

Special needs trusts give families peace of mind

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When attorney Bernard Krooks met a client who is an investment banker at one of the top New York City brokerage houses, he noticed an estate planning oversight that would have made it difficult for the client's disabled son to receive a lifetime of adequate and affordable medical care.

"During our discussions, it occurred to me that the ultimate beneficiaries of this client's retirement plans were his children, one of whom is autistic," says Mr Krooks, a partner at Littman Krooks LLP, a firm that specialises in estate planning and special needs planning as well as corporate and elder law.

If the banker's son had received the retirement money outright after his father's death, he would have been ineligible for the federal Supplemental Security Income (SSI) and state-administered Medicaid benefits he is entitled to.

The reason is that people with disabilities cannot qualify for government programmes – such as SSI and Medicaid – if they have more than \$2,000 in assets, excluding a car and a home. Receiving a big inheritance would have pushed the son's assets over the threshold, thus disqualifying him.

Rules such as these make it essential for families to plan for the financial future of a disabled child or grandchild.

Mr Krooks advised his client to direct the retirement proceeds to his son's special needs trust, rather than leave the money to him in an outright inheritance. That way, the family-appointed trustee could draw on the trust fund to pay expenses not covered by SSI and Medicaid without jeopardising the assistance.

"Fortunately, we were able to contact the plan administrator and change the beneficiary to his special needs trust, thereby preserving the government benefits," Mr Krooks says.

What makes a special needs trust – sometimes called a "supplemental needs trust" – a key tool for financial planning is that it is not counted as an asset when determining eligibility for government programmes. These trusts, which can be revocable or irrevocable, are typically set up by parents or grandparents who appoint trustees to use the money to pay for expenses not covered by SSI and Medicaid.

They can be funded with life insurance, family gifts and inheritances.

One advantage of a special needs trust is that it can bring some peace of mind to the family – especially for parents who are worried about who will take care of the financial needs of their child once they retire or die.

It also helps provide a better quality of life for the disabled person. Brenna Mansfield, an attorney with Giarmarco, Mullins & Horton, says a special needs trust can be used to pay for expenses such as furniture, electronics, holidays and transport.

A third-party-funded special needs trust, or TPSNT, can take the form of a lifetime trust or a testamentary trust contained in one's will. (A TPSNT is so named because it is established by a third party instead of the disabled person.)

Without a special needs trust, an inheritance can quickly erode.

Chris Cooper, a certified financial planner and president of Chris Cooper & Company, says one of his clients is a cardiologist who, without government aid, would be paying at least \$100,000 a year for the facility where his wheelchair-dependent child has been living since the 1960s.

For a developmentally disabled child whose needs include help getting dressed, annual costs could easily be triple that amount, he adds.

Ms Mansfield says another advantage of a TPSNT is that after the death of the disabled beneficiary, any remaining trust property can pass to the grantor's other beneficiaries.

With a "self-settled special needs trust", or SSSNT – where the beneficiary is the same as the person funding the trust – there is a state-mandated requirement that medical assistance paid by the state on the beneficiary's behalf be reimbursed from any amount that remains in the trust after the beneficiary's death before funds are distributed to other family members. This is an important distinction to bear in mind when setting up the trust.

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