

9 costly mistakes to avoid in planning for your special needs child

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COSTLY MISTAKE #1 DISINHERITING THE CHILD Many disabled people rely on SSI, Medi-Cal or other government benefits to provide food and shelter. You may have been advised to disinherit your disabled child - the child who needs your help most to protect that child's public benefits. But these benefits rarely provide more than subsistence. And this "solution" does not allow you to help your child after you are incapacitated or gone.

When your child requires or is likely to require governmental assistance to meet their basic needs, you should consider establishing a Special Needs Trust.

COSTLY MISTAKE #2 IGNORING THE SPECIAL NEEDS WHEN CREATING A TRUST FOR THE CHILD A Trust that is not designed with your child's special needs in mind will probably render your child ineligible for essential benefits. The Special Needs Trust is designed to promote the disabled person's comfort and happiness without sacrificing eligibility. Special needs can include medical and dental expenses, annual independent check-ups, necessary or desirable equipment (such as specially equipped vans), training & education, insurance, transportation, and essential dietary needs. If the trust is sufficiently funded, the disabled person can also receive spending money, electronic equipment & appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality-of-life enhancing expenses: the sorts of things you now provide.

COSTLY MISTAKE #3 CREATING A "GENERIC" SPECIAL NEEDS TRUST THAT DOESN'T FIT Even some "special needs trusts" are unnecessarily inflexible and generic. Although an attorney with some knowledge of the area can protect almost any trust from invalidating the child's public benefits, many trusts are not customized to the particular child's needs. Thus the child fails to receive the benefits that the parent provided when they were alive.

Another mistake attorneys with special knowledge in this area see others making time and time again is putting a "pay-back" provision into the trust rather than allowing the remainder of the trust to go to others' upon the special needs child's death. These "pay-back" provisions are necessary in certain types of special needs trusts. An attorney who knows the difference can save your family hundreds of thousand of dollars, or more.

All too often, attorneys make Special Needs Trusts "irrevocable" upon signing. While this is appropriate in rare cases, most parents prefer to retain their right to improve and fine tune the trust as the years pass. Over time, their child's evolving needs can inform the trusts provisions and just as important, changes in the law can be addressed by changes in the trust. If there's one thing I can say for sure about the law, in this area, it's that the law will be very different in 10 years.

COSTLY MISTAKE #4 PROCRASTINATING Because none of us knows when we may die or become incapacitated, it is important to plan for your special needs child early, just as you would for other dependents such as minor children.

Unlike most other beneficiaries, your special needs child may never be able to compensate for your failure to plan. A minor beneficiary without special needs can obtain

more resources as he or she reaches adulthood and can work to meet essential needs. Your special needs child may not have that opportunity.

COSTLY MISTAKE #5 FAILING TO INVITE CONTRIBUTIONS FROM OTHERS TO THE TRUST A key benefit of creating the trust now is that your extended family and friends can make gifts to the trust or remember the trust as they plan their own estates. You can also consider whether making the trust the beneficiary of a life insurance policy makes sense now, while you are healthy and insurance rates are low.

In addition to the gifts and inheritances from other people who love your child, you can leave your own assets to the trust in your will. You can also name the trust as a beneficiary of life insurance or retirement benefits.

COSTLY MISTAKE #6 CHOOSING THE WRONG TRUSTEE During your life, you can manage the trust. When you and your spouse are no longer able to serve as trustee, you can choose who will serve according to the instructions that you have provided. You may choose a team of advisors. You may choose a professional trustee. Make sure that whomever you choose is financially savvy, well-organized, and, most important, ethical.

COSTLY MISTAKE #7 RELYING ON YOUR OTHER CHILDREN TO USE THEIR MONEY FOR THE SPECIAL NEEDS CHILD'S BENEFIT You can rely on your other children to provide for your special needs child from their own inheritances. That can be a temporary solution for a brief time, such as during a brief incapacity if your other children are financially secure and have money to spare. However, it is not a solution that will protect your child after you and your spouse have died or when siblings have their own expenses and financial priorities because of the many potential problems.

What if your child with the money divorces? His or her spouse may be entitled to half of it and will likely not care for your special needs child. What if your child with the money dies or becomes incapacitated while your special needs child is still living? Will his or her heirs care for your special needs child as thoughtfully and completely? What if your child with the money loses a lawsuit and has to pay a large judgment or has other significant creditor problems? The court will certainly require your child to turn that money over to the creditor.

If you create a special needs trust, you protect all of your children. The trust facilitates easier record-keeping and allows your other children to rely on the assistance of a professional trustee, if needed. Siblings of a special needs child often feel a great responsibility for that child and have felt so all of their lives. When you provide clear instructions and a helpful structure, you lessen the burden on all your children and you support a loving and involved relationship between them.

COSTLY MISTAKE #8 FAILING TO PROTECT THE SPECIAL NEEDS CHILD FROM PREDATORS An inheritance from parents who fund their child's special needs trust by will rather than by revocable living trust is in the public record. Predators are particularly attracted to vulnerable beneficiaries, such as the young and those with limited self-protective capacities. When you plan with trusts, you decide who has access to the information about your children's inheritance. This protects your child and other family members, who may be serving as trustees, from predators.

COSTLY MISTAKE #9 FAILING TO PROPERLY "FUND" AND MAINTAIN THE PLAN Every trust-based estate plan requires changes to asset ownership and beneficiary

designations. If the plan includes life insurance protection (done with an “Irrevocable Life Insurance Trust”), these asset transfers become complicated. Your attorney or your attorney’s Funding Director should explain which asset goes where, and why. If this explanation doesn’t make complete sense, or if you suspect the assets were not properly transferred, take action! Call your attorney and ask for a report. This is one of the most common reasons estate plans fail.

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