

New Jersey Law for Special Needs Children

NEWS & UPDATES ON ESTATE PLANNING FOR NEW JERSEY FAMILIES WITH SPECIAL NEEDS CHILDREN

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Ending Your Marriage Does Not Mean Ending Your Commitment to Your Special Needs Child

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The end of a marriage does not end your commitment to your child with special needs. First, it is important for any child support dedicated to a child with special needs to be allocated under the separation agreement to a special needs trust so that these assets do not affect the child's ability to receive government assistance. It is important in connection with a divorce that each spouse consider the impact of the separation on his or her individual special needs planning. Each parent must have appropriate special needs planning in order to protect the child's eligibility for assistance. Each spouse can have their own special needs trust with different trustees and different beneficiaries. Despite this, it is important that where possible, the parents of the child with special needs coordinate the funding of the trusts to ensure that adequate resources will be available to the child, and to ensure that the both spouses have incorporated the planning necessary to preserve the child's eligibility for assistance.

If you incorporate special needs planning in your estate plan, but your ex-spouse has not, the planning you have done will not be enough to protect your child's eligibility for assistance at the time that your ex-spouse dies.

In obtaining the divorce, one issue which is not often contemplated is who is responsible for becoming the guardian of the child upon the child's attainment of age 18 (one parent or both together) and who has responsibility for educational decisions with respect to a child (this could be both parents or one). These issues should be addressed in a divorce agreement to minimize disputes following the divorce.

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