionally, upon the death of the disabled individual, the Trust can further provide for distribution of those remaining assets to the disabled individual’s children or if there are no then living children back to other members of the family. A Living Trust lets you provide for the Special Needs individual who does not have the earning capacity of other children and at the same time ensure that what assets the disabled individual does not need or use pass back to the other family members. All of this planning can only be accomplished with a Living Trust. A Last Will and Testament would not allow you the lifetime control that is needed for a Special Needs beneficiary.