



## Planning for Family Members With Special Needs

*Hearing about families with children or other family members who have special needs is becoming more commonplace – not necessarily because there are more people with special needs, although that may be true, but because of greater awareness and understanding, and less embarrassment and social stigma. There is no typical profile for those with family members with special needs – they arise in wealthy families and in poor, rural and urban, with young children, siblings and/or parents, and at any age. All such families need to ensure they have conducted proper estate planning. The first concern of estate planning is to help ensure that family members are cared for.*

The special needs of physically, mentally, and emotionally disabled persons, present unique planning problems. For example, for a family with modest assets and three children, one of whom is autistic, who is going to care for that child when mom and dad are gone? The child will probably need continued care for the rest of his/her life. Will the next care giver have the financial resources to take on this responsibility assuming the will and good intentions are there? The care givers have many concerns and responsibilities, including (a) finances; (b) daily physical care; (c) emotional support; (d) housing and transportation needs; (e) medical and educational needs; (f) legal needs; and (g) others.

Once the care givers are gone, there are three primary sources of support available to the person with special needs: family, charity and government. Estate planning goals would seek to maximize each source of support and include:

- Protect and provide for the physical, emotional and financial security of the person with the special need
- Do not take any action that might jeopardize his or her eligibility for government programs

- Assure continued availability of charitable programs
- Consider the needs of other family members
- Provide family members the financial ability to handle ongoing needs
- Organize the estate to maximize assets and minimize taxes and costs

Accordingly, leaving assets outright to the special needs person would eliminate eligibility for any governmental or charitable assistance. That would not be a good result for most families. Disinheriting the special needs person, leaving him or her completely dependent on government programs and charity to continue to meet his or her needs into the future is also not a solution since governmental programs and charity would probably be insufficient. So, what do you do?

### One Solution – Creating and Funding a Special Needs Trust

A Special Needs Trust is a trust typically funded with life insurance on the lives of the primary care givers (individual life insurance or survivorship life insurance) so that upon their death, an immediate pool of money is created to provide “supplemental benefits” to the special needs person. The supplemental benefits go above and beyond the primary care needs of the special needs person. Primary care needs are met by government and charitable sources while supplemental needs – second medical opinions, vacations, special transportation needs, and improved education, are provided by the trust.

The Special Needs Trust can be created either during life or as a testamentary trust under a will. The trust must be drafted in compliance with state laws and contain repayment provisions, if required. The repayment provisions will provide that upon the beneficiary’s death, any government funds



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advanced on behalf of the special needs person will be reimbursed before distribution to any surviving family members.

By creating a Special Needs Trust, and funding it with life insurance, the care givers can rest assured that the needs of the Special Needs family member will be met, without sacrificing the distribution of their estate to their other family members.

Note, that the area of Special Needs Trusts and qualifying for public assistance is a complicated area of law. You must consult with an attorney who specializes in this area.

Please consult with your Guardian Financial Representative if you have any questions concerning this document.

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