

A SHORT EXPLANATION
ABOUT PROPER
ESTATE PLANNING

WITH INFORMATION
SPECIFICALLY IMPORTANT
TO FAMILIES WITH
SPECIAL NEEDS CHILDREN

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The purpose of this writing is to share with you both the importance of and the method by which you can make plans for your family's future protection. It is a subject which we are often too busy or choose not to talk about, but one which we will all ultimately face.

This information and the action you are encouraged to take is vital for everyone. I especially want to share this information with families who have a special needs child. Thank you for sharing this with families you know. The attempt is to keep this direct and short, please read through to the end and then let's talk. I guarantee that you will learn something very important.

Sincerely
Steve

There are only two documents that are recognized by the state when a person passes away. The deceased either has a Will or a Trust. If they have not taken the steps to acquire one or the other of these, the state will give them a will that frequently falls short of reflecting the true wishes of the deceased.

A Will is the most common document of which we are aware. It is a simple document that can be prepared by an attorney or an individual. With proper witnesses and unambiguous language you can express your wishes regarding how your possessions will be distributed after your death, **but these are only your wishes.** The final decision of how your estate is settled lies with the judicial supervisor in whose court room your estate will be probated. Probate is the required legal process through which all Wills are taken.

Many people are misled to believe that having a will avoids the probate process. This is incorrect. When a person dies their will is used to take their estate through the probate process. Doing nothing and dying without any documentation is called 'intestate' and most states will then provide a standard will.

The probate process is difficult to describe since everyone's experience with it differs. Some who have gone through probate will say it was not a big deal while others will tell you of the nightmare they had dealing with attorneys, relatives, forms, fillings, and fees.

In all cases, time, money and emotions are heavily invested and the potential for disagreement and disappointment can be high.

Since probate is carried out in the public courts - it is a matter of public record falling under the rules of open records. This allows anyone to access your probate court records. All the details of your estate and the distribution of your assets are there for the world to see.

And what about the cost? In studies conducted by AARP, Elder Law Solutions and others, it is estimated that the cost of probate can deplete an estate of between 4 and 7% percent of its total value. Maybe less, maybe more.

What it will cost to probate your estate no one can say. Will the cost of probate be increased by family members who wish to contest your will and your wishes?

"Contestable" means someone disagrees with the provisions of your will and goes in front of the judge to complain. Of course this requires additional attorney time and fees. By law it is up to the judge to decide the merits of the complaint and to alter your will if they deem the merits of the contest are valid.

Your final wishes might not be fully honored by the use of a Will.

A major concern for a family in which one of the offspring is currently or hopes to receive disability / SSI income is to guarantee those benefits will always be available, and not be jeopardized. The question then arises – **how will my estate planning affect my children?** I have met some families who thought that the will they created, in which they clearly state that their disabled child shall receive no inheritance, was going to protect that child's benefits. Sounds like a good plan, but let's consider the process that will be followed.

At the death of the parents, the will they wrote or had drafted by an attorney will go in front of a probate court. The parents are sharing their assets with their other children but excluding the child who is receiving government benefits. The court is a branch of the government. Isn't it logical that the court will decide to split the estate evenly between all the heirs? If the child receiving the SSI benefits then loses those benefits, well, they now have an inheritance to live from and the state is freed of one less dependent.

But how long will the inheritance last? How do they then reapply for benefits? Who will be there to assist them? Will they be accepted? How will their siblings shoulder the responsibility of caring for their disabled brother or sister?

It is very clear within the federal guidelines that a person who has resources above \$2000 is no longer eligible to receive disability income assistance from the government. You can see the dilemma here. A person who receives an inheritance has a very great possibility of losing their SSI income. Because of their particular life situation their inheritance is used up much quicker and now they must reapply for benefits – but mom and dad are no longer around to help.

Some legal advisers may suggest a trust for the person with disabilities. The inheritance will then go into the trust and be handled as a resource and income to the disabled person. Sounds like a good idea and it does accomplish some of what is needed, if the process is handled properly and all goes smoothly. But how much of the parents assets will be going into the trust? As the parent you would want all of the estate you have worked hard for to be there for your children and especially the on-going needs of your child with disabilities. Unfortunately it won't happen this way.

