WILLS, TRUSTS & ESTATES: PLAIN AND SIMPLE

Estate Planning for Families with Children Who Have Special Needs

By Patricia C. Marcin, Esq. ©2014

Estate planning for families who have children with special needs is similar to estate planning for families who do not have special needs children. From an estate tax perspective, the considerations do not differ. 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 (which can be created under your will or as a separate document) that restricts 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 (like IRAs, pensions, life insurance, transfer on death accounts and the like) and jointly held property (like joint bank and brokerage accounts and real estate) 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 a 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 a SNT for your special needs child. For example, let's assume you have two sons, John and Jim. Jim has special needs and receives Medicaid. Upon your death, the proceeds of your $2 million life insurance policy are paid to your ILIT (free of estate tax). The trustee of that trust is directed to split the trust into two trusts, (1) one for John that gives the trustee broad powers to pay income and principal to John, and (2) another for Jim that qualifies as a SNT, with distributions permitted to Jim only for "supplemental" items.

As I've mentioned in previous articles, it is important to consider using trusts in your estate planning; and when you have minor children or special needs children, it's even more important.

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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