

PJG

Patrick J. Gibbs, P.C.
Attorney at Law
Roswell, Georgia

**Wills, Trusts and Estates
Corporate and Business Law**



Trusts for Special Needs Children

Every parent needs to plan against the possibility of his or her death occurring while the children are still minors. That is probably the primary motivation for most wills being drafted for the first time. However parents of children who have special needs because of a disabling medical condition have to do more. They worry about what sort of economic security is possible for the child who is permanently handicapped because of such conditions as Down Syndrome or mental retardation. In some cases, such as those involving a chronic illness, there is the question of how to pay for a lifetime of expensive medical care.

Those issues require extensive planning and parents should not try to figure it out all by themselves. There are social workers, "life-care" planners and other experts available for consultation. Life insurance agents and financial planners can do some of the number crunching as to how to fund the future needs not met by government programs. In some cases a family might even be able to pay for all of the future needs of a disabled child, such as when there is great wealth and no extraordinary medical expenses anticipated because of the nature of the disability; but how much money is enough will require some complicated calculations and projections.

It is normal for any person with minor children to use a trust for their benefit in an estate plan. In cases of a disabled child the parents must customize a trust for that child so as to provide a dedicated solution for him or her. These arrangements should be separate from those for other children. Most government programs for disabled persons, such as Medicaid, place restrictions on "personal" resources or require exhaustion of such resources for continued eligibility. The typical trust for minor children would be classified as a "personal resource" in the case of a disabled child. Another advantage of a separate trust is that it forces a decision as to the allocation of the family wealth among different trusts for different children according to priorities set by the parents.

A properly drafted trust document can avoid disqualifying the disabled child for government benefits while enabling the trustee to use the trust principal or income to provide "extras" for the beneficiary to enrich that person's life. Specific language to empower the trustee to refrain from spending money may allow the trustee to resist orders from government bureaucrats to use up all of the trust property for the beneficiary. In all cases the trustee should conduct an annual evaluation of government programs to make sure that all appropriate benefits are obtained.

Selection of the trustee can be another challenge. Even if there is a sibling who has the level of financial expertise and fidelity, there is no certainty that he or she will outlive the beneficiary. A backup person who can act as a successor trustee should be identified. A combination of a corporate fiduciary (e.g. a bank's trust department) and a close relative may be the best solution for the long haul, assuming that the trust is large enough to justify the fees charged by a corporate trustee.

If the trust is not large enough to warrant the expense of establishing an individual trust, federal law allows for the use of a "pooled trust" for the disabled person. Since passage of enabling legislation in 1996, people in Georgia have had a "community trust" available to hold assets for a beneficiary, which are pooled for investment purposes. The annual fees for the community trust to manage the contributed assets are substantially less than what a trust company would charge for an individually managed trust.

A big advantage of this approach is that limited funds can be preserved for many years to improve the quality of life of the beneficiary. Expenditures can be made on an individualized basis (with a family member serving as co-trustee) and there is no disqualification from a needs-based benefit program. After the death of the beneficiary, if the original source of the trust property was not from a third party, the law may require that the government be reimbursed for Medicaid benefits. For more details about this tool visit: www.georgiacommunitytrust.com.

Delaying this sort of planning can result in additional costs and significant risks. If life insurance is going to be part of the solution, there is no guarantee of the continued insurability of the parents. Because of the benefits of compounding on investments, plans (and insurance policies) made earlier can have a lower annual cost. Both financially and psychologically, it's a case of the sooner the better.

© Copyright 2004, 2006, 2007, 2008
Patrick J. Gibbs

Patrick J. Gibbs practices law in Roswell with a concentration on Wills, Trusts and Estates. This article is intended to be educational. Legal advice should be obtained as to individual needs before taking any action.