

How to Start Planning Your Estate

By Life Planning for Families of Special Needs

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When parents have a son or daughter with a disability, they should consider developing an estate plan that provides for that person's future best interests. Here are some suggestions that can help parent's approach planning their estate when a son or daughter with a disability must be taken into consideration.

First: Realistically assess your son's or daughter's disability and the prognosis for future development. If necessary, obtain a professional evaluation of your child's prospects and capability to earn a living and to manage financial assets. If your child is young, it may be more difficult to predict the future and in most cases, you should take a conservative view. It is better to anticipate all possibilities, good and bad, so you do not limit your loved one's potential or set him or her up for unrealistic expectations. Remember, too, that you can change your estate plan as more information about your child becomes available.

Second: Carefully inventory your financial affairs. Estimate the size of your estate (what you own) if you should die within the next year or the next ten years.

Third: Consider the living arrangements of your son or daughter with a disability. Your child's living arrangements after your death are of paramount importance. Every parent of an individual with a disability should give thought to the question, "If my spouse and I should die tomorrow where would our child live? What are the possibilities available to him or her?" The prospective living arrangements of your son or daughter will have a tremendous impact on how your estate should be distributed.

Fourth: Analyze the earning potential of your son or daughter. It is important to determine how much your child can be expected to contribute financially, because of employment. If your child is presently too young to be employed, you will have to project into the future. In many cases, even if your son or daughter is employed or expected to be employed at some point in the future, he or she will require additional financial assistance.

Fifth: Consider what government benefits your son or daughter needs and is eligible to receive. Support for a person with a disability will usually come from state and federal benefits.

In brief, government benefits can be divided into two categories. First are those categories that are unaffected by the financial resources of the beneficiary. For example, social security disability insurance (SSDI) beneficiaries receive their benefits without regard to financial needs. Regardless of what the parents leave to a son or daughter with a disability, the social security payments will still be forthcoming once the person has qualified for them. Medicare is available after a two year waiting period.

Second, some government benefits, such as a supplemental security income (SSI) and Medicaid, have financial eligibility requirements. If a person with a disability has too many assets or too much income, he or she is not eligible to receive any or all of these benefits.

Someone who is eligible due to a lack of financial resources can become ineligible upon inheriting money, property or assets. This would lead to a reduction or termination of the SSI benefits for that person. Therefore, if your son or daughter is receiving government benefits that have financial eligibility requirements, it is important to arrange your estate in a manner that will minimize his or her loss of benefits, especially SSI or Medicaid.

Establishing a Will: Two Possible Approaches

Having decided what your son or daughter needs and what you own, you can now consider how to best assist him or her. There are two possible ways to do so.

First, you can disinherit your son or daughter with the disability. No state requires parents to leave money to their children, disabled or not. If your assets are relatively modest and your son or daughter's needs relatively great, the best advice may be to disinherit your child by name and have him or her rely upon federal and state supports after your death. This may be the wisest decision, particularly if you wish to help your other children. Instead of complete disinheritance, you might leave your son or daughter with a disability a gift of modest but sentimental value, such as his or her bedroom furniture. The value of the gift will be small enough not to affect government benefits, but it will still indicate your love and concern.

Second, you can establish a special needs trust for your son or daughter with a disability. For many parents who have a child with disabilities, the use of a trust is the most effective way to help that individual. The point of the trust is to keep assets in a form that will be available to your son or daughter but that will not disqualify him or her from government benefits for which he or she might otherwise be eligible

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