Estate Planning for Families with Special Needs

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Today’s Presenter

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Dr. Gillen’s research interests include personal and family finance, behavioral economics, foster care, trauma, older adults, Social Security, poverty, retirement planning, financial social work, food security, risk management, and innovative post-secondary education models.
What If…

• Advance planning is associated with death but it is really about the life of those you leave behind
• Advance planning is about the "what ifs" in life
• Can be done at any stage in life
  • Should be updated as circumstance, family, geography, etc., change

Barriers to Planning

• Awareness
  • Never given it a thought
• Denial
  • Young and invincible
• Confusion
  • Forms and Documents and Processes, oh my!
• Cultural
  • Views on death
  • Familial responsibility

Today’s Presenter

Andrew B. Crocker

Education
• BA, Biology
• MS, Gerontology

Experience
• Extension Program Specialist III – Gerontology & Health
• PI, Military Caregiving Concentration Area, Military Families Learning Network
• PI, Increasing Breast and Cervical Cancer Screening and Diagnostic Rates in Rural, Frontier, and Border Counties for Uninsured, Underserved Women
Advantages of Planning

- People worry that planning will cause
  - Unnecessary stress
  - Depression
  - Anxiety
  - Emotional suffering
- But... research shows that planning gives adults peace of mind
- And those who plan are more likely to have their wishes respected after their death

Don’t Keep It a Secret

- Share with trusted friends and family
  - Especially those whom you’re tapping to execute your wishes
  - Surrogate decision-makers
  - Persons who will care for dependents
- Use “I” messages for effect
  - I want to talk about something that is important to me. I have put considerable thought into my wishes and want to share how I feel and why I made these choices

Disclaimer

- This presentation is not intended to be a substitute for legal advice. Rather, it is designed to create an awareness of the need for estate planning and to help individuals become better acquainted with estate planning terminology and documents.
- State laws vary
- Be sure to check your state laws
Estate Planning Terms

A Glossary of Estate Planning Terms

What % of American adults have a will or living trust?

Only 4 in 10 (40%) American adults have a will or living trust.

- More older adults have estate planning documents
- 81% of those age 72 or older
- 58% of those age 53 - 71
So what exactly happens if you don’t have an estate plan when you die?

If you don’t have a will or an estate plan, your state of residence has one for you:

- In some states, 50% of your assets go to your spouse and 50% of your assets go to your kids.
- This could create some financial and family issues.

Estate planning is important for everyone, especially if children are involved.

- Make sure children are cared for by the people the parents want as guardians in the event of their death.
- 78% of millennials (ages 18-36) and 64% of Generation Xers (ages 37-52) do not have a will.
What about my children?

If you don’t make the decision about who should raise your children if you and their other parent dies, a judge who doesn’t know you, or what’s important to you, will make that decision in your place.

What about my children?

If a child is orphaned and no guardians have been named, the court will appoint a guardian based on the following statutory guidelines:

- The court will appoint a grandparent. If the child has more than one living grandparent, then the court will make a decision about who would be most suitable considering what the court deems to be in the best interests of the minor child.
- If no grandparents are alive or are willing or able to care for the child, then the nearest relative will be appointed. If the child has two or more relatives that are of the same degree of relationship to the child, then the court will appoint the person it believes is best suited to serve as guardian, considering the best interests of the child.
- If the child has no relatives, or none are willing or able to care for the child, then the court will appoint another qualified person to serve as guardian.

Even more important if your family has special needs.

- 69% of families say they are very concerned about being able to provide lifetime care for their dependents with special needs.
- 88% of parents who have children with special needs have not set up a trust to preserve eligibility for benefits such as Medicaid and Supplemental Social Income.
- 72% have not named a trustee to handle the child’s finances and 56% say they are unfamiliar with the steps needed to identify a trustee to watch over their dependent’s financial holdings in the future.
Even more important if your family has special needs.

- 49% have not identified a guardian for their child.
- The survey found that 32% of parents spend more than 40 hours per week with their child with special needs, or time equal to a second full-time job.
- Parents spend an average of $326 per month, or just under $4000 per year, on out-of-pocket medical expenses on their child with special needs.
- On the positive side, 38% of caregivers have written a will and 36% plan for their dependent’s future housing.
- More than 55% of caregivers say there is too little information available about financial assistance (benefits and support provided by government agencies); and 55% say that such information is very difficult to find.

