



ESTATE PLANNING

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EDUCATION

B.S.A., with High Honors in Finance and Managerial Economics, University of Michigan – Dearborn; J.D., Higgins Scholar and Notre Dame Law School Scholar, Notre Dame Law School; M.B.A., with Honors, University of Notre Dame Graduate Business School.

AREAS OF PRACTICE

Estate Planning; Tax Planning; Wills; Trusts and Estates; Probate and Trust Administration; Business Law; and Business Planning.

CAREER

Mr. Morello has personally developed or supervised over 7,500 Estate Plans over the past twenty-three years. He is a frequent speaker on estate and business planning; selected as Downriver's Estate and Business Planning Attorney; selected as one of Detroit's top estate planning lawyers by DBusiness Magazine; awarded the Five Star Estate Planning Attorney in 2014, 2015 and 2016; and awarded the Martindale-Hubbell Client Distinction Award in 2015; and he was awarded the 2016 Northville Record People's Choice Award for Best Attorney.

ADVICE

Estate and Special Needs Planning for Disabled Individuals

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If you are an individual with a special needs child, or other disabled loved one, proper estate and special needs planning with an experienced attorney is vital to ensure that you are able to maximize the services and resources available to your loved one. Disabled individuals may be entitled to a number of governmental and/or needs based programs to assist with his or her care. While such programs may help to provide for certain necessities, they have varying and complicated eligibility requirements and may not be sufficient to provide the standard of living desired for such disabled individual.

Many families desire to make additional assets available to be

used to increase the quality of life for a disabled individual and to ensure that funds remain available long into the future. However, without proper planning, such additional assets can disqualify an individual from receiving other government benefits. Having proper special needs planning in place beforehand can ensure that you are able to maximize the government benefits available, set aside additional funds that can be used to increase the quality of life, and ensure that funds are available (and under the control of the appropriate individual) for a disabled loved one.

This article will discuss some of the common estate and special needs planning available for disabled individuals. While the intent of this article is to provide information on common planning strategies, each individual's situation is different and the ideal plan will need to take each family's unique situation and facts into account. If you have a disabled loved one, the first step is to contact an experienced special needs planning attorney to discuss these and other options to develop the proper special needs plan for your situation.

ESTATE PLANNING

The foundation to proper planning for a disabled individual is ensuring that the individual and his or her family have appropriate estate planning documents in place. The foundation of special needs planning most commonly



includes a special needs trust. A special needs trust is a vehicle that can hold assets, that will be managed by the selected Trustee, for the benefit of a disabled individual.

Generally, as long as the disabled individual cannot compel distribution of trust assets, the assets contained in the special needs trust will not be countable assets to such individual for purposes of achieving/maintaining eligibility for government benefits. A proper special needs trust should give the Trustee very broad power and, ideally, complete discretion of the distribution of trust assets for the benefit of the disabled beneficiary. As such, selecting the ideal Trustee (as well as Successor Trustee) to properly manage and distribute the trust assets is paramount to an effective special needs trust.

There are a variety of different special needs trusts, but they normally fall into one of two categories:

FUNDED WITH ASSETS BELONGING TO SOMEONE OTHER THAN THE DISABLED INDIVIDUAL

These trusts are commonly referred to as “third-party” special needs trusts. Oftentimes, a family or a particular family member desires to leave funds that can be available to supplement a disabled individual’s quality of life without reducing any of the government benefits available for such individual’s basic needs. A third-party trust allows an individual (called the “Settlor”) to leave funds to be used in the discretion of an identified Trustee for the lifetime benefit of a disabled individual, without reducing other government benefits. Such trusts also ensure that assets will continue to be available long after the Settlor’s death. These particular trusts also are not subject to pay-back or estate recovery by the State after the death of the disabled beneficiary, and allow for the Settlor to identify other remainder beneficiaries to receive any remaining funds.

