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Estate planning is a very personal endeavor. Even though most people have similar objectives and goals, these same people may have unique or special circumstances to consider. Therefore, we offer a free initial consultation so that we can appraise these considerations and then recommend a comprehensive estate plan for you. In other words, the purpose of this introductory meeting is to learn more about you, and to learn about your desires and aspirations. You will owe this firm nothing if, after this meeting, you choose not to proceed with our recommendations. When our proposal is made to you, we will quote you a flat fee for all the work to be done. We do not charge you an hourly fee, as some attorneys do, because this can lead to charges not contemplated by you. We believe it is important for you to know exactly what the fees will be.

We are committed to providing legal services that will give you peace of mind and the satisfaction of knowing that the work is of the highest quality. We certainly look forward to working with you.

MICHAEL D. TOOBIN has been in the private practice of law in Northern Virginia since 1974. He graduated from The American University in Washington, D. C. in 1971 and received his law degree from the University of Connecticut in 1974. His practice is general in nature, with emphasis on estate planning, administration of estates, and real estate law. He is a member of the Board of Directors of the Arc of Northern Virginia, and a former adjunct professor of The American University. He is an extensive lecturer on estate planning and real estate matters. He is a contributing author of the books, Virginia Elder Care Planning: How to Protect Assets and Provide for Services (National Business Institute, 2005), The Probate Process From Start to Finish (National Business Institute, 2006), and Estate Planning Basics (National Business Institute, 2007). Michael and his wife, Merle, live in Burke, Virginia.

ESTATE PLANNING FOR YOU AND YOUR FAMILY

Proper estate planning allows you to plan for yourself and your loved ones without giving up control of your affairs. The two main objectives are to receive maximum benefits for property ownership during one's lifetime and to plan for the orderly disposition of assets with a minimum of taxation. Your plan should give what you own to whom you want to receive it, the way you want them to receive it, and when you want them to receive it. Finally, it should save every tax dollar, professional fee and court cost that is legally possible to save.

In order to understand various estate planning techniques, a knowledge of basic documentation is necessary. These documents include a testamentary will, a revocable living trust, a durable power of attorney, and a medical directive, which may or may not include "living will" language.

Both the testamentary will and the revocable living trust can provide the following benefits: control of property, instructions for the care of your loved ones upon your death, instructions for the disposition of your property upon your death, protective trusts for children and grandchildren, and estate tax planning. There are a number of disadvantages of a will which are not associated with a living trust. These include the fact that all property passing through a will goes through probate which is the government-controlled administration of your estate. Specific costs and procedures are involved, as well as time delays in distributing property. Wills are fully public and open to inspection by anyone. Furthermore, wills do not provide instructions for the care of you or your loved ones in the event of your disability.

Living trusts, on the other hand, avoid probate, are private and do provide instructions for your care and that of your loved ones in the event of your disability. This is because you place the property in the trust while you are alive and so it begins working and continues to work during your lifetime and then upon your death.

A durable power of attorney allows your named agent to handle many of your financial affairs in the event you are unable to do so. Since it is "durable", it survives your disability. It permits your agent to do many things on your behalf, including withdrawing funds from bank accounts, signing contracts, selling or buying property, and filing tax returns.

A medical directive is a document in which you can name an agent to make medical decisions on your behalf. Basically, the agent is given the power and authority to consent to such medical care and treatment that you would choose and decline such care and treatment that you would choose if you were able to act for yourself. This would include the employment of medical personnel, admission and/or discharge from medical facilities and inspection of medical records.

Finally, a "living will" is a natural death declaration. It deals with the situation in which you have a terminal medical condition from which there can be no recovery and death is imminent. It allows you to direct that no artificial life-prolonging procedures be administered, except for those deemed necessary to provide comfort or alleviate pain. It also conveys HIPAA authority, and notes your preference for organ donations.

Many families have a member who has special needs. This person may be a child with a mental or physical disability; a spouse who recently suffered a stroke; or a parent experiencing memory loss. If this person is receiving, or may be entitled to receive, governmental benefits, special estate planning steps must be taken. This person's share of your estate must be protected. One way to do this is to place this interest into a trust that will protect it from governmental attachment and will not preclude the receipt of government benefits.

For many of us, life insurance makes up a large percentage of our estate. Proceeds from these policies are part of your taxable estate if you own the policies when you die or it is payable to your estate. This can be avoided by creating an Irrevocable Life Insurance Trust and having the trustee own the policies. Premiums are usually paid from gifts you make to the trust beneficiaries who can be your spouse, your children or whoever you prefer.

