

Estate Planning for a Person with a Disability

Travis Finchum

Elder and Disability Law Forum

November 12, 2020

Is this client any different than the rest?

- What makes a family with a special needs member different from the rest of our clients?
- Are they really any different for the financial planners too?
- How are we, as lawyers advising this population, different?
- Where do we start?

The First contact with our office.

- What should our “Director of First Impressions” know?
- How did this family come to choose us to help?
- What does our website say about us?
- What does the caller already know about us?
- Setting the appointment.

The First meeting in our office.

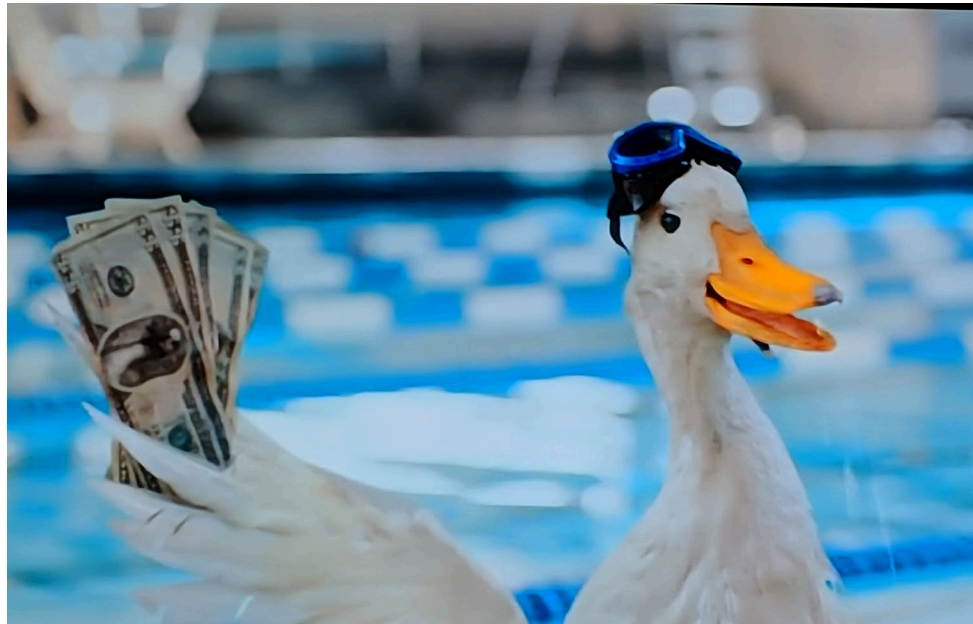
- Listening to the client to understand their concerns.
- Not letting the client lose focus on their importance in the entire process (protecting the protector).
- Learn what the client already knows – or thinks they know. Dispel myths and rumors.

The First meeting in our office.

- First the basics.
- Planning for incapacity or “what about the *caregiver?*”

The First meeting in our office.

- First the basics.
- Planning for incapacity or “what about the caregiver?”



The First meeting in our office.

- First the basics.
- Planning for incapacity or “what about the caregiver?”



The First meeting in our office.

- The basics.
- Medical Advance Directives including Healthcare Surrogate/Proxy/Power of Attorney and Living Wills.
- Financial Powers of Attorney
- Not just for the parents but sometimes for our adults with special needs.

Need to Educate about the Programs

- Once we understand what a client already knows we may need to educate about the programs that are out there.
- Federal programs like Social Security, Supplemental Security Income and Subsidized Housing as well as the state programs like Medicaid and our state Medicaid Waiver programs.

Getting a little more specific and advanced.

- Guardianship for adults with special needs.
- New adults gain certain civil rights that a parent may have been exercising for a child.
- Examples include: enter into and perform contracts, make medical decisions, apply for governmental benefits, determine residency, determine social environment, handle finances or sue and defend lawsuits. Other rights may also be addressed as needed like the right to travel, drive, vote, work, marry or make certain major medical decisions (like abortion or sterilization).

What about the money?

- The “Old Way” was maybe to omit the special needs family member from any inheritance.
- Leave everything to the sibling and trust they will do the right thing.
- This still happens a lot and sometimes it probably works fine but those aren't the cases we see in my office.

What about the money?

- Problems with the “Old Way.”
 - What if the sibling doesn’t do “the right thing.”
 - What if they try to do the right thing but something happens to the sibling first: death, disability, divorce or bankruptcy.
 - What about the inherent conflict that exists: if I don’t spend this money on my brother then I (or my kids) get what’s left over.

What about the money?

- We need those funds in a Trust – A Special Needs Trust (SNT)
- We need someone competent and honest in charge of the funds with good instructions for how they should use the money.
- We need to have backups named for who is in charge and we need to say where those funds go upon the death of the initial beneficiary if there is something left.

The Special Needs Trust (SNT)

- There are many ways to do a SNT
- The goals are generally going to be the same for all of them:
 - We want the assets (money or property) to be there to benefit the person with special needs.
 - We need someone capable to be in charge of the SNT (the trustee).
 - We need the SNT to be exempted from consideration for the beneficiary to qualify for needs-based programs such as Supplemental Security Income and state Medicaid programs.

The Special Needs Trust (SNT)

- There are many ways to do a SNT:
 - The SNT may be embedded within a Will
 - It can be embedded within another Trust
 - It can be a stand-alone Trust (let's set it up now)
 - It can be irrevocable (and non-amendable) now or become irrevocable later. Just can't be revocable by beneficiary.

ABLE accounts

- Achieving a Better Life Experience accounts.
- ABLE accounts can be a compliment to, or in some instances a substitute for, a SNT.
- Also exempted for SSI and Medicaid programs.
- Administered through state programs.

Coordinating Financial Plan with Legal Plan

- Just having the right legal documents may not be enough.
- Trusts need to be “funded.”
- Beneficiary designations and account titles must be coordinated with the legal plan.

Letters or Memorandums of Intent

- Fill in the Gaps for others.
- What do you need to know about my special family member?
- The critical stuff like medical histories and medications as well as the programs and services our loved one is receiving.
- The small (but still important) things like routines, what kind of cereal she prefers, obsessions, likes and dislikes.

Questions?



Travis Finchum

Special Needs Lawyers, PA

Travis@specialneedslawyers.com