

## 10 Tips for Helping Families with Special Needs

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This month's issue of Peltier Law Office, PLLC's newsletter examines the unique planning requirements of families with children, grandchildren or other family members (such as parents) with special needs. There are many misconceptions in this area that result in costly mistakes in planning for special needs beneficiaries. It is, therefore, incumbent upon us - our clients' advisors - to ensure that clients understand all of their options.

### **COSTLY MISTAKE #1: Disinheriting the special needs beneficiary.**

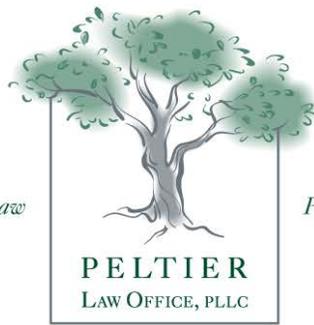
Many disabled people rely on SSI, Medicaid or other government benefits to provide food and shelter. Your clients may have been advised to disinherit their special needs beneficiaries - beneficiaries who need their help most - to protect those beneficiaries' public benefits. But these benefits rarely provide more than basic needs. And this solution does not allow your clients to help their special needs beneficiaries after the clients become incapacitated or are gone. When a loved one requires, or is likely to require, governmental assistance to meet his or her basic needs, parents, grandparents and others should consider establishing a Special Needs Trust.

*Planning Tip:* It is unnecessary and in fact poor planning to disinherit special needs beneficiaries. Clients with special needs beneficiaries should consider a Special Needs Trust to protect public benefits and care for those beneficiaries during their own incapacity or after their death.

### **COSTLY MISTAKE #2: Procrastinating.**

Because none of us knows when we may die or become incapacitated, it is important that your clients plan for a beneficiary with special needs early, just as they should for other dependents such as minor children. However, unlike most other beneficiaries, special needs beneficiaries may never be able to compensate for a failure to plan. Minor beneficiaries without special needs can obtain more resources as they reach adulthood and can work to meet essential needs, but special needs beneficiaries may never have that ability.

*Planning Tip:* Parents, grandparents, or any other loved ones of a special needs beneficiary face unique planning challenges when it comes to that child. This is one area



where clients simply cannot afford to wait to plan.

**COSTLY MISTAKE #3: Failing to coordinate a planning team effort.**

It is critical that advisors assisting with special needs planning include in the planning team: an attorney who is experienced in this planning area; a life insurance agent who can ensure that there will be enough money to maintain the benefits for the special needs child; a CPA who can advise on the Special Needs Trust's tax return; an investment advisor who can help ensure that the trust fund's resources will last for the special needs beneficiary's lifetime; and any other key advisors that may support the goals of the trust going forward.

*Planning Tip:* Special needs planning dictates that clients' advisors work together to ensure that there are sufficient trust assets to care for special needs beneficiaries throughout their lifetime.

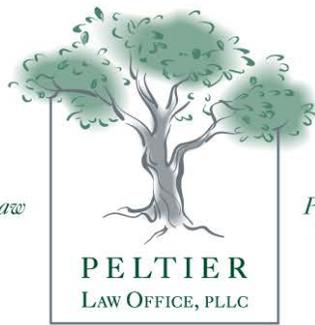
**COSTLY MISTAKE #4: Ignoring the special needs when planning for a special needs beneficiary.**

Planning that is not designed with the beneficiary's special needs in mind will probably render the beneficiary ineligible for essential government benefits. A properly designed Special Needs Trust promotes the special needs person's comfort and happiness without sacrificing eligibility. Special needs can include medical and dental expenses, annual independent check-ups, necessary or desirable equipment (for example, a specially equipped van), training and education, insurance, transportation and essential dietary needs. If the trust is sufficiently funded, the disabled person can also receive spending money, electronic equipment & appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality-of-life enhancing expenses: the sorts of things your clients now provide to their child or other special needs beneficiary.

*Planning Tip:* When planning for a beneficiary with special needs, it is critical that clients utilize a Special Needs Trust as the vehicle to pass assets to that beneficiary. Otherwise, those assets may disqualify the beneficiary from public benefits and may be available to repay the state for the assistance provided.

**COSTLY MISTAKE #5: Creating a generic special needs trust that doesn't fit.**

Even some special needs trusts are unnecessarily inflexible and generic. Although an attorney with some knowledge of the area can protect almost any trust from invalidating the beneficiary's public benefits, many trusts are not customized to the particular



beneficiary's needs. Thus the beneficiary fails to receive the benefits that the parents or others provided when they were alive. Another frequent mistake occurs when the Special Needs Trust includes a pay-back provision rather than allowing the remainder of the trust to go to others upon the death of the special needs beneficiary. While these pay-back provisions are necessary in certain types of special needs trusts, an attorney who knows the difference can save your clients hundreds of thousands of dollars, or more.