THE REVOCABLE LIVING TRUST

There are many ways to distribute property at the time of your death. Property can be transferred by way of joint ownership or beneficiary designation. Most commonly, property is distributed by a last will and testament or by intestate distribution.

A revocable living trust has advantages over the above-mentioned ways of distribution. These include the following:

- * It provides instructions for your care and that of your loved ones in the event of your disability.*
- * It is effective if you move to or own property in another state.*
- * It avoids probate and its associated costs, procedures and time delays.*
- * It keeps your affairs private and confidential.*
- * It controls all your property including pensions, retirement benefits and life insurance.*
- * It allows you to leave explicit instructions for the care of your loved ones.*
- * It can create protective trusts for young children, grandchildren, and heirs with disabilities.*
- * It can provide estate tax planning.*

In other words, a living trust may do a better job in allowing you to give your property to whom you want, the way you want, and when you want.

THE IRREVOCABLE TRUST

- 1) irrevocable--cannot be changed or altered by the maker of the trust.*
- 2) trust owns the assets, such as a life insurance policy, and can be the beneficiary of the life insurance policy.*
- 3) trust names the beneficiaries of the assets and the proceeds of the life insurance policy.*
- 4) all assets and proceeds are not included in the maker's taxable estate.*
- 5) all assets and proceeds can be used for the benefit of the beneficiaries pursuant to the maker's instructions.*
- 6) with "special need" language, all proceeds can be protected from governmental attachment and will not be used to substitute for governmental assistance and benefits.*
- 7) a second-to-die, or last survivor, life insurance policy insures the lives of both spouses.*
- 8) with this type of policy, premiums are usually lower than those for two individual policies, since premiums are based on the joint life expectancy of both insureds.*
- 9) with this type of policy, the beneficiary will be the "special needs" child, or the siblings can also be named as beneficiaries.*

Special Needs Trusts

We all have a desire to provide for our loved ones. We do this by gift giving during our lifetimes or by a bequest at our deaths. However, there are many factors to consider when planning for family members who have special needs.

One of the most basic vehicles for property distribution is a Special Needs Trust (SNT). There are a number of ways an SNT can be created, however the two most often utilized are the third-party trust and the self-created trust. This article will discuss some of the factors of the third-party trust (since this is a general discussion, it is not intended to be a thorough presentation of all issues concerning SNT's; nor is it intended to address issues concerning eligibility rules for public benefits or the public benefits themselves.).

A third-party trust is created by a grantor who wants to provide for the special needs beneficiary without having the assets cause disqualification of the beneficiary receiving public benefits. The trust assets may supplement public benefits but must not be intended to replace these benefits. Therefore, the trustee of the trust must have the sole discretion as to the use or distribution of the trust assets. Legally, the assets must be unavailable to the beneficiary. In other words, the beneficiary cannot compel the distribution of the principal or the income of the assets. The discretion of the trustee to make payments for the benefit of the beneficiary must be total and nonreviewable. No person or entity, including a judge, should have the power or authority to substitute his or her judgment for the discretionary decisions made by the trustee.

Furthermore, the trust cannot be used for the basic support of the beneficiary. In fact, the trust assets must only be available for the special needs of the beneficiary. These are usually defined as assets used to maintain the beneficiary's happiness, comfort and luxuries of life when these items are not provided by public benefits. Language may state the assets may be used to best enable the beneficiary to lead as normal, comfortable, dignified, and fulfilling a life as possible.

SNT's can be established during the lifetime of the grantor, or they can be found in the grantor's Will or Revocable Living Trust. If done during the lifetime of the grantor, the vehicle used is normally an irrevocable trust. This trust is commonly referred to as a "stand-alone trust." It can be funded with gifts from parents, grandparents or any other individual. It can also be the document to receive bequests from someone's Will or Revocable Living Trust. Finally, it can be the proper vehicle to hold life insurance for the benefit of the special needs individual.

When the SNT is placed in a testamentary document (will or living trust), it is part of the general distribution plan of the grantor. Whether to use a will or a living trust is a decision to be made by the grantor. However, there are a number of factors to consider when choosing between a will or a living trust. Again, this issue cannot be adequately treated in this article. However, please be aware that there are distinctions and they should be discussed with the preparer of your estate planning documents.

