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Estate Planning for Children with Special Needs

All too often, when we review the estate plan of a new client, or are retained to assist in the administration of the estate of a decedent who was not our client, we find that the options which are available to protect the inheritance of a special needs beneficiary have not been properly implemented.

Understandably, the parent of a child with special needs does not want that child's future inheritance to reduce or interfere with governmental benefits the child is, or will be, receiving. Do-it-yourself estate plans, or those which are prepared by uninformed attorneys, "disinherit" the disabled child by giving that child's share of the estate to other children with the expectation that a healthy sibling will segregate the disabled child's share and use it for the disabled child's benefit.

Unfortunately, this frequently doesn't work. What if the healthy child dies before the disabled child? Where will the money intended for the disabled child go? What if the healthy child's marriage fails? Will the divorcing spouse wind up with some of the money intended for the disabled child? What if the healthy child falls into financial difficulties or has creditor problems? All of these very real situations can jeopardize the assets intended to benefit the special needs child.

In New York, one can provide for a disabled beneficiary by creating a Supplemental Needs Trust which is specifically intended to supplement *but not replace* the benefits provided by the government, to enhance the beneficiary's quality of life. By redirecting the disabled beneficiary's inheritance to an SNT, ordinary testamentary goals can be achieved without any of the risks. The healthy sibling can be named as a trustee without jeopardizing the plan. The trustee's death, divorce or creditor problems do not invalidate the trust or place the trust assets at risk. A successor trustee can assume the responsibility of administering the trust if a trustee dies or cannot otherwise serve. The assets in the trust are insulated from a trustee's

divorcing spouse or the trustee's creditors.

We can not overemphasize the importance of having your estate plans reviewed periodically by an attorney who is familiar with this type of planning. While we can modify estate plans that do not meet your goals during your lifetime, there will unfortunately come a time when the plan can no longer be changed. Do not let this happen to you.