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# What are some important considerations in estate planning with a disabled child?

BY TIMOTHY E. FLATLEY  
AND MATT CROLEY



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# M

any people endeavor to draft an estate plan that will meet their family's needs when they pass. Once they truly are faced with their own mortality, these plans become an object of even greater scrutiny.

However, a sudden death will not afford that luxury.

We recently worked with a client who unfortunately was in the advanced stages of cancer. She had a disabled adult child, along with her other two children. And for that reason, she had been careful to ensure that her will, drafted 15 years earlier, designated the child's share of the estate to be held in trust. The trust was meant to provide for the child's health, support and maintenance.

This disabled child, now an adult, was receiving Social Security disability

benefits, lived in government-assisted housing and had state-assisted healthcare. We asked Dennis McAndrews, Esq., who has specialized in estate planning for disabled people for over 30 years, his opinion on this particular trust. (McAndrews'

(SNT). A third party-funded SNT is designed solely for expenses that occur beyond what is covered by governmental assistance. McAndrews shared with us several important elements needed to make the SNT work.

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A special needs trust gives families a much better chance of protecting their disabled child's assets and benefits than a traditional trust alone normally would. —Dennis McAndrews, Esq.

”

website is [www.mcandrewslaw.com](http://www.mcandrewslaw.com).)

The attorney responded that, “If the trust calls for providing for her health, support and maintenance, most governmental authorities will assume that the trust assets should be used for those purposes before she would be eligible for any further governmental benefits.”

Therefore, a parent in this position would be left in the unenviable position of disinheriting the child or recognizing that the child's assets would be consumed for his or her support.

Of course, if the child were disinherited, there could be a side arrangement under which the other children would keep their sibling's assets separate for the disabled child's use. But this solution could introduce tax problems, longevity and divorce issues.

The best solution, then, would be the use of a third party-funded special needs trust

#### THESE INCLUDE:

- The source of funding must come from assets other than those of the disabled person. He or she cannot personally fund the trust.
  - The disabled person must never possess more than a few thousand dollars of personal assets, not including the trust assets, at any one time.
  - The trustee of the SNT must administer the trust very carefully to ensure the trust remains qualified. Any expenditures from the trust for food or shelter should be made with the advice of counsel, so as not to interfere with public benefits.
  - There must be an accurate reporting of the trust income to the proper authorities.
- As a result of McAndrews' recommendations, our client, the mother, drafted a new third party-funded SNT. This document was executed and the original will was amended to have the disabled child's share flow into the new SNT.

It is important to note that there is a risk that the SNT might be challenged by the government. According to McAndrews, however, it gives families a much better chance of protecting their disabled child's assets and benefits than a traditional trust alone normally would. ●

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