

Other Planning Considerations



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HERE ARE SEVERAL OTHER IMPORTANT ISSUES TO CONSIDER WHEN PLANNING HOW TO LEAVE MONEY OR OTHER ASSETS TO YOUR FAMILY. THESE INCLUDE MINIMIZING THE IMPACT OF TAXES, PLANNING FOR POTENTIAL LONG-TERM CARE NEEDS YOU MAY HAVE, AND WORKING EFFECTIVELY WITH PROFESSIONALS.

“Little by little does the trick.”

— Aesop

Other Planning Considerations

Futures planning must be comprehensive in that it considers you within the context of your life and your goals; it considers you as an individual, spouse, parent, and/or other family member. It cannot be done in a vacuum. Of course, the discussions about supplemental needs trusts, decision-making and benefits for your family member with a disability are of primary concern in futures planning. However, these discussions may be accompanied by some related planning issues, such as working with professionals, tax planning and long-term care planning.

Your planning issues will vary depending on many factors, including whether you are married, how much money you have saved, how many children you have, and your children's needs. Your health status and age also are important factors to consider when beginning a futures plan, especially if you may have long-term care needs.

This section will alert you to some things you should consider as you plan for your family member with a disability.

Tax Issues

The tax laws in this area have changed significantly and the information contained in this section is no longer accurate. The tax laws continue to be in a state of flux. For further information, contact an attorney or tax professional.

There are several different taxes imposed by federal and state governments, including *gift and estate taxes, inheritance taxes, income taxes, and capital gains taxes*. These taxes may apply to you whether you are planning for a person with a disability or not. You should become aware of when each tax is applied and whether it applies to your situation. You may need the assistance of an attorney, accountant and/or financial planner to analyze your situation to determine whether taxes can be reduced or avoided.

Gift and Estate Taxes

Federal gift and estate taxes get a lot of attention because the tax rates are high, up to 55 percent in some estates. For this reason, many individuals and couples seek ways to reduce or avoid gift and estate taxes. Federal law allows each of us to transfer up to \$650,000 in assets to other people without having to pay federal gift or estate taxes. This can be done through lifetime gifts and transfers occurring at death and is known as the "applicable exclusion amount." The amount that can be protected will gradually increase to \$1 million by 2006.

You can use the applicable exclusion amount a little at a time and apply it to gift and/or estate taxes. For example, if Dad gave \$300,000 in assets to his daughter in 1996, he used up some of his applicable exclusion amount. If he died in 1999, he would have \$350,000 of his applicable exclusion amount left. If he left \$500,000 in assets to his son, then \$350,000 in assets would be protected by the remaining applicable exclusion amount and only the excess \$150,000 would be subject to estate tax.

If your assets total \$650,000 or more, or will in the future, some estate planning options may enable you to avoid or reduce gift and estate taxes. Some assets cannot be gifted, so you should consult an attorney or financial planner.

Some other points to consider regarding gift and estate taxes include:

- You can avoid gift taxes through the “annual exclusion.” This allows you to give away a limited amount to as many individuals and couples as you like, every year, without using any part of your applicable exclusion amount or paying federal gift taxes. The limit is a gift of \$10,000 per individual and \$20,000 per married couple, each year.
- Irrevocable life insurance trusts can own insurance on a person and when the person dies, the insurance proceeds are not considered part of his or her estate.
- Married couples have increased options available because federal gift and estate tax does not apply to gifts or estate transfers to spouses. Also, married couples can have wills that create trusts to make sure each spouse can use the applicable exclusion amount to transfer assets tax-free.

Inheritance Tax

State inheritance tax is assessed upon death regardless of how much is in an estate. It applies to all probate assets and most non-probate assets. The tax rate is one percent for estate assets passing to spouses, parents, children, grandchildren, great grandchildren, etc. and ten percent to anyone else, except charities. Some special exemptions apply to assets passing to spouses. Inheritance tax on probate assets and some non-probate assets must be paid before an estate can be closed.

Income Tax and Capital Gains Tax

Income tax considerations are important for trusts, as well. The assets transferred into a trust are not taxed but the income the trust earns will be taxed. Once created, some trusts must obtain a tax identification number and file tax returns.