Unique Estate Planning Challenges for Families w/ Special Needs

1. How to provide for all of their loved ones without jeopardizing the special needs child’s eligibility for means-tested government benefits such as Supplemental Security Income (SSI) and Medicaid;
2. How to design an estate plan that supplements the special needs child’s means-tested government benefits and enhances the quality of the child’s life;
3. How to treat the other children equitably while providing for the special needs child;
4. How to make sure sufficient funds are available at a parent’s death to care for the child;
5. How to provide for the proper supervision, management, and distribution of an inheritance for the special needs child through a third-party created and funded special needs trust (SNT).

Unique Considerations for Military Families w/ Special Needs

Frequent moves, often across state lines – state based benefits may differ and have long waiting lists.
Special needs planning does not end with the identification of these needs, but includes the necessary action steps that you need to take to ensure a bright future for everyone in your family during three distinct times of your life:

1. While you are alive and well.
2. While you are alive, but are no longer able to be your loved one’s primary caregiver because of your own health issues.
3. When you pass away.

ESTATE PLANNING CONSIDERATIONS

Considerations

• Guardianship
• Ensuring proper caregiving
• Defining your vision for your loved one’s life
• Providing resources for your loved one’s lifetime
• Government Benefits
Elements of an Estate Plan

- Letter of intent
- Will
- Trusts

Letter of Intent

- Provides all of the information that a new guardian or caregiver will need to understand and provide for the child.
- Prepared by the parent.
- Not a formal legal document.

Letter of Intent

- Family history
- General overview – a brief summary of your child’s life to date and thoughts and hopes about the future for your child
- Daily schedule
- Food
- Medical care
- Education
- Benefits received
- Employment
- Residential environment
- Social environment
- Religious environment
- Behavior management
- Final arrangements
Will

- A will tells exactly how you want your assets distributed when you die.
- If you have children, you can also name their guardians in your will.

A Will in Florida

Must be:
- In writing
- Witnessed and notarized in special manner provided by law
- Proved in and allowed by probate court
- Person writing the will must be at least 18 years of age
- Must be of sound mind when the will is signed

Estate Planning Financial Alternatives

- Direct bequests and gifts
- Gifts to a family member
- Special Needs Trusts
Direct Bequests & Gifts

• Simplest to establish and administer, but the added resources may lead to disqualification for government programs.
• As an example, benefit eligibility may be severely restricted once the special needs individual’s resources exceed $2,000.
• In addition, the beneficiary may not be competent to manage the assets.

Gifts to a Family Member

• Gifts to a family member who then manages the assets for the disabled child are also simple to establish.
• Indirect gifts may help preserve benefit eligibility.
• But the assets themselves would be considered part of the family member’s estate, where they could be claimed by the family member’s creditors or lost in a divorce action.
• And, of course, the family member must be willing and able to take on the role.

Special Needs Trust

• Addresses the risks and shortcomings of simple gifts.
• With a trust, you can determine the asset management and disbursement policies of the trust and then put the reins of the trust into hands that you designate.
• The trust can also help assure that government benefit eligibility (Medicaid and SSI) is maintained.
• But creating and implementing a trust is a complex task.
• Successful trusts require legal, financial and fiduciary advice.
Special Needs Trust & Government Benefits

- The separation of ownership features built into the SNT prevents the trust assets from being counted as an "available resource," which may have otherwise caused disqualification.
- Therefore, a SNT provides for the "special needs" beyond the basic needs for medical care, food and shelter, and enhances the beneficiary's overall lifestyle.

Special Needs Trust

- The SNT allows the trustee to only make non-countable income distributions for extra items or services the beneficiary does not receive from the government.
- Some examples of permissible SNT distributions are the following:
  - hobbies and vacations
  - limited recreational and vocational activities
  - professional services
  - maintenance of a pet or service animal
  - educational opportunities

Types of Special Needs Trusts (SNT)

- A third party SNT is created by a donor who would like to set aside or bequeath assets for the benefit of another individual without jeopardizing the individual's eligibility for government benefits.
- It can be created either during life or after death. It is most frequently utilized when a parent wants to establish and fund a trust for a special needs minor or adult child.
- There is no requirement that Medicaid be repaid from the SNT when the child dies or if the trust terminates during the child's lifetime.
Types of Special Needs Trusts

- Self-settled trust (first party) established by the government benefits recipient.
- A SNT may be created by a special needs individual, funded with the special needs individual’s own funds and designed to benefit the special needs individual only.
- This occurs most frequently when there is a lawsuit recovery or settlement, such as for personal injury.
- On the death of the beneficiary, assets remaining in the trust must be used to pay back any state Medicaid agency providing benefits.

