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Special Needs Planning

Introduction

Planning for a child or family member with special needs requires significant financial and legal forethought. As their requirements can extend beyond the lifetime of a guardian or caregiver, permanent life insurance can be an important part of a solution ensuring their ongoing care and to transition assets.

Overview

The term "special needs" commonly refers to an individual with a disability of varying severity. Their disability may be physical, mental, or an overall injury or incapacitation that renders them dependent on care provided by a family member or facility. A Special Needs Trust may be drafted to ensure their physical and financial needs are met. A preferred funding tool for this type of trust is permanent life insurance. Many disabled individuals qualify for Social Security and Medicaid services that can provide limited financial resources for care needs. Qualification for these services must be considered in the planning process, as a family with a special needs dependent may unintentionally risk losing valuable benefits upon the transfer of assets to the dependent after the death of the family member(s).

The primary goals of Special Needs Planning include:

- Ensure the financial means are available to pay for future care of the dependent
- Outline the plan of care
- Manage and protect assets left for the benefit of the dependent
- Allow the dependent to qualify for government-funded programs

Special Needs Trust

A Special Needs Trust for a disabled individual is often structured as a Grantor Trust under IRC Sec. 675(4). Upon the establishment of the trust, the grantor must decide whether the trust is a testamentary or inter vivos (living) trust, and whether is it revocable or irrevocable. Special Needs Trusts may also address the following topics:

- Designation of guardians for both physical and financial needs
- Successor guardians
- Conservatorship establishment
- Means of funding

Proper funding of a Special Needs Trust will ensure that the disabled beneficiary receives proper financial support while also qualifying for necessary government services. Without establishing a funding mechanism, the trust will only outline a plan of care, and will be unable to pay for the plan. Careful attention must be paid to every detail of the trust.

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In addition, even though proper establishment of the trust may occur, possible mistakes can be made when incorrectly passing assets to a Special Needs Trust. For example, one may incorrectly designate the beneficiary of investment accounts such as 401(k) plans, IRAs, etc., to the individual and not the Special Needs Trust or gift money directly to the individual—whether upon death or prior to—disqualifying the disabled beneficiary from receiving government services such as SSI and Medicaid.

Upon disqualification, the beneficiary may be able to requalify for services after a "spend down" has occurred to bring the estate down to meet the qualification criteria. This may take years and force a liquidation of assets that were meant to supplement care for the beneficiary's lifetime, which is detrimental to long-term planning objectives.

Summary

Planning for the current and future care of an individual with special needs requires a complex review of their care needs, their guardian's financial resources and goals, and available government programs. Establishment of a Special Needs Trust may provide a family with peace of mind that the disabled beneficiary's care will be fulfilled through a well thought out plan. Funding the plan, commonly with life insurance, is vital to the successful execution of any planning for future care needs. Careful attention must be paid to ensure all assets are passed through the trust and not directly to the beneficiary to ensure access to critical services is retained. Families with complex planning needs arising from future care requirements for an individual with special needs will benefit from working closely with a qualified team of advisors.

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