Capital gains taxes must be considered when giving away certain property during your lifetime, such as real estate and stocks. If the property value has increased since it was purchased, the increase is a capital gain and will be subject to capital gains taxes when the property is sold.

Tax issues are extremely complicated and should be approached only with the assistance of an accountant or attorney who has tax experience or other tax advisor. Additionally, he or she should know about special provisions that may be available to people with disabilities or high medical expenses.

Long-Term Care Needs

To avoid depleting your savings that you may want to leave to your children, you might want to consider the long term care needs you may have later in life. People receive long-term care in their own homes, assisted living facilities and in nursing homes. No matter where it is provided, it is usually very expensive. We all hope we will never need long-term care. Unfortunately, it is becoming more likely as people are living longer and fewer family members seem to be available to care for elderly relatives.

One way to plan for long-term care is to buy long-term care insurance. There are many types of long-term care insurance policies and the decisions can be very confusing. It is important to work with an insurance broker who is well-informed about long-term care insurance in general and the insurance companies and policies that are available to you.

Like most insurance, long-term care insurance becomes more expensive as you get older. People who already have certain illnesses may have to pay very high premiums or may not be able to qualify for a policy. Also, people with modest incomes and/or other expenses may not be able to afford any additional premium. For these reasons, long-term care insurance is not the answer for everyone.

Some individuals can pay for their long-term care through their savings or income, or a combination of the two. Because long-term care is so expensive, many individuals and couples must rely on Medicaid to cover some or all of the cost. Medicaid covers long-term care in nursing homes and has special rules to protect the spouse who continues to live at home. Medicaid also allows people to transfer certain assets to individuals with disabilities (or to trusts for individuals with disabilities) without jeopardizing the Medicaid long-term care eligibility of the person transferring the assets.

Because Medicaid law is so complex and changes frequently, each case must be evaluated considering the current law and facts of the situation. In order to learn about special protections and to make sure that you do not take steps to disqualify yourself or your spouse from Medicaid, consult an attorney who is familiar with Medicaid's rules for long-term care.

Arranging Your Assets: Meet the Smith Family

Planning for someone with a disability must be done in the context of his or her family. Of course, each family has unique circumstances and a unique history. Parents usually begin futures planning in relation to their child with a disability, but also provide for their other children. If you want to leave assets to a family member with a disability and to other family members, there are several different arrangements that may work for you.

The Smith family examples are outlined to give you ideas about some of the planning options you may use. However, they do not represent all possible scenarios or solutions. Because each person and family is unique, it is crucial that you consult an attorney who has experience with estate planning to determine the best plan for you and your family.

Mr. and Mrs. Smith ("Mom and Dad") have 3 adult children, Mike, Sally and Jake. Jake has a developmental disability and lives at home with Mom and Dad. Mike and Sally are both married with children. Mom and Dad want to plan for their entire family, making sure that Jake will live as independently as possible while continuing to receive SSI benefits.

Scenario 1: Mom and Dad own \$300,000 in assets. Dad dies first and Mom then owns all assets. When Mom dies, the estate will be divided so that one-third (1/3) passes to Mike, one-third to Sally, and one-third to a supplemental needs trust (SNT) for Jake. When Jake dies, the assets left in the trust will be divided between Mike and Sally, as stipulated in the trust.

Scenario 2: Mom and Dad own \$300,000 in assets. Upon the death of the first spouse, the surviving spouse will own all assets. When the surviving spouse dies, the entire estate will be distributed into a SNT for Jake. When Jake dies, the assets left in the trust will be divided so that half passes to Mike and half to Sally.

Scenario 3: Mom and Dad have \$10,000 in assets, and they have purchased a "second to die" life insurance policy that will pay out proceeds when the second spouse dies. On the death of the second spouse, the insurance proceeds will be paid into a SNT for Jake. When Jake dies, the assets left in the trust will be divided so that half passes to Mike and half to Sally.

