

Planning pointers for parents with disabled children

I am often asked to prepare an estate plan for parents with a child that has a disability. Special considerations may exist for the couple because they may need an estate plan that anticipates the child may never be able to support themselves. This article discusses a few of the considerations that we will likely discuss at our initial planning meeting.



Macrina G. HJERPE

Do the parents have enough life insurance? A parent is irreplaceable, but someone will have to fill the void for the disabled child once mom and dad are deceased. The family may be fortunate enough to have siblings or other relatives responsible and caring enough to assist. In all likelihood, the family will need to pay for at least some services the parents provided when able. If the estate is not large enough for this important purpose, purchasing life insurance may permit the necessary services to be available. Premiums for second-to-die insurance (which pays off only when the second of two parents passes away) can be surprisingly low. Did the parents create a trust for the disabled child? Funds

left for a child with special needs, whether from an estate or the proceeds of a life insurance policy, should be held in trust for the child's benefit. Many special needs individuals are unable to manage money. In addition, giving the special needs child a check or cash will jeopardize the child's public benefits, including the critical services on which the child relies. Some families disinherit children with special needs, relying on their siblings to care for them. This approach is fraught with potential problems. Siblings can be sued, get divorced, die (leaving the disabled child's assets according to the estate plan of the sibling), suffer from their own ailments and physical problems or simply be dishonest or unethical and use the funds for their own benefit. The best approach is for the parent to create a trust, either in their will or revocable trust, for the child with special needs, naming a responsible trustee. Putting the assets in the trust should protect the assets from the trustee's and the beneficiary's "creditors and predators." If the child is a minor, did the parents create a will naming a guardian for the child? A will is typically the document that identifies the parents' choice for a guardian if both parents are deceased. While a will and the appointment of a guardian

is important for anyone with minor children, it is especially important if the child has special needs. Finding the right guardian can be difficult for a special needs child. In some cases, the care needs of the child may be so demanding that he or she will need a guardian other than his or her siblings. The parent's assessment of what is right for the child is essential; accordingly, the child will be served best when parents make these determinations while they are able.

An adult child may also require a guardian when the parent can no longer serve as the child's guardian. Legally, parents cannot name the guardian for an adult child in a will. It may make sense to begin making the transition to a new guardian while the parent is able to assist in the process. If the child is currently under guardianship, the parents can petition the court to approve a co-guardian or to name a successor guardian.

Write down the care plan. All parents caring for children with special needs are advised to write down what any successor caregiver would need to know about the child and what the parent's wishes are for his or her care. Should the child be in a group home, live with a sibling or be on his or her own? The memo or letter can be kept

in the attorney's files with the parent's estate plan.

Coordinate beneficiary forms and advise other family members. Even a carefully developed plan can be derailed by a well-meaning relative who leaves money directly to the child with a special need. Also, the plan to protect the funds for the child will not work completely unless the parents take time with their attorney or financial advisor to direct retirement assets and life insurance proceeds into the trust created for the child and not to the child directly. So, if the child's name alone is written on the beneficiary form, the plan likely will fail. Generally, the beneficiary form should say something like, "To the then-

serving trustee of the Johnny Doe Special Needs Trust." If a special needs trust is created for the benefit of the child, grandparents and other family members should be told about the trust so that they can direct any bequest they leave to the child directly to the trust and not directly to the child.

Attorney Macrina G. Hjerpe is a partner in the Providence law firm Chace Ruttenberg & Freedman. She practices in the areas of Estate Planning, Probate, Estate Administration, Trust Administration, Trust Litigation, Guardianship, Business Succession Planning, Asset Protection Planning, Elder Law and Estate Litigation.

Photos

of events, people, etc.

available for purchase at eastbayri.com

SUMMER CONCERT SERIES

PRESENTED BY:
ALEX AND ANI*

THURSDAY, 8/18

BECKY CHACE

6:00PM-8:30PM

\$20 PER CARLOAD

(INCLUDES A \$10 WINE PURCHASE CREDIT)



SUNDAY, 8/21

DOUG WOOLVERTON
& THE GROOVE
MERCHANTS

1:00PM-4:00PM | NO COVER



162 WEST MAIN ROAD | LITTLE COMPTON, RI | FOR FULL SCHEDULE, VISIT: SAKONNETWINE.COM

Concerts for Sakonnet customers only | CAFÉ OPEN DAILY | Sakonnet food and beverage only on premises