

Siblings Role in Managing a Special Needs Trust

By Theresa M. Varnet, Esq.

A special needs trust is a way to ensure that an inheritance intended for the benefit of a family member with a disability is left in a manner to supplement government benefits rather than supplant them. When a person is challenged with a disability, s/he may qualify for several needs-based government benefits such as SSI, Medicaid, SNAP, subsidized housing, fuel assistance, etc. If a brother or sister is left a direct inheritance, this may result in a loss of benefits that are critical for his or her support and independence. If the family member with a disability is left an inheritance in a special needs trust, s/he gets the best of both worlds: continued eligibility for needs-based benefits and a private source of funds to enable him or her to live a higher quality of life than s/he could otherwise afford.

Drafting a special needs trust is the first step in placing a safety net under a child or other family member with special needs to ensure a quality life for him or her. While parents often rely on siblings, or a cousin or close family friend, to monitor how funds are spent and to ensure that the special needs family member reaps the greatest benefit from having a special needs trust, the knowledge of how to manage a special needs trust is not intuitive. Families often name siblings in a number of fiduciary positions such as guardian, trustee of a special needs trust, executor of their estate, trust protector, etc. It is important for families to have a talk about how they have provided for the family member with special needs with the adult child or other person they have designated as trustee, guardian, or trust protector so that this person is aware of what is expected of him or her. Knowledge is power and if siblings know what is expected of them, they will be in a better position to educate themselves about what they need to know and learn for their future role as trustee or trust protector of a special needs trust.

If you are the sibling of a brother or sister challenged with a disability and your parents haven't said anything to you about their lifelong plans for your brother or sister, you may want to initiate the conversation with them. You will want to know what their hopes and dreams are for your sibling and what your role is, if any, in implementing that lifelong plan. If there isn't a plan, this may be the perfect opportunity to work with your parents to form a plan that is realistic given the long waiting lists for services in most states.

Parents should let their adult children know if they have included a special needs trust in their wills or living trusts that provides for the sibling with a disability. Some parents have merely disinherited the child with a disability and left what is commonly referred to as a morally obligated gift to the other sibling or all siblings with a request that they use the extra inheritance for the benefit of the brother or sister with a disability. This may create a number of legal problems for the relied-upon sibling. If the special needs child has been disinherited, the parents have created a potential conflict of interest between the typical siblings and the special needs sibling. A probate court may appoint an independent guardian to look into contesting the will if the person named as guardian is also named to receive a larger share of the estate. The naming of a GAL may result in substantial cost to the estate and may delay distribution for many months or longer.

While no parent enjoys discussing what is going to happen to their special needs child when they die, this is a discussion that can make a huge difference in the success of their plans for their special needs child. Fletcher Tilton PC, offers an annual seminar titled *How to Administer a Special Needs Trust*. It is highly recommended that if a parent has named an individual to serve as trustee, this future trustee be encouraged to attend the annual training in person or via webinar. Attending this training may open the door to a discussion of how the parent wants the funds s/he has left for the special needs child to be used and may make sure that everyone is on the same page.

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