Scenario 4: Mom and Dad own a home and \$60,000 in other assets. Upon the death of the first spouse, the surviving spouse will own all assets. When the surviving spouse dies, the home and \$30,000 will be distributed to a SNT for Jake so that Jake may continue living in his home with support. Mike and Sally will each receive \$15,000. When Jake dies, any assets left in the trust, including the home, will be divided between Mike and Sally.

Working with Professionals

We have mentioned the need to work with attorneys, financial advisors and other professionals throughout the preceding chapters. Finding the right professional who has the right technical skills is the first step, and can be a difficult one. Then, you must make sure you trust him or her, because you will be working together on very important issues and your relationship may be very long-term.

You may start by looking for an attorney who can address the needs of your family member with a disability, while considering your own needs and those of your other family members. Many families begin with an attorney who can prepare wills, trusts and other legal documents. Some need an attorney because government benefits have been denied or stopped. Futures/estate planning and advocacy for persons with disabilities is not a well-defined “practice area” like family law or medical malpractice. For this reason, it may take some research to find the right lawyer.

Like anyone you hire for services, you may start through “word of mouth.” If you decide you need to replace your roof, you talk to your neighbor who had his roof replaced last year. You ask your neighbor if the roofer did a good job, what he charged, how long the process took and whether your neighbor considered any other roofers and if she would use the roofer again. You may then talk to your electrician to find out if he could recommend a roofer with whom he had worked. When you get several names of roofers, you call them and “interview” them over the phone and may set up a time to meet to assess the job.

Talking to other parents who have already begun planning, such as other parents of a person with a disability, can give you a tremendous head start. Your child’s teachers, service coordinators, advocates or employer also may provide good referrals. Agencies serving individuals with disabilities may also know of attorneys familiar with benefits, estate planning and futures planning.

A list of attorneys in Maryland who have expressed an interest in estate planning with families who have a member with a disability has been compiled by an organization called Service Coordination. Contact Service Coordination at 410-882-4710 for the list.

Hiring an attorney can seem intimidating if you are unfamiliar with the legal terms or the documents you may need for your situation. For this reason, the more you do in advance to learn about estate planning, the better prepared you will be to evaluate the attorney and decide whether you want to retain him or her. Reading, attending seminars, and “networking” with other families will help you prepare to begin futures and estate planning.

You may be concerned that an attorney will be too expensive or that you will not know what to expect regarding costs. When you contact an attorney, you should ask what he or she will charge for the first meeting. The attorney should give you an estimate of his or her fees for representing you. If you decide to retain the attorney, he or she may require an advance payment, called a “retainer fee,” or may bill you when the work is finished. He or she may bill you based on a flat fee for the entire job or based on his or her hourly rate.

A qualified attorney should discuss with you the amount and type of assets to pass to your child with a disability and may recommend establishing a trust to receive the assets. The attorney may evaluate whether your child will qualify for benefits, either currently or in the future, and how the existence of a trust would affect those benefits.

It is important to think about short-term and long-term goals for your child, and to communicate those goals to your attorney. Then, he or she can help you create a plan that provides a good framework for the future, but is flexible enough so that it can be changed as your child’s needs change.

Your Attorney Should be Knowledgeable in these Areas in Order to Effectively Plan for a Person with a Disability:

- ✓ Wills
- ✓ Special Needs Trusts, other trust options, and tax implications
- ✓ Public Benefits: SSI, SSDI, Medicaid and Medicare
- ✓ Other sources of income (for example: Pensions, Survivor Benefits, Annuities)
- ✓ Guardianship and other alternatives
- ✓ Health insurance
- ✓ Life insurance
- ✓ Understanding of the capabilities and needs of people with disabilities and their families, and a general awareness of community service options for people with disabilities.

In addition to working with an attorney, you may require the services of other planning professionals, such as accountants, financial planners or insurance brokers. The search for these professionals will be similar to your search for an attorney.

As you undoubtedly have gathered from the earlier chapters, because each individual's and family's situation is different, each future's plan is different. Some basic areas may be common to most plans, but when it comes to actually developing a plan for your child, your attorney and other planning professionals must learn the details of your situation, identify the issues that require attention, and decide with you which steps to take to address those issues.