

Estate Planning for a Child with Special Needs



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We love to work with parents and other family members of children with special needs. While the “special” needs of the children can vary greatly, the need to include some specific provisions for the child in the parent and/or grandparent’s estate planning documents is almost uniform. However, we often hear a statement that is some variation of the following when we begin the discussion of the inclusion of special needs language or special needs provisions in the parents or grandparents’ documents:

“We do not need to include a special needs trust in our estate plan for my child. I have a sepa-

rate life insurance policy in the amount of \$500,000, which is payable to my sister, who is very close to my child. My sister will take care of and love my child just as I would.”

Frankly, the statement is both scary and heartwarming to us. There can truly be nothing more comforting to a parent, who often continues to provide care and nurturing for his or her child through that child’s adult years, than knowing that he or she has a backup. We can barely conceive of anything more comforting than to know that, in the event of the parent’s untimely death, there is another per-

son in the child’s life who can be trusted to provide the necessary care for that child and to do so as lovingly as the parent does.

Moreover, in preparing an appropriate estate plan, knowing that we can, without reservation, name such a trustworthy person as the guardian, to continue to nurture and provide the necessary care for the child, and as the Trustee for the child’s trust, to hold whatever funds can and will be made available for the child’s care (with special provisions, so that the funds held in the trust will not interfere with any governmental benefits for which the child might be qualified), is, indeed, comforting.

However, as comforting as it is to know that there is another person who will love and provide care for the child when his or her parents are no longer able to do so, naming that person as the beneficiary of the life insurance or a bank or investment account that is intended to provide for the needs of that child can present unanticipated consequences. In this discussion, we do not wish to frighten anyone who has such a plan in place; however, we do wish to present some information for consideration, to

ensure that, as with all estate planning decisions, this planning decision is examined in a critical light.

So, let’s consider if a trusted sister is named as the beneficiary of a life insurance policy that is intended to provide for the special needs of your child, what might happen if your sister survives you by one year, claims the \$500,000 life insurance policy and maintains those funds in a separate account, which she utilizes for the sole purpose of providing care for your child, as planned. What will happen with those funds and, indeed, your child, at your sister’s death? Will those funds pass to your sister’s husband? Or, perhaps, to your sister’s children? Are your sister’s husband and children people whom you would select to serve as your sister’s backup to provide care for your child when you are no longer able to provide that care? Do you have other, potentially better, options available?

If the answers to any of these questions have you questioning whether the plan you have in place is the best for your child, it might be a good idea to discuss the possibility of a different plan, possibly designating your sister to serve as both guardian and Trustee for your child. In this regard, a significant benefit of establishing a special needs trust for your child is that you are able to set forth the allowed uses of the funds for your child and you are able to designate one or more successors to your most trusted family member or friend, so your child’s care does not pass “by chance” to someone whom you would not trust to serve in that capacity.

If you have any questions and would like more information about this type of planning, please do not hesitate to contact our office. We are happy to meet with you and answer any questions you might have about your particular situation. We are here to help.

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