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Estate Planning for Families with a Special Needs Child

A Presentation to
TSANJ

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Overview

- Why do I need a will?
 - Tax reasons – Save money!
 - Non-tax reasons
 - Many choices
 - Beneficiaries
 - Executors/Trustees
 - Guardians
 - Use of Trusts



Why do you need a will?

- Choice of beneficiaries
- If you die without a will, assets pass pursuant to New Jersey intestacy laws
- Ensure that there are adequate resources to provide for a special needs child
- Where parents have a special needs child, unless special trusts are used, an inheritance can make the child ineligible for government assistance



Use of Trusts

- Outright bequests may not be appropriate
- Testamentary trusts – very flexible
 - Distributions upon attainment of certain ages
 - Years following death
 - Graduation
 - Special needs trust
 - Lifetime trust to provide financial assistance to a child



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Designation of Contingent Beneficiaries

- Who will be the beneficiaries if there is a family tragedy?



Choice of Fiduciaries

- Executor(rix)
 - Administer decedent's estate
- Trustee
 - Administer all trusts under the will
 - Especially important with a special needs child
- Testamentary guardians
- Who will care for minor and disabled children?



Planning by the Parents of a Special Needs Child

- Supplemental benefits trust
 - Trust assets can supplement but not replace government benefits
- Can be an *inter vivos* trust to receive gifts or inheritance from parents or others
 - Can be revocable or irrevocable
- Create flexibility where the needs of a beneficiary are unknown



Planning by the Parents of a Special Needs Child (cont'd)

- Funding of Special Needs Trust (“SNT”) at death (amount)
 - Allocation to SNT before other children receive assets or divide assets equally between all children
 - Cap amount to special needs child
 - Consider funding necessary amount with insurance
 - The disabled individual can have no control or access to the trust funds
- Letter of Intent



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State Law Can Affect Structure and Requirements of a Special Needs Trust



Asset Ownership

- Probate assets
 - Assets that pass under will (ex. individually owned property, non-retirement investments, tenants-in-common property)
- Non-probate assets
 - Beneficiary designation assets
 - Retirement assets (IRA, pension)
 - Life insurance
 - Jointly owned assets



Don't Ignore the Effect of Taxes on Planning

- **Federal Estate Tax**
 - 45% rate
 - marital deduction
 - applicable exclusion amount
- **State Estate Tax**
 - 4-16% rates
 - marital deduction
 - estate tax exemption



Planning Techniques

- Do not waste first spouse to die's applicable exclusion amount and state exemption



Powers of Attorney

- Documents effective during your life which appoint someone to make a wide variety of business decisions on your behalf



Three Types:

- Durable – effective immediately
- Springing – effective on subsequent disability or incapacity
- Bifurcated – effective immediately as to spouse and on disability as to successors



Healthcare Directives

- Two purposes:
 - Appoint a representative to make health care decisions on your behalf
 - Declare your intention that life-sustaining treatment be withheld or withdrawn
 - HIPAA Act – Confidentiality between doctors and patients
 - Authorizes doctors to release information to your health care representatives.



Life Insurance

- Face amount included in your estate if you have “incidents of ownership”
- Coordinate beneficiary forms with estate plan
- Can use insurance to provide adequate liquidity to special needs children



Planning for the Special Needs Child

- Durable power of attorney
- Health care proxy and health care directive
- Special needs trust
 - Supplement government benefits
 - Medicaid lien at death
 - Bond requirement
 - No expenditure over \$5,000 without notice
 - Review of trust by NJ



Planning for the Special Needs Child (cont'd)

- Guardianship appointments over