

New Jersey Law for Special Needs Children

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

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Five Mistakes Commonly Made By Families of Special Needs Children

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Families who do their best to protect their children with special needs often make several critical mistakes in developing their family plan. These mistakes are outlined below.

- **529 Plan.** Often there is a 529 Plan in the name of a special needs child. The existence of this account in a child's name can affect the child's ability to receive government assistance. The 529 plan is considered an available asset of the child's in determining his or her eligibility following the death of the individual who established the plan for such child. The best solution would be to change the designated beneficiary under the 529 Plan to name another child, if that is an option.
- **Custodial Accounts.** The presence of custodial accounts in a child's name will also affect the child's availability for government assistance. Custodial accounts are often established long before the child's special needs are recognized. Parents must deplete any such accounts for the care of their child if the account has assets in excess of \$2,000 to qualify for Medicaid assistance or allocate the assets to a pooled trust or first party special needs trust. Going forward, if there is a goal to allocate assets to or for the benefit of that special needs child, a special needs trust can be established by parents or other family members and gifts can be made directly to this trust account.

- **Retirement Plan and Insurance Policy Beneficiaries.** Often times, parents may have worked to develop a special needs trust to which their estate plan is tied, however they forget one critical issue. Life insurance policies and retirement plan accounts pay to designated beneficiaries and do not pass under an individual's Will. It is vital that parents tie these assets with the special needs trust. If a life insurance policy or retirement plan account are paid directly to a special needs child, the receipt of the assets will affect the child's ability to receive government assistance.
- **Discussions with Extended Family.** A discussion with extended family members who may want to benefit a special needs child is a difficult and awkward conversation for parents to have; however, the discussion is critical. Well meaning grandparents may allocate a portion of their estate to the special needs grandchild to make sure there are monies available to benefit their special needs grandchild and while intentions are good, the receipt of these monies could affect the grandchild's ability to receive government benefits. Alternatively, a grandparent's Will could leave assets to his or her children and if a child predeceases him or her, to the deceased Child's issue (which could include a special needs grandchild). A bequest by grandparents to a special needs grandchild should be made to a special needs trust. If the parents of a special needs child feel there are family members who might make gifts or bequests to his or her special needs child, the parents should discuss with family members this issue to make sure that they understand that to the extent that they do want to leave assets to a special needs child, the assets should be left to the special needs trust created for the benefit of that child.
- **Use a Specialist.** It is important that parents use an attorney who specializes in special needs planning instead of a general practitioner since there are specific issues which must be incorporated in a special needs plan.

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