

Ask The Expert: Planning Your Estate

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Question: My wife and I are planning our estate and we want to make sure that our daughter, who needs fulltime care after her brain injury, is provided for financially. What kinds of things should we be talking about with our attorney?

Answer:

Michael V. Kaplen, Esq.: What you need to mention to your attorney, and discuss with them, is the creation of a supplemental needs trust, or what many people call a special needs trust. And usually the proper attorney to speak to about that are attorneys who specialize in the field called elder care, that's working with senior citizens. Because we're talking about the same issue, which is protecting the assets so that the individual is still entitled to government benefits, such as Medicaid, or Medicare benefits. And what we are trying to do is ensure that the person who gets money still passes the needs or income test imposed by the government to see if they're eligible for these programs.

So what we need to do is segregate these funds into a trust, called a special needs trust, or a supplemental needs trust that's created, that will shelter the money, rather than have the money go directly to the individual. And the whole purpose of this trust is in short to say this trust will fund programs that the government won't fund. So if a program will fund housing for an individual, this trust won't fund housing. If the government will pay an individual's medical or rehabilitation expenses, this trust won't do that. If the government will provide clothing for an individual, this trust won't provide clothing.

What will the trust do. This trust will buy a van for the individual if they need transportation, special assistance, this trust will pay for family trips and vacations for the individual. This trust will take care of things around the house, this trust will in short do everything that the government can't do for a person, which is though very important for the person to live independently, and have a life that is meaningful. It's not enough that a person just live at home and watch TV all day, they have to have an existence that is a meaningful existence. And this trust will provide the funds to do that for an individual, and yet still allow that individual to receive all their government entitlements.

Michael V. Kaplen, Esq., is a partner in the New York law firm, De Caro & Kaplen, LLP. He is the chairperson of the New York State Traumatic Brain Injury Services Coordinating Council and the immediate past president of the Brain Injury Association of New York State. He has been named a New York Super Lawyer for the years 2006, 2007, and 2008 and one of the top 100 trial lawyers in New York State by the American Association of Trial Lawyers. Mr. Kaplen's legal practice focuses primarily on representing persons with brain injury caused by automobile accidents, medical malpractice, and other forms of negligence. He is a noted national author and lecturer on Legal Issues and Advocacy in the field of traumatic brain injury. He publishes a web blog on the latest news and information on traumatic brain injury at www.braininjury.blogs.com.

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