

New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends
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ESTATE PLANNING FOR A "SPECIAL" CHILD "Beliefs and Caring Can Survive Death"

by Richard L. Ferris, Esq.

Overview

In discussing estate planning with clients who have a child or a grandchild with disabilities, I have learned that most have very strong and definite ideas as to how their "special needs" child should be provided for and reared. Planning for "special needs" children involves creating an environment that will allow these loved ones to experience both care and economic security. This planning is necessary in order to provide more than the "necessities of life" which they would receive from governmental assistance programs alone.

Estate planning for families with a member who has a disability is different from other types of estate planning because there is so much more that needs to be done. Parents must plan their estates regardless of size, their age or their marital status to ensure the loving care and well being of their child. For example, future caregivers

must be selected, living arrangements investigated, and alternatives discussed and selected.

A "SPECIAL" Child

These are children (young or older) who have a physical, mental, or emotional difficulty that makes them dependent on someone (parent, family member or spouse) throughout their lives. Parents face a unique planning challenge – ensuring that the child receives the special care he/she needs after the parent(s) becomes disabled or dies. For example, if a parent dies or becomes disabled, unless written plans have otherwise been made, the "special" child becomes a ward of the Probate Court. This means that the Probate Court appoints a guardian as a substitute parent to care for the "special" child. As a result, the guardian (and family) is now subject to the supervisory control of the Probate Court.

Likewise, a conservator is appointed to manage the property for the benefit of the

disadvantaged child. The conservator's role is to make recommendations to the Court as to how and why funds are to be spent, then implement the approved plan of expenditure. A guardian is usually a family member; a conservator is usually a bank or other professional money manager. This guardian/ conservator process is expensive, public, time consuming and humiliating. In other words, the family must avoid this Court appointed guardianship/Conservatorship procedure.

The Planning Challenge

If you have a "special" child, you are rightfully concerned about the costs of caring for your child should you die or become disabled. For example, how can you qualify the child for state or federal benefits to help ease the child's financial burden? How are costs going to be paid? How can you leave instructions for the care of your child? If a "special" child has brothers or sisters, how do you split the inheritance? If your "special" child is now receiving governmental benefits, how do you protect them from being eliminated by his/her inheritance?

The Living Trust Solution

Although there are several planning alternatives for a "special" child such as guardianship, informal care arrangements, gifts to the disabled child, and gifts to a third party, the trust form offers significant benefits over these alternatives.

A well-drafted Living Trust can achieve these benefits for the "special" child and the family:

- A trust becomes effective immediately upon the Trustmaker's (parent) disability or death.
- It sets out your instructions for how you want your "special" child cared.
- You select one or more trustees to be the caretaker of the property or money you

leave expressly for your "special" child, thereby avoiding a court-appointed conservator.

- You select a guardian to carry out your loving and caring instructions so that your guidance lives on for the benefit of your "special" child.
- The Trustee is instructed to ensure that your child receives all payments he or she is entitled to from any governmental agency or charitable institution and that the trust does not duplicate those payments.
- A trust for the benefit of a disabled child can be carefully integrated into the rest of the parent's estate plan. This achieves estate equity among family members as well as other important tax and non-tax considerations.

The Role of Insurance in "SPECIAL NEEDS" Planning

Even with a Living Trust and supporting legal documents, most parents are still very concerned about having sufficient cash or property in the trust to care for their "special" child for his or her entire life. They are also concerned about planning an equitable division of their property for all other children. In cases like these and those with Federal Estate Tax issues, it is highly recommended that both disability insurance and life insurance on the parent(s) be used to "fund" a trust especially for the "special" child, as well as for the benefit of the other children, if necessary.

Insurance is often the least expensive method of attaining "peace of mind" in regard to knowing there is cash available for a "special" child when the parent(s) is no longer able to earn the needed funds. Moreover, insurance can allow for a more equitable division of the remainder of the estate among other family members.

The Role of The Estate Planning Team

Planning for a disabled child is a challenging undertaking because there is no clear-cut answer that will always apply to every situation. In addition, the parents' concerns invoke human

issues that are not always addressed in the estate planning process. The involvement of the client and the other important members of the estate planning team such as the CPA, life agent, trust officer, financial planner, or investment advisor is a MUST if the client is to achieve superior planning results and "peace of mind"!

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About the Author

RICHARD L. FERRIS began his legal career in 1972 with the Ohio Attorney General's Office, Tax Section. After serving as a Director of a major financial institution's Estate and Business Analysis Department, he founded the Williamsburg Law Firm of Ferris & Associates in 1993. The Firm focuses on Estate & Trust Planning; Probate, Trust and Estate Administration; and, Business Formation and Planning.

Dick earned his Law Degree from Ohio Northern University; Master of Laws (LL.M.) in Taxation from Boston University; and his CLU, ChFC, and Masters of Science in Financial Services Degrees from the American College.

He has authored many articles on Estate and Business Planning, including publication in the Virginia State Bar's *Trusts and Estates*. In addition, Dick is a frequent speaker before civic, social, and professional groups. He has co-authored three books on Estate and Trust Planning: **LEGACY—Plan, Protect and Preserve Your Estate;**

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Dick is admitted to practice before Virginia, Ohio, and District of Columbia Bars, and is a member of the National Network of Estate Planning Attorneys. He is admitted to practice before the U.S. Tax Court in Washington, D.C.

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