*Planning Tip:* A Special Needs Trust should be customized to meet the unique circumstances of the special needs beneficiary and should be drafted by a lawyer familiar with this area of the law.

### **COSTLY MISTAKE #6: Failing to properly fund and maintain the plan.**

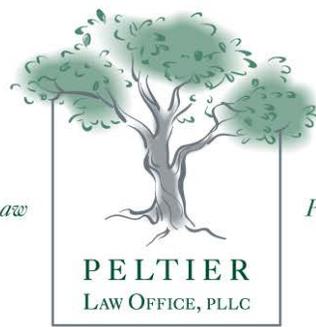
When planning for a beneficiary with special needs, it is absolutely critical that there are sufficient assets available for the special needs beneficiary throughout his or her lifetime. In many instances, this requires utilization of a funding vehicle that can ensure liquidity when necessary. Oftentimes permanent life insurance is the perfect vehicle for this purpose, particularly for young and healthy clients while insurance rates are low. Also, because this is an ever-changing area, it is imperative that clients revisit their plan frequently to ensure that it continues to meet the needs of the special needs beneficiary.

*Planning Tip:* Clients should consider permanent life insurance as the funding vehicle for special needs beneficiaries, particularly with young beneficiaries given the often staggering costs anticipated over their lifetime. For clients subject to estate tax, consider having an Irrevocable Life Insurance Trust own and be the beneficiary of the policy, naming the Special Needs Trust as a beneficiary. Alternatively, in a non-taxable situation, consider naming their revocable trust as the beneficiary to help equalize inheritances.

### **COSTLY MISTAKE #7: Choosing the wrong trustee.**

Clients can manage the trust while alive and well. Once they are no longer able to serve as trustee, clients can choose who will serve according to the instructions they provide. Clients may choose a team of advisors and/or a professional trustee. Whomever they choose, it is crucial that the trustee is financially savvy, well-organized and of course, ethical.

*Planning Tip:* The trustee of a Special Needs Trust should understand the client objectives and be qualified to invest the assets in a manner most likely to meet those objectives.



**COSTLY MISTAKE #8: Failing to invite contributions from others to the trust.**

A key benefit of creating a Special Needs Trust now is that the beneficiary's extended family and friends can make gifts to the trust or remember the trust as they plan their own estates. For example, these family members and friends can name the Special Needs Trust as the beneficiary of their own assets in their revocable trust or will, and they can also name the Special Needs Trust as a beneficiary of life insurance or retirement benefits.

*Planning Tip:* Creating a Special Needs Trust now allows others, such as grandparents and other family members, to name the trust as the beneficiary of their own estate planning.

**COSTLY MISTAKE #9: Relying on siblings to use their money for the benefit of a special needs child.**

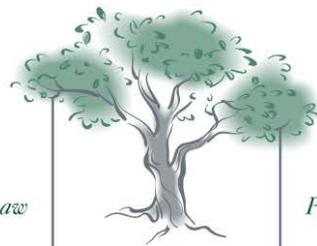
Many clients rely on their other children to provide, from their own inheritances, for a child with special needs. This can be a temporary solution for a brief time, such as during a brief incapacity if their other children are financially secure and have money to spare. However, it is not a solution that will protect a child with special needs after your clients have died or when siblings have their own expenses and financial priorities. What if an inheriting sibling divorces or loses a lawsuit? His or her spouse (or a judgment creditor) may be entitled to half of it and will likely not care for the child with special needs. What if the sibling dies or becomes incapacitated while the child with special needs is still living? Will his or her heirs care for the child with special needs as thoughtfully and completely as the sibling did? Siblings of a child with special needs often feel a great responsibility for that child and have felt so all of their lives. When clients provide clear instructions and a helpful structure, they lessen the burden on all their children and support a loving and involved relationship among them.

*Planning Tip:* Relying on siblings to care for a special needs beneficiary is a short-term solution at best. A Special Needs Trust ensures that the assets are available for the special needs beneficiary (and not the former spouse or judgment creditor of a sibling) in a manner intended by the client.

**COSTLY MISTAKE #10: Failing to protect the special needs beneficiary from predators.**

An inheritance that funds a special needs trust by will rather than by revocable living trust is in the public record. Predators are particularly attracted to vulnerable

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beneficiaries, such as the young and those with limited self-protective capacities. By planning with trusts rather than a will, clients decide who has access to the information about the transfer of their property. This protects their special needs child and other family members, who may be serving as trustees, from predators.

*Planning Tip:* A Special Needs Trust created outside of a will ensures that information about the inheritance is not in the public record, protecting the special needs beneficiary from predators.

Conclusion Planning for special needs beneficiaries requires particular care and the participation of all of the clients' wealth planning advisors. A properly drafted and funded Special Needs Trust can ensure that special needs beneficiaries have sufficient assets to care for them, in a manner intended by their loved ones, throughout the beneficiaries' lifetime.