

PLANNING FOR YOUR FUTURE AND THE LIFETIME OF A PERSON WITH SPECIAL NEEDS

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1. What is estate planning?

Estate planning is a process where legal and financial professionals work together with you to prepare for the management and distribution of your estate upon your death. In a case involving a person with special needs, the estate plan also includes a plan to provide for the future of the loved one.

Typically, a person's estate consists of all the property that he or she owns at the time of his or her death, including both real property (land) and personal property (property that is not land).

2. Why is estate planning important?

Estate planning is important because during your lifetime, you have a unique opportunity to direct how your property or estate will be managed and distributed upon your death. In your estate plan, you choose your beneficiaries and the manner in which your beneficiaries receive your property. If you do not do proper estate planning, your estate may be managed and distributed in a manner other than you desire.

3. Why is estate planning important for a person with special needs?

It is important to plan for the future of a person with special needs in order to provide and ensure a lifetime of quality care for that person. In addition, if a person with special needs is receiving SSI or Medicaid benefits and receives income that pays for certain expenses, the person can lose his or her government benefits. An inheritance, a personal injury award, or even child support can compromise the person's eligibility for these benefits. As a result, it is important that you consult with a qualified legal and financial professional regarding estate planning for a person with special needs due to the federal and state laws regarding government benefit eligibility.

4. What documents generally make up estate planning?

Typically, an individual can properly plan for their future and/or the future of a person with special needs through the following documents:

A. Last Will and Testament

- B. Living Will
- C. Durable Power of Attorney
- D. Durable Power of Attorney for Healthcare
- E. Trust

A Last Will and Testament is a document that generally provides for the management and distribution of your estate upon your death. In creating a Last Will and Testament, your legal and financial professional looks at your assets and liabilities and determines what type of will is appropriate to meet your goals. The professional considers the potential federal and state tax consequences of your proposed distribution. A Last Will and Testament may be changed or amended at any time prior to your death. In addition, you may name a guardian and trustee for your children.

A Living Will is a document in which you direct whether or not you desire artificially provided nourishment and fluids in the event your attending physician diagnoses you with a terminal condition and declares that you have no reasonable expectation of recovery. This document also allows you to designate whether or not you wish to donate your organs in the event of your death.

A Durable Power of Attorney is a document that designates someone to act on your behalf with respect to your personal and financial affairs. This person is known as your designated “Attorney-in-Fact”. The Power of Attorney is a “durable” Power of Attorney because it remains in effect upon your disability. A Durable Power of Attorney may take effect immediately or you may choose for it to take effect if and when you either make a sworn statement that you are unable or unwilling to continue the management of your affairs or one or more physicians certify that you are incapable of handling your own affairs. A Durable Power of Attorney does not authorize your designated Attorney-in-Fact to make healthcare decisions for you.

A Durable Power of Attorney for Healthcare is a document that designates someone to act as your “agent” to make healthcare decisions for you during any period which, in the opinion of your attending physician and your agent, you are considered unable to make or communicate a choice regarding a particular health care decision. As with a Durable Power of Attorney, you can choose a Power of Attorney for Healthcare to take effect immediately. You may revoke your Durable Power of Attorney for Healthcare at any time by notifying your agent or your healthcare provider either orally or in writing.

A Trust is generally a document that involves a “grantor” or person who creates the trust, a “trustee” or person who administers the trust and a “beneficiary” or person who will receive the benefit of the trust. There are many different types of trusts. Trusts providing for the future of people with special needs are discussed below.

5. How do I plan for the future of a person with special needs?

One of the most effective ways to plan for the future of a person with special needs who receives governmental benefits is through a Special Needs Trust. A Special Needs Trust provides for the supplemental needs of a person with special needs above and beyond his or her basic needs for food, clothing, shelter, and healthcare provided by federal, state, and local government programs.

You may set up a Special Needs Trust during your lifetime. This is referred to as an Inter Vivos Trust. You may also set up a Special Needs Trust through your Will to be funded upon your death. This is referred to as a Testamentary Trust.

In Tennessee, a person with special needs may qualify for Supplemental Security Income (SSI) and Medicaid. If their income exceeds \$2000.00 per month, however, his or her governmental benefits can be at risk of being terminated.

A Special Needs Trust is an important estate planning tool because it allows you to provide for the future of a person with special needs without compromising his or her government benefits. In Tennessee, there are three types of special needs trusts. They are as follows:

- (1) Self-Settled Special Needs Trust
- (2) Third-Party Special Needs Trust
- (3) Pooled Special Needs Trust

A Self-Settled Special Needs Trust is a trust created by a parent, guardian, spouse or other third-party and is funded with funds belonging to the beneficiary or person with special needs. Such funds may include a personal injury settlement or award, an inheritance from a relative, or child support payments. A Self-Settled Special Needs Trust must include a provision stating that at the death of the person with special needs, any funds remaining in the trust will be used to pay back the government for benefits rendered to the person with special needs during his or her lifetime.

A Third-Party Special Needs Trust is a trust created by a party other than the person with special needs. A parent, guardian, spouse, or relative may set up a Third-Party Special Needs Trust for a person with special needs. This type of trust is funded with the assets of someone other than the person with special needs. Unlike a self-settled trust, upon the beneficiary's death, monies do not need to be paid back to the government when a third party sets up a trust from the third party's property.

A Pooled Special Needs Trust is a trust established for the benefit of a person with special needs by the person with special needs or a third-party in

which funds belonging to the person with special needs or a third-party are combined and placed with a non-profit organization that manages the funds. A separate account is set up for each beneficiary, but all funds are pooled for investment purposes. A Pooled Special Needs Trust will provide for the supplemental needs of the special needs individual throughout his or her lifetime. Upon his or her death, the funds will remain with the Pooled Special Needs Trust, or be used to pay back Medicaid for benefits the person with special needs received during his or her lifetime.

6. If you want to look more closely at your options for planning for your future and the future of your children, what should you do next?

Because each person and family has individual needs, so are the tools available for meeting your goals and planning for your family's future.

Creating the legal document that is your Last Will & Testament or a Special Needs Trust, is only one step in the overall process. Please schedule an appointment to discuss your needs and goals and develop a plan that is appropriate for you, your children, and your family.

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