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WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE

ESTATE PLANNING FOR FAMILIES WITH CHILDREN WHO HAVE SPECIAL NEEDS

Estate planning for families who have children with special needs is similar to general family estate planning. The key, however, is to make sure that any funds or other assets put aside for a child or adult who is receiving, or could receive, governmental benefits (ex. Medicaid) are placed in a "Supplemental Needs Trust", or "SNT", rather than given outright or placed in a disqualifying trust. A receipt of assets by a person receiving government benefits could jeopardize those benefits.

SNTs are trusts that restrict the trustee from making distributions to or for the benefit of the special needs person; the trustee can make payments only for items and services that are not already paid for through government benefits. For example, government benefits generally cover expenses for basic needs, such as food, clothing, and shelter, while the SNT can be used to pay for supplemental needs, such as utilities, medical care, special equipment, education, job training or entertainment. SNTs created and funded by someone other than the special needs person can state to whom the remaining assets should be paid upon the death of the special needs person (for example, to that person's children, or your other children and/or grandchildren).

Remember, assets that have beneficiary designations and jointly held property should be looked at carefully to make sure assets are not passing outright to a special needs person upon your death. But what if a special needs person does inadvertently receive assets, thus jeopardizing their Medicaid eligibility? In that case, a "self-settled" SNT can be created, in which the guardian of the property of the special needs person brings a court proceeding to have an SNT created. The assets are then placed in the SNT. The difference with a self-settled SNT is that when the special needs person dies, the government must first be reimbursed from the SNT for all governmental monies spent on behalf of the special needs person during life. Any property remaining in the SNT can then be paid to family members.

One way to fund SNTs to ensure that your special needs child is taken care of after you are gone is to use life insurance. The life insurance (on your life) can be purchased by an irrevocable life insurance trust (an "ILIT") that you create; the trust's terms can provide for an SNT for your special needs child. The trustee of that trust is directed to split the trust into multiple trusts if you have more than one child and only one with special needs.

If there is a trusts or estates topic that you would like to know more about, please feel free to email me at **pmarcin@farrellfritz.com** with your suggestion and I will do my best to cover it in a future column.

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