



PLANNING FOR A LOVED ONE WITH SPECIAL NEEDS

By Robert D. Vale

When planning for a loved one with special needs, here are a few points to consider.

When I speak of a Special Needs Trust, I sometimes use the term ‘luxury trust’. My point in using this term is to highlight the fact that Special Needs Trusts are designed to provide the special needs child with a modicum of financial resources over and above the governmental assistance that is available without jeopardizing the governmental assistance. This is not to say that the special needs child will be the beneficiary of ‘luxuries’ as that term is normally used. However, to have a television, an occasional meal out, a better living situation and the like are luxuries to those living at a subsistence level, and this is the context in which the term ‘luxury’ is used.

If your child receives governmental assistance to meet his or her basic needs, a Special Needs Trust should be considered. Parents of a special needs child will sometimes be advised to disinherit the child to protect the child’s public benefits. Remember, however, that public benefits rarely provide more than subsistence and disinheritance does not allow a parent to help the special needs child in the event of the parent’s incapacity or death. Sometimes the thinking is to leave the inheritance to siblings with the implicit understanding that they will care for their special needs brother or sister. But, if the well intentioned sibling loses a lawsuit and has to pay a large judgment or dies unexpectedly or has unanticipated financial problems, financial resources for the special needs child could be lost or significantly impaired. The creation of a Special Needs Trust protects all of the children.

It is important that the trust created for a special needs child be one that will allow the child to maintain essential government benefits. In other words, the trust needs to be designed to promote the child’s comfort and happiness without sacrificing eligibility.

Once a Special Needs Trust is established, family and friends can make gifts to the trust or include the trust as a beneficiary in their estate plans. This can be done without endangering eligibility. In addition, parents can consider whether making the trust the beneficiary of a life insurance policy makes sense now, while the parents are healthy and rates will most likely be lower.

In establishing a Special Needs Trust, the selection of the Trustee (manager of the trust assets) is important. Parents can serve as Trustee so long as they are alive and well. Thereafter, the parents will have listed their choice for Successor Trustee. Parents can choose a family member, a team of trusted advisors or a professional Trustee such as a bank. It is important that the selected Trustee be financially astute, well organized and, most important, ethical and caring.

A Special Needs Trust can be incorporated into the living trust maintained by the parents or it can be a ‘stand alone’ living trust. Which Special Needs Trust is implemented depends upon the facts and circumstances of the particular family. In either case, the goal of Special Needs Trust planning is to provide clear instructions and a helpful structure in which Successor Trustees can oversee trust assets for the benefit of the special needs child.