Types of Special Needs Trusts

- Some states permit a SNT called a "pooled trust."
- This type of arrangement is maintained by a non-profit charitable organization and is ideally suited for smaller trusts.
- Charity sets up these trusts that allow beneficiaries to pool their resources for investment purposes, while still maintaining separate accounts for each beneficiary’s needs.
- When the beneficiary dies, the funds remaining in her account reimburse the government for her care, but a portion also goes towards the non-profit organization responsible for managing the trust.

Who needs a Special Needs Trust?

The following list is not all inclusive:

1. A special needs individual who needs assistance with managing their financial affairs and relies on governmental assistance to provide for their basic needs.
2. Family members who want to maintain eligibility for governmental benefits and maximize the future security for their special needs family member.
3. A person who is "blind" as defined by federal law as central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.
4. Any other person over 18 years of age with a "disability" as defined by the Social Security Act, such as hearing or cognitive impairment.
When to Create a SNT

• Families have the option of creating a special needs trust at their death by incorporating a trust within a last will and testament, this is called a testamentary trust.
• The other option is for the parents to create a special needs trust while alive – not surprisingly, this is often referred to as a living trust (or inter vivos trust).
• The advantages of a living trust include:
  • The avoidance of a probate
  • The creation of a trust to which other family members can make contributions, most usually the grandparents
  • An opportunity for a co-trustee to gain hands on experience in administering the trust

Revocable or Irrevocable Trust?

• Tax considerations come into play in the decision to make the special needs trust either revocable or irrevocable.
• Generally speaking, the family will make the trust revocable whenever:
  • The goals include maintaining maximum control over the trust;
  • The family is not concerned with income tax considerations.
• Correspondingly, the use of an irrevocable trust may be appropriate when the family is concerned with: income tax considerations; and if more than a million dollars will be going into the trust, possible federal estate and gift taxes.

How to Fund a SNT?

• Any asset in your estate can be used to finance a special needs bequest, including financial securities (such as stocks, bonds and mutual fund shares), income-producing property, life insurance policies and cash.
• Since the trust will likely be required to function as a steady, predictable source of cash, many people find life insurance policies attractive.
• If you decide to use life insurance policies you currently own, you should consider transferring the ownership of the policy to a trust and then naming the trust as the beneficiary of the expected payout.
• This reduces the size of your taxable estate.
• Protects your child from any adverse effects on their program eligibility.
• A direct lump sum death benefit payout could cause a disabled child to be disqualified from some or all public support.
SNT and Military

- Under the 2015 National Defense Authorization Act, a SNT can now be named as a beneficiary of their Survivor Benefit Plan.
- Prior to that, the funds had to be left directly to an individual and would have disqualified the child from receiving means-tested government benefits such as Medicaid and SSI.

Other Trust Planning Considerations

- Consider who will carry out your instructions.
  - Sibling
  - Attorney
  - Corporate trustee
  - A non-profit organization
  - Co-Trustees – family member and a trust company

The principal purpose of a SNT is to provide an inheritance for the special needs child without risking the loss of important means-tested government benefits.

Consequently, it is important that grandparents and other relatives do not leave an inheritance outright to a special needs loved one.

For example, the following common assets and applicable beneficiary designations are examples of assets that should be reviewed to make sure they will not be paid directly to the special needs child: IRA, 401(k), or other retirement benefits; life insurance; any property not subject to the parents' will or trust; and joint accounts.
Managing Assets Already Owned by a Child with Special Needs

- If a child with special needs who is disabled has received an inheritance, gift, bequest, lawsuit award or settlement, child support, alimony, or divorce property settlement, the child’s receipt of these assets can result in the disqualification of means-tested government benefits.
- To preserve these benefits, the child’s disqualifying assets should be converted into “exempt” or “non-countable” assets or transferred to a first-party self-settled SNT that is government approved.