An SNT usually contains provisions dealing with the termination of the trust. This can be accomplished during the lifetime of the beneficiary or at his or her death. For example, what if the beneficiary's interest in the trust disqualifies the beneficiary from receiving public benefits? Or what if the beneficiary ceases to be deemed "disabled"? Furthermore, provisions should be included to distribute the remaining trust assets after the beneficiary dies. Designation of a trust protector and a trust advocate is also very important.

It is extremely important that the grantor seek professional assistance in the preparation of an SNT. The advisor must obtain adequate information regarding the beneficiary's special needs and the public benefits being received or may be received in the future. Finally, and equally important, the grantor's wishes and desires need to be expressed to the advisor. Only then can a proper estate plan be formulated for the benefit of the special needs beneficiary.

We all have a desire to provide for our loved ones. We do this by gift giving during our lifetimes or by a bequest at our deaths. However, there are many factors to consider when planning for family members who have special needs.

One of the most basic vehicles for property distribution is a Special Needs Trust (SNT). In this article, we will review the basics of self-created trusts. Again, since this is a general discussion, it is not intended to be a thorough presentation of all issues concerning this type of trust; nor is it intended to address issues concerning eligibility rules for public benefits or the public benefits themselves..

As people aged they sometimes had the need to receive government benefits such as Medicaid. However, programs such as Medicaid were (and still are) known as mean-tested benefits. In other words, these benefits are available to people with minimal income and minimal assets or resources. If a person possessed assets over a certain amount, that person would be ineligible to receive these benefits. Historically, individuals attempted to create discretionary trusts using their own funds without losing their entitlement to public assistance. They tried to shelter these assets

in this type of trust vehicle.

However, this technique worked very infrequently. Case law usually found that these self-created discretionary trusts remained available to the trustmakers and, therefore, remained available to the trustmakers creditors, including the government. Therefore, the assets in these trusts were countable assets for government benefit purposes. This was true in many cases, but there was no uniform national policy or law dealing with these trusts. This all changed in 1993. In that year, Congress passed the Omnibus Budget Reconciliation Act (OBRA 1993).

Under this legislation, assets in certain trusts were deemed to be protected as noncountable assets for government benefit purposes. This was especially true for disabled persons who had financial needs beyond essential medical care. OBRA now permitted the retention of resources of a disabled person in a trust without those assets disqualifying the person from receiving government benefits such as Medicaid.

There are two trusts that can be used with the disabled persons assets. One is a "payback trust" and the other is a pooled or "pay-to trust". With a "pay-to trust" when the beneficiary dies the remaining assets may be distributed to the nonprofit association that managed the assets. If the trustmaker does not want the assets going to this association, then the assets will be used to reimburse the state for the funds provided to the beneficiary for medical care during the beneficiary's lifetime. We will spend more time with pooled trusts in a later article.

The "payback trust" is the more commonly used trust. Here too, the state may reimburse itself from the remaining assets in the trust in an amount equal to the medical benefits the state has provided during the beneficiary's lifetime. This OBRA trust can be created by the beneficiary, his or her parents, grandparents, legal guardian or a court (in many cases the funds are the result of a successful personal injury lawsuit). Under the legislation, the beneficiary must be under the age of sixty-five years and be disabled under federal law definition. It is a wonderful vehicle to shelter the beneficiary's assets so that he or she can receive government benefits.

In both trust situations, the assets must be placed in a special needs trust. That is the trust assets may supplement public benefits but must not be intended to replace these benefits. The trust mechanism would, therefore, be similar to the third-party created special needs trust discussed in the last article.

To repeat the criteria, the trustee of the trust must have the sole discretion as to the use or distribution of the trust assets. Legally, the assets must be unavailable to the beneficiary. In other words, the beneficiary cannot compel the distribution of the principal or the income of the assets. The discretion of the trustee to make payments for the benefit of the beneficiary must be total and nonreviewable. No person or entity, including a judge, should have the power or authority to substitute his or her judgment for the discretionary decisions made by the trustee.

Furthermore, the trust cannot be used for the basic support of the beneficiary. In fact, the trust assets must only be available for the special needs of the beneficiary. These are usually defined as assets used to maintain the beneficiary's happiness, comfort and luxuries of life when these items are not provided by public benefits. Language may state the assets may be used to best enable the beneficiary to lead as normal, comfortable, dignified, and fulfilling a life as possible.

As stated in the earlier article, it is extremely important that the creator of the trust seek professional assistance in the preparation of an SNT. The advisor must obtain adequate information regarding the beneficiary's special needs and the public benefits being received or may be received in the future. Finally, and equally important, the grantor's wishes and desires need to be expressed to the advisor. Only then can a proper estate plan be formulated for the benefit of the special needs beneficiary.

SpecialCare™

Financial Strategies for the Special Needs Family

*The information contained in this material is being provided with the understanding that it is not intended to be interpreted as specific legal advice. Individuals are encouraged to seek the guidance of their own personal legal advisor.

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What is SpecialCare?

- A program that offers information, specialists, and financial solutions to people with disabilities and other special needs and their families
- SpecialCare begins by providing you access to a compilation of information – from what you need to know to provide the best care to your loved one to how to manage the needs of yourself and other family members.
- For parents of a loved one with special needs there is a poignant realization that there may come a time, through sickness, disability or death, when you will not be able to provide care for them
- This planning process involves a broad range of decisions and plans designed to secure the future.

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Why SpecialCare?

For people with physical, mental, or emotional disabilities, health issues are only the beginning.

How you plan for their financial well being will make a tremendous difference in your lifestyle now and when you can no longer care for your loved one.

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Goals of SpecialCare

- Help to preserve & protect our children's future
- Help to protect their government benefits
- Provide peace of mind

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10 Comprehensive Planning Steps

1. Address Primary Issues
2. Create a Special Care Vision
3. Choose Guardian(s) & Trustee(s)
4. Identify Financial Resources
5. Determine Plan/Care Costs
6. Prepare Letter of Intent
7. Prepare Will(s)*
8. Establish Special Needs Trust
9. Hold Family Meeting
10. Review Plan Annually

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Guardianship / Conservatorship*

- Makes decisions for your child and his or her property
- Pre-determine their level of responsibility, depending on level of assistance child needs
 - ✓ General Guardianship/Conservatorship vs. Limited Guardianship/Conservatorship

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Special Needs Trusts

- Government benefits
- Trustees
- Communication with Family
- Experienced Attorney



Letters of Intent*

- Not a legal document, but considered by court
- Current situation, as well as hopes and dreams
- Updated regularly



Letter of Intent Examples*

- Describe your child's current medical condition, medications, doctors, allergies, hospitalizations, etc.
- Does your child currently live with you? Where do you see your child living in the future?
- What does your child like to do for fun?
- What are your child's strengths and weaknesses?
- Describe your child's education and work history
- Who is your choice of guardian/conservator?

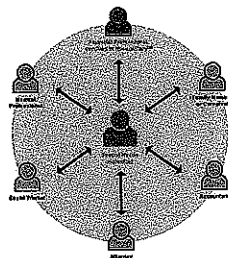


Person Centered Planning Process

- Keeps the person with a disability or other special needs as the primary focus and develops a Life Plan that enables that person to obtain the best quality of life possible
- A Life Plan is a coordinated program of social, medical, financial and legal strategies for people with disabilities and their families



Person Centered Planning Process



Role of a Financial Professional

- Understand the social, medical and legal needs of the special needs individual
- Review the complete financial picture
- Coordinate financial strategies with the attorney and other professionals on the team
- Offer options that make the most sense



Role of a Financial Professional

- Ensure that benefits such as Medicaid or Supplemental Security Income won't unintentionally be jeopardized
- Maximize finances
- Help maintain the lifestyle of the special needs individual



The Washington Group *Special Care Planning Team*

- Financial services firm with specialists in *Special Care Planning* who work by a set of core values: *integrity, honesty, teamwork, and the Golden Rule*
- We have earned our clients' trust and admiration by emphasizing the quality of service and relationships
- Our professional associates combine knowledge and decades of collective experience
- We work with you and your professional advisors to review your complete financial situation and offer options that will best benefit you, your loved ones, and your entire family



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Further Clarification - Steps

- Overview
- Life Cycles...Family...Special Needs
- Considerations
- Priorities
- Special Care Vision/Letter of Intent



Legal Considerations

- Guardians & Trustees
- Wills
- Trusts
- Durable General Powers of Attorney
- Advance Medical Directives
- Special Need Trusts



Identify Financial Resources

- Financial "Snapshot"
- Assets, Instruments, Structure, and Priorities
- Insurance –
Life, Health, Disability Income, Long Term Care
- Determine Plans and Effectiveness...Costs



Communication Process

- Family Meeting
- Extended Family Communication
- Letter of Intent
- Balance Sheet Listing – Financial Physical
- Instruction and Documentation



Review Plan Annually (At Least)

- Updated Snapshot

– PEACE OF MIND –



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