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Protecting Assets for Family Members with a Disability

Planning an estate is never an easy task. When a family member has a disability, most parents are lost as to where to begin. Many disabled individuals are entitled to public benefits that provide income for living and medical expenses. Many times the medical expenses are substantial. Programs such as Supplemental Security Income (SSI) and Medicaid are designed for individuals with minimal financial resources. A simple Will leaving the family savings to the children can cause a disabled child (adult or minor) to lose much needed public benefits. Yet, in many families the disabled child is the primary concern of the parents. **Don't just disinherit your child.**

The public perception of children with disabilities has changed dramatically over the past twenty-five years. With changed attitudes and advances in medical technology, the life expectancies of persons with disabilities have come more in line with those individuals without disabilities. Many disabled adults are outliving their parents which can cause serious concerns regarding who will provide much needed care for

the child with a disability. Another major concern is how to preserve assets for the child with a disability without jeopardizing public benefits.

Many parents are not aware that special planning tools are available to protect assets and governmental benefits. A **Special Needs Trust (SNT)** is a trust designed specifically to provide funds for a disabled individual's needs without putting their public benefits at risk. Parents can establish these trusts during life or through testamentary plans.

SNT's are used to shelter funds for the benefit of the person with a disability. These funds are typically the result of an inheritance or personal injury award but can come from any source. Funds are available for anything **not** provided by public benefits. Within a properly drafted trust the funds are not considered in determining eligibility for public benefits.

On the reverse are several examples of how SNT's can be used to protect a vulnerable individual.

EXAMPLE 1 – 3rd Party SNT

Maria is living in a group home (or in her own apartment) and receiving Supplemental Security Income (SSI) and Medicaid. Maria's parents have always provided for Maria's needs that were not met by her public benefits. Maria's parents want to ensure that Maria will have money for her lifetime for any needs that may arise. Maria's parents incorporate a SNT for Maria in their existing estate plan. Maria's parents appoint Maria's brother as the Trustee to use the money for anything not covered by SSI or Medicaid. Maria maintains her eligibility for public benefits and a reserve fund is thus made available to provide for enhanced care and to add to Maria's quality of life. Any funds remaining in the SNT at Maria's death will go to her siblings or nieces and nephews.

EXAMPLE 2 – Under Age 65 SNT

Several years ago Mark was injured in an accident and is now permanently disabled. The personal injury lawsuit that has been pending since the accident is about to be settled for several hundred thousand dollars. Mark has been on public benefits since the accident. If Mark receives the settlement in a lump sum he will lose his public benefits. Instead, Mark will establish a SNT to receive the settlement. The funds will be held in the Trust to provide additional benefits for Mark until he dies. With this type of SNT, upon his death, the State of Florida will be repaid from the SNT for the benefits paid on Mark's behalf during his lifetime. Any funds remaining in the trust after reimbursing the State will pass to Mark's heirs.

These are just two possible examples of how specialized estate planning can maintain much needed public benefits for individuals with disabilities. Otherwise an inheritance or personal injury settlement will be quickly depleted and no funds will be available to provide for extra care.

Many parents believe they can address these problems by leaving their entire estate to other children, or family members who are not disabled, with mere instructions to use the money for the child with a disability. There are many problems with this plan. For instance, the non-disabled child could: (1) predecease the disabled child, (2) get divorced and lose funds to their ex-spouse, (3) get sued, or (4) have creditor problems. Any of these examples could cause the funds to not be there for the disabled child.

Finally, proper estate planning includes not only planning for others after your death, but planning for yourself during your lifetime. You must plan for the possibility that you, as the caregiver of a family member with a disability, could yourself become disabled. You must be certain that your estate will be preserved for your family, particularly your loved one with a disability. This includes working with a skilled attorney to discuss taxes, creditors, probate and nursing home coverage. I would be honored to help you design an estate plan to address these many concerns. We have attorneys skilled in tax law, long term care issues and public benefits. We look forward to working for you.