Other Trust Planning Considerations

Because every child with special needs has unique needs and every family has unique financial considerations, every special needs trust is also unique.

Your legal advisor can help you identify the special circumstances you’ll need to address with specific provisions.

CASE STUDIES
The Thompsons (Janice & Ed)

- Their granddaughter, Ally, was born with significant disabilities.
- Ally’s parents (the Thompsons’ daughter, Katherine, and her husband) currently have a lot of support through programs funded by their hometown.
- But once Ally reaches adulthood, she likely won’t be able to live independently without assistance from caregivers.
- While they are living, the Thompsons plan on helping with Ally’s financial needs through gifts to her parents.
- But they’re most concerned about relieving the financial burden after they are gone and ensuring that Ally is supported when her parents have passed.


More of the Story

- Janice and Ed both like their daughter’s (Katherine) husband, but they see signs of trouble on the horizon.
- The financial burden of Ally’s care has taken its toll on his and Katherine’s marriage.
- Although they are hoping for the best, the Thompsons want to take steps to ensure that any money they have gifted the parents is used for Ally’s care.

Jimmy

- Jimmy’s life changed in an instant during a family trip to an amusement park.
- The formerly active and athletic 14-year-old suffered catastrophic injuries when a defective roller coaster seat broke during his ride. Jimmy’s multiple bone fractures, internal injuries, and severe head trauma resulted in his becoming a paraplegic.
- Shortly after Jimmy’s family filed suit, the amusement park and the manufacturer of the defective ride settled the claim. After paying attorney fees, expenses, and medical liens, Jimmy would net $1,600,000.
- Jimmy is currently covered under his father’s group health insurance plan.

Source: http://www.robinyoungcompany.com/casestudies_2.html
Bill

- Harry and Sally have a 21-year-old son, Bill, who has autism and lives at home with them.
- The couple is concerned about protecting Bill’s welfare after they die.
- They had always expected Bill to go live with his sister, Joan, who is married and has three children. But recently, they learned that Joan’s husband does not want to take on this responsibility. Harry and Sally now need to make alternate arrangements for their son’s future.
- Harry and Sally own a home, and they have retirement plans, life insurance, and approximately $500,000 in assets.
- Bill receives Supplemental Security Income (SSI) benefits and Medicaid health insurance coverage. He is also eligible for a group home environment. By law, these benefits are available to Bill only if he has limited income and no more than $2,000 of assets in his name.


A Tale of Two Families: Special Needs Beneficiaries

- Mr. and Mrs. Dingle have three children, ages 23, 18, and 16, one of whom, Daisy (the 18-year-old), is severely handicapped and will need lifelong care.
- Mr. and Mrs. Ringle also have three children, ages 35, 25, and 23, one of whom, Ronnie (age 25), is severely handicapped.
- Both the Dingles and the Ringles have $1 million in IRA funds among their other assets, and both seek to use the IRA asset to help their respective disabled children.
- However, there the similarity ends.


The Dingle Family

- The Dingles have no other assets they will be able to leave for Daisy’s benefit.
- Daisy Dingle qualifies for government-provided medical care and other need-based welfare-type benefits.
The Ringle Family

- The Ringles have substantial wealth, and intend to provide for Ronnie’s needs from their wealth without attempting to qualify him for any need-based government benefit programs.
- They expect that their other children will always have very high incomes, while Ronnie will have no income other than what they provide for him.
- Also, Ronnie will always have very high medical expenses.

Questions or Comments

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CEU Credit & Certificate

One Survey, three different ways to receive a certificate.

1. MFLN Personal Finance concentration are offering 1.5 credit hours from AFCPE for AFC-credentialed participants and 1.5 CEUs from FinCert for CPFC-credentialed participants.
2. MFLN Military Caregiving concentration area is offering 1.5 CEU credit from the UT School of Social Work to credentialed participants.
3. MFLN Certificate of Completion for providers interested in receiving general training.

To receive CEU credit OR certificate of completion, please complete the evaluation survey found at:
https://vte.co1.qualtrics.com/jfe/form/SV_ehpOL0VVryd0czr
MFLNPF Upcoming Event

Title: Investing Basics & Beyond
Time: 11:00 a.m. Eastern
Date: Tuesday, September 12, 2017
Location: learn.extension.org/events/2997

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