Estate Planning for Families with special needs

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The Importance of Estate Planning

Wills

* Written document that sets out what you want to happen to your property when you are no longer alive
* If you have a child under 18, you must make provisions for a guardian of that child
* Typically if one parent passes away, the other parent becomes guardian
* If you don’t have guardian in will, you will need to go to court to determine guardian
* Written document- must be in writing and signed by person whose will it is; must have two witnesses
* Only covers property the individual owns in his or her own name (not jointly owned property or retirement accounts)

Letters of Intent

* Do not need lawyer
* Document that talks about child’s life
  + Ex. Student only takes medicine in certain way
* Include who doctors are, medications, other things a potential guardian would need to know (the “little” stuff others may not know)
* Include ideas about money, living arrangements, etc.

Trust

* Legal organization with agreement- includes person who sets it up, beneficiary (who gets the money), trustee (person who runs the trust)
* Must be created in writing
* Special Needs Trust- person who is sufficiently disabled (incapable of employment, can not have more than $2000 in available assets) can receive SSI
  + Take assets others have and put into trust so person with disability can still receive SSI
  + Provides Medical Assistance and Medicaid (funding source for after people get out of school)- need Medicaid to get DDA services
* Federal employees can have their children use the federal health insurance forever if the parent retires or dies if they meet certain requirements
* Some private employers will do above, but not necessarily
* Trust can be used to pay health insurance premiums after parents die
* Difference between Revocable and Irrevocable Trusts- revocable can be changed and irrevocable can not be changed
  + Recently, it has been easier to change irrevocable trusts in MD
* Third Party Trusts- trusts created for benefit of person with special needs, but funded with other people’s money (this is preferable)
* First Party Trusts- trusts funded with the disabled person’s money- this does not count as available asset-only if disabled person has assets in his or her name

How much money do I need?

* Need substantial assets in third party trust to cover things that are not covered in public benefits

Who should be trustee?

* Someone you trust
* One of best ways to fund trust is through life insurance- survivor (second to die) life insurance (covers both parent lives- pays out only when second parent dies)

Able Accounts- Similar to 529 for people with disabilities

* Doesn’t affect person’s ability to access benefits
* Only allowed to have one, only 15000 per year
* After 100k is put in, SSI is suspended
* Good for small amounts of money, good for staying under $2000
* Doesn’t take place of other money sources

Guardianship

* At 18, people become adults
* Some people have disabilities and can not make and communicate responsible decisions for their safety and wellbeing
* Two types
  + Guardian of the person
  + Guardian of the property
* What is the process
  + File petition in Circuit Court
  + Physician and LCSW or Clinical Psychologist need to fill out form
  + Person with disability gets lawyer appointed and hearing occurs
  + Court appoints a guardian

Advanced Directives

* Appoint someone to make medical decisions

Surrogate Decision Making

* Someone is authorized by law to make medical decisions

Durable Powers of Attorney

* Allow person to make financial decisions

Long-Term Care

* For parents