FUNDED WITH ASSETS BELONGING TO THE DISABLED INDIVIDUAL

As stated above, an important objective of special needs planning is to avoid providing assets directly to the disabled individual, so that the assets do not disqualify such individual from government benefits. There are situations, however, when this is unavoidable. Particularly this may occur in situations where the disabled individual receives a lawsuit settlement, an inheritance, or has significant assets when he or she becomes disabled. In these situations, it may be necessary to have the disabled individual fund a “first-party” special needs trust.

There are two main types of trusts specifically authorized under federal and state law. One is a self-settled payback trust (also referred to as a “D4A” trust). Provided that the individual beneficiary is disabled, under age 65, and the trust is for the sole lifetime benefit of such individual and provides for the reimbursement to the State for any medical assistance benefits received, an individual can fund excess assets into the D4A trust in order to achieve asset eligibility for government benefits. Another option is a pooled trust (also referred to as a “D4C” trust). A D4C trust serves a similar purpose, but is typically set up and managed by a nonprofit entity. While these trusts are easy to join and typically managed by an individual familiar with government benefit rules, they do not allow the individual to select a preferred family Trustee and may include significant professional administrative fees.

ACHIEVING A BETTER LIFE EXPERIENCE (“ABLE”) ACCOUNTS

ABLE accounts provide a method for various family members to contribute money into a bank account that can be used by a disabled individual (who became disabled on or before age 26) without such funds being a countable asset to that individual.

As such, they are a very important additional tool that can be used in conjunction with (but likely not sufficient to supplant) other special needs planning.

There are many advantages to using such accounts. First and foremost, these accounts are one of the few options that can be managed and used at the direction of the disabled individual his or herself. If able, giving the disabled individual some control over the assets in the ABLE account can be empowering and ultimately increase the quality of life of that individual. Also, the funds in an ABLE account grow tax-free. Additionally, distributions from an ABLE Account specifically for food will not be considered to be “in-kind support and maintenance” and will not reduce an eligible individual’s SSI benefits, as would similar distribution for food from a special needs trust.

Any individual or entity can contribute to an ABLE account established on behalf of an eligible individual. The annual limit on the total amount that can be contributed to any ABLE account is currently set to coincide with the federal annual gift tax exclusion (\$14,000.00 for 2017). Additionally, Michigan provides for tax deductions for contributions to such accounts up to certain limits.

While an excellent addition to any special needs plan, for the majority of families looking to provide for a disabled individual, it is unlikely that an ABLE Account will be the sole solution. Especially where third-party funds are to be used, a special needs trust offers more flexibility for the contribution and use of funds and does not require that the state be reimbursed upon death of the beneficiary.

MAXIMIZING GOVERNMENT BENEFITS

A focus of special needs planning is to maximize the resources available to a disabled individual from government and other private/family sources. Many of the planning techniques discussed above detail how to properly structure additional private resources in a manner that would not decrease other government resources. However, it is vitally important that a disabled individual obtains any and all public assistance that is available to him or her.

There are many government programs and benefits that may be available including, but not limited to: Social Security, Medicare, Medicaid, Department of Health and Human Services, Community Mental Health, School Systems, and other local government entities. Navigating this complicated web of potentially-available benefits can be difficult and often overwhelming for families who are already expending their efforts to care for a disabled loved one. Consulting with an attorney experienced in special needs planning can be an excellent resource to help ensure that your loved one takes full advantage of the public benefits to which they are entitled.

CONCLUSION

Many options are available to assist families and ensure that their disabled loved one is taken care of and has the highest quality of life possible. These options include taking advantage of all public assistance available, and utilizing other private planning techniques to supplement (without reducing) other public assistance available. An attorney experienced in special needs planning will be able to help you with navigating the complicated web of available options and work with you to come up with an estate and special needs plan tailored to your family and your unique situation.

If you have a disabled loved one and would like more information regarding planning options, or would like to schedule an appointment to discuss your particular situation in person with an experienced attorney, please contact the Morello Law Group, P.C. at 734-281-6464 or visit morellolawgroup.com