From what you already know, you have the answer. If a trust is set up for the heir, to be funded at a later date, with assets from the parents will, before the assets of the estate can be distributed it must go through probate. So before your assets go to your children they will be reduced by fees that could total between 4 to 7% or more.

A Trust for the parents with a Special Needs Addendum is a better option

What Is A Trust?

While we might not yet understand the full concept of a trust, we do understand enough to learn how it can benefit us and our families. A trust is used in a variety of ways and there are different types of trusts. Don't let that confuse you and then fail to act to protect yourself and your loved ones. Here is one simple way to understand a trust.

A trust is an entity that you set up, you control, you manage and you get the benefit from. When you get sick or die, you have already determined who will take over the responsibility of managing the trust. A married couple share one trust and jointly own and manage the trust.

Today you are the owner of everything you have. Your property, your finances, all your "stuff" is owned or titled to you. When you die, everything you own must now be dispersed. (If you are married everything is given to the spouse, our discussion here is on the second death and your estate is now going to the next generation)

Your Will is now used to go through the probate process which is governed by the laws of the state.

But let's say you don't own anything? There is now nothing to probate since your estate is empty. Your family avoids the whole emotional and costly process. But how do we get to the point of owning nothing and why would we want to? We could give everything away, and there exists ideas about how to do this, but they are risky, tax laden, and you must be willing to give up control. There are many ways this can back fire when taxes, laws or relationships change.

This is the major benefit of a trust.

A trust is a separate entity. It is an entity that can own things. Think of a small business or organization. The business may own office equipment or own property. The organization may sign a lease or collect dues. While we know there are people behind the organization, the president or owner, they transact business in the name of the business entity.

Without taking that analogy any further, as the owner of your trust, you control and transact everything that happens within the trust. You can buy, or sell, or move money, open accounts or invest. You do this for the trust as the owner/manager of the trust – as the Trustor / Trustee of the trust. So what is it that the trust owns? - Everything. Everything you currently own is transferred into the name of your trust, which you and only you have control over.

Let me tell you what that looks like. My wife and I have a trust. It was written by an independent attorney. With assistance, we moved the home we own into the name of the trust, same with our cars, retirement accounts, bank accounts and investments. It took a little work, some help, but wasn't too big of a deal. Most of the time we forget we have the trust. Nothing is different about the way we bank, invest, pay bills or file taxes. Once a year we have a free review to confirm everything is in order and to learn about any tax law changes that may effect us.

The result of this is that we don't own anything. Our trust, which we control and manage, owns everything. We still have the full benefit of all the assets, but we let the trust own them. And here is why we did this. When we die, since we don't own anything our children will totally avoid the probate process. The full amount of our estate will pass to our heirs without the cost or intervention of the courts, the state or the need for probate attorneys.

Various amendments can be added to a trust and the distribution of the assets can be quite creative to suit your unique situation and wishes. Some trusts go on for many years as they provide a designated income to the heirs.

Special Needs Addendum

Without the added cost of a future trust for a disabled heir and the potential for complications, right within the parents trust can be written a Special Needs Addendum. This addendum allows for the distribution of assets to go to the disabled heir directly from the parents trust, over time, in a manner which would not jeopardize government disability benefits. This simple addition to your trust assures protection for your child receiving government benefits. It protects your estate and your family. Its the right thing to do for everyone's benefit.

In Summary

- You have the right to help your family avoid probate and the uncertainties that come with this option.
- You have the obligation to do all you can to protect your disabled child.
- You can set up a trust with lifetime services* and end of life settlement* to assure that all your plans are carried out.
- Your trust can include a provision to protect your disabled child.

*Lifetime Services and End of Life Settlement are provided by a Trust Service Company whose purpose is to assist you in the proper implementation, funding, updating and settling of your trust document. These services eliminate the inevitable future cost of managing your trust.

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