

Estate Planning for Families with Special Needs



Presented by



“Estate Planning... For What Means Most to You!”

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My Family



Your Loved Ones



What Happens When My Child Turns 18?

Considerations:

- Guardianship
 - of person
 - of estate
- New benefits, including SSI and Medicaid
- Employment opportunities and skills development programs
- Living arrangements





According to a recent survey from Rocket Lawyer, over half of American adults have no estate plan in place!

Myth: Estate planning is not just for very wealthy people.

- Everyone needs an estate plan.
- Even younger people, especially those with minor children and/or children with special needs, need to have an estate plan in place in order to provide instructions to their loved ones in the event of a debilitating accident or untimely death.



Example:
Terri Schiavo



Goals of Estate Planning



- Different for everyone
- Plan for the present
- Plan for incapacity
- Plan for death
- Avoid probate and save taxes (*maybe*)

Your Estate





Essential Estate Planning Documents

- Property Power of Attorney
- Health Care Power of Attorney
 - Living Will
 - HIPAA
- Personal Property Memorandum
- Funeral Planning
- Will (or Living Trust)



Types of Special Needs Trusts

- “First-party” Special Needs Trust
 - Funded with assets of the individual with special needs
 - Beneficiary must be under age 65
 - Payback requirement
- “Third-party” Special Needs Trust
 - Funded with the assets of another individual (or individuals)
 - No age limits
 - No payback requirement
 - Can be established during the donor’s lifetime as a stand-alone trust or upon his or her death through a will or a living trust
- “Pooled” Special Needs Trust
 - Managed by a non-profit association such as Wispact (see www.wispact.org)
 - Must be established by the beneficiary’s parent, grandparent or guardian, by the court, or by the person with the disability
 - No age limits
 - Payback requirement depends on whether the sub-account is considered a first-party trust or a third-party trust

Your Will--

What It Does

- Names a guardian for minor children
- Designates a personal representative
- Establishes how assets will be distributed upon death (can include *testamentary* special needs trusts)



What It Doesn't Do

- Provide for mental incapacity (i.e., avoid living probate)
- Avoid death probate

What is death probate?

- The process of transferring title to your beneficiaries or heirs upon your death
 - *Beneficiaries are named in your Will*
 - *Heirs are the people would inherit your assets if you died intestate*
- Court proceeding
 - *Records are open to the public, including the terms of any testamentary trusts*



Property Ownership

Will/Probate: Assets pass according to the terms of your Will or by laws of intestacy

- Your name alone
- *Estate* named as beneficiary

No Probate: Co-owner or beneficiaries

- Joint tenancy
- Payable on death
- Transfer on death
- Beneficiary designations



What about future marriages?



How can I avoid death probate?

- 1) Name direct beneficiaries on all of your assets.
- 2) Create a fully funded revocable living trust.



How does a revocable living trust work?

- A revocable living trust is a legal document utilized as a “will-substitute”.
- The grantors create the trust, then transfer their assets into the trust.



All assets of David and Susan are owned by the trust, except:

- retirement accounts
- annuities

David and Susan Smith Living Trust
David Smith and Susan Smith, Trustees

David and Susan are:

- Grantors
- Trustees
- Beneficiaries

Death of David

Survivor's Trust
Susan Smith, Trustee

← all income

← principal for

← HEMS

Credit Shelter Trust
Susan Smith, Trustee

Death of Susan

Sarah Smith Trust
(Sarah is her own trustee; trust provides divorce and creditor protection)

Tommy Smith Trust
(someone else as trustee until age 30; available for whatever the trustee determines is appropriate)

Cindy Smith Trust
(lifetime special needs trust)

The Moral of the Story: Don't be like Prince!



“Prince was a major star and a cultural influencer, but he was a human being... It comes down to taking care of business. If you don't take care of it, you're leaving a mess to the family or the courts.”

- The New York Times

Questions?

