

**PRESENTED AT**

**Essentials for Special Needs Planning**

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## **Funding a 3rd Party Special Needs Trust**

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## **Funding a 3<sup>rd</sup> Party Special Needs Trust**

A key part of planning for a loved one with a disability with a special needs trust is how the trust will be funded, what assets will be subject to the terms of the trust and designating the trust as beneficiary. You could have a great trust that clearly defines your objectives and intentions, with the ideal management system and the best trustee and advisory system available, but if the trust isn't funded, it will obviously be ineffective. In many cases, planning for families that have a loved one with disabilities is no different from planning for a more typical family. The biggest difference is that more preparation and thought are required. This is particularly true if the individual will need some form of support throughout life.

### **Working with a Financial and/or Tax Advisor**

Financial and tax advisors can be useful both before and after utilization of the trust begins. A good financial advisor can not only design your investments to meet your objectives but can ensure that all your assets are owned by your trust, or that the trust is designated as beneficiary. Making sure that all assets are titled properly into your estate plan is always important, but when a family member has disabilities, it's imperative. There's little room for error. Likewise, an established CPA who has served the family for many years can be an invaluable member of the team, providing counsel on creation of the funding plan and ensuring that it remains relevant to the family's needs.

A good financial advisor should be more than a good investment selector; they must understand and support your unique objectives. It may be advisable either in the Journal of Intent or in the trust document itself to indicate your desire that the trustee continue to seek advice from your longtime financial or tax professional. This could also influence your choice of trustee. For instance, if you wish your financial advisor to continue serving upon your death or incapacity, and they don't have an established relationship with a trust company that would be appropriate for your circumstances, you might decide to have the trust managed by a private fiduciary willing work with your advisor.

### **How Much Should I Put into My Child's Special Needs Trust?**

This is a question that's almost impossible to answer with precision. Let's return to the example of Kathy and her family. Because Kathy is 17 and expected to live another 70 years, there are many variables that the family must take into account. For instance, if Kathy is able to find a well

run residential program, and the service system is funded and administered appropriately for the remainder of her life, Kathy's other needs may be relatively small. If, on the other hand, there are no suitable placements or residential support programs, to her housing needs to be paid privately, and those costs could prove to be astronomical.

There are two figures that this family must keep in mind. One will be the amount needed if Kathy will be able to utilize government support for quality residential programs and services. A second number would be based on the assumption that there will be fewer, if any, acceptable services. Of course, these figures can only be estimates at this point. As Kathy gets older, the family's ability to identify actual costs will improve.

### **Attempting to Achieve Equal Treatment of Children**

An issue that families often find challenging is how to split their estate when one of their children has a disability and others do not. They want to appear fair in their own eyes and those of all their children. The fact is, children are not created equal, whether they have disabilities or not. In many cases, it might be more prudent, at least initially, to dedicate more of the estate to the special needs trust than to a non-disabled child. In most cases, the child with disabilities will have more needs than their siblings. This is nothing new to the parents of children with disabilities, who have been dealing with this juggling act their entire lives.

In many instances, it's difficult to achieve equal treatment in terms of inheritance, especially when the family has limited resources. My personal advice is to make a pragmatic decision. Try to avoid making choices based on guilt, although I realize that's easier said than done. A common approach is to purchase life insurance to make up the difference or fill the gaps. As discussed later in the chapter, life insurance can be a short-term or a long-term solution, depending on the situation.

### **What if I Overfund my Child's Special Needs Trust?**

Over-funding a special needs trust can be as problematic as underfunding it. There are so many variables to take into consideration, especially for a young child, that no matter what you do, there's an element of guesswork involved. Let's return to Kathy to illustrate this. Remember that in our scenario, she is 17 and expected to have a normal life span of 70 more years. Let's also suppose that she lives in a residential program that provides for virtually all of her needs. You and your advisors determine that as long as these services continue, oversight for her needs and quality of life would likely amount to several hundred thousand dollars over her lifetime. On the other

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