

## **Estate planning when Disabled persons are Beneficiaries**

by Gary Villnow

### **Why is it important to Plan for disabled persons?**

Many families have within them disabled individuals who will depend on their parents for support. When parents can no longer care for their children due to their own disability or death, the responsibility for care can fall on siblings, other family members and the community.

Careful planning by parents can make a positive difference in the quality of life for a disabled child. Planning for a disabled child may also have the effect of providing other family members with guidance in the care of a disabled child.

In many instances, disabled persons will be receiving some type of governmental benefit which will include a monthly payment and Health Benefits. Generally, these types of benefits will be subject to an asset limitation. For Example, persons who receive benefits under the SSI program can have no more than \$2,000.00 in order to be eligible for that program.

Inheriting or receiving gifts from parents or others could have the effect of rendering the disabled person ineligible for benefits because the asset limitation will have been exceeded.

Generally, if a disabled person were to receive an inheritance or a gift from parents or others that would exceed asset limitations, the disabled person would lose eligibility for benefits until the inheritance is spent. The disabled person would not be allowed to simply give the assets away and retain benefits. During the time that the money is being spent, the disabled individual may not be eligible for medical or prescription drug coverage.

### **Is it a good idea to leave my estate to my non-disabled children with an expectation that they will take care of my disabled child?**

Some parents choose to leave their estates to non-disabled children and rely on those children to provide for a disabled sibling. Generally, this is not a good idea. The non-disabled children will be put in the position of deciding how and what to spend with respect to the disabled child. If money is given to or paid incorrectly on behalf of a disabled person, benefits can be adversely affected. There is also the possibility that the funds could be subject to the creditors, a divorce or a bankruptcy of the non-disabled children. The non-disabled child will also need to do some planning in the event that the non-disabled child dies before the disabled child.

## **What is a Supplemental Needs Trust?**

A Supplemental Needs Trust allows disabled beneficiaries to receive funds and yet not disrupt their eligibility for certain governmental programs. These types of trusts are designed, not to provide basic support for items such as food and housing, but instead these trusts will pay for comforts and luxuries that are not provided by governmental programs. Supplemental needs trusts can pay for things like education, recreation, and medical treatment.

Parents can serve as trustees of a Supplemental Needs Trust during their Lifetimes. Parents can appoint alternate trustees in the event that the parents can no longer serve. The disabled individual can not serve as trustee of the trust.

## **Could my Disabled child simply create the Trust for him or herself?**

If a disabled person receives an inheritance, he or she could, by petitioning the court, create a Supplemental Needs trust. If a parent or Grand parent is alive when the disabled person receives the inheritance, the grandparent or parent could establish the trust without court intervention.

A Supplemental Needs Trust that is created with money after it is received by the disabled person is considered a Self-Funded Trust. If there is any money left in a Self-Funded Trust when the disabled person dies, the funds must be paid to the government as reimbursement for benefits received by the disabled person.

## **Who should establish a Supplemental Needs Trust?**

People who have disabled beneficiaries in their estate plans should consider establishing Supplemental Needs Trusts to receive or hold assets for the disabled beneficiary. These types of Supplemental Needs Trusts are considered Third-Party Trusts because they are established by someone other than the disabled person and because they are funded with money from someone other than the disabled person.

Unlike Self-Funded trusts, if there is money remaining in a Third-Party Trust when the disabled person dies, the money does not need to be paid to the government; rather it can pass to any persons designated by the person who created the trust.