



Top 10 mistakes people may make in Special Needs Planning

10. Disinherit your Special Needs Dependent

Many people with disabilities rely on government benefits to help provide food, shelter and medical care. If you have been advised to ‘disinherit’ your child, remember that these public benefits provide no more than ‘bare bones’ necessities.

9. Have Assets in Your Child’s Name

In order to qualify for government benefits such as MedQuest, a person can have no more than \$2,000 in assets. If you leave funds or convertible assets directly to your child, they may have to be ‘spent down’ in order to qualify for these important benefits. Assets in your child’s name are subject to predators (who are attracted to those with limited capacity) and creditors. In addition, they are open to law suits, bankruptcy and spendthrift situations.

8. Relying on Other Children to Take Care of Their Disabled Sibling

You may be thrusting a moral obligation on one sibling to take care of their brother or sister. Shouldering this type of burden can cause resentment. If ‘typical sibling’ gets married, would taking care of their brother or sister interfere in their lives? Will the spouse understand?

7. Leave Money to Brother/Sister to Support Their Special Needs Sibling

Closely related to above...What if the ‘typical sibling’ dies, gets divorced, sued, goes bankrupt or just mismanages the funds? The funds maybe lost forever. There is also no accounting here, and money can be used for other purposes by a spouse or child.

6. Have a 529 College Savings Plan or UTMA or Savings Bonds in Your Child’s Name

If these total more than \$2,000 your child may be ineligible for government benefits. There are ways that I can help you regarding this.

5. Failing to Communicate Your Plan to Family Members

The best laid plans can ‘blow up’ because they are not communicated to immediate and extended family members. A well meaning, but an uninformed relative may leave funds directly to your child. This may undo all the hard work and expense you have gone through in setting up a plan. A plan is only as good as its weakest link, and communication and reviews are for many, the keys to success.

4. Fail to Fund Your Trust Properly

A Special Needs Trust without assets is useless to your special needs child. Any asset you wish to put into the trust requires a change in title or ownership. For example, if you want life insurance or retirement plans to pay into the trust when you die, you must be sure you've completed the proper owner and beneficiary designation forms

3. Have the Right Kind of Trust

There is more than one type of special needs trust. A common mistake is having a 'payback' provision (where the state can recover its expenses upon the death of the special needs child) when it is actually unnecessary. A payback trust (OBRA '93 Trust) is used *only* when the trust is funded with the assets of the child. A third party trust funded with assets from someone other than the child does NOT require payback to the state. Any leftover assets can go to your named beneficiary.

2. Have the Trust Created by a *Competent* Attorney

There are many types of attorneys, and many types of estate planning attorneys. Having a special needs trust set up properly requires specialized expertise. There are only a handful of attorneys who understand the process and ramifications. If the trust is not set up properly your child may be deemed ineligible to government benefits – and you will NOT be here to advocate your intentions. The state can deny coverage for essential services if the assets in the trust are considered to be 'available' to the special needs child.

If your best friend is an attorney and offers to author your trust, ask them if they have any experience in this area. Additionally, beware of trusts offered in 'packages' or 'on line.' In these cases, you may truly get what you pay for.

1. Die Intestate (Without a Will or Trust)

Actually, don't worry because Hawai'i has written one for you. A portion goes to your spouse, and another portion goes to your children. Dying without a will may cause your child with special needs to receive over \$2,000. This may cause them to lose government benefit eligibility.

For more information, please call: Kirk S. Barth, CFP[®], CLU[®], ChFC[®], LUCTF, CLTC at Special Needs Hawai'i... kbarth@jhnetwork.com or visit my website: www.specialneedshawaii.com (808) 469-4884.

The material being presented is for informational purposes only. Although many of the topics presented may involve tax, legal, accounting or other issues, neither Signator Investors, Inc. and its affiliated companies, nor any of its agents, employees or registered representatives are in the business of offering such advice and it may not be relied on for the purpose of avoiding any federal tax penalties. Individuals interested in these topics should consult with their own professional advisers to examine tax, legal, accounting or financial planning aspects of these topics and how it applies to their specific circumstances.

Special Need Hawaii, LLC is independent of Signator Investors, Inc. Registered Representative/Securities and Investment Advisory Services offered through Signator Investors, Inc., Member FINRA, SIPC, a Registered Investment Advisor.

146-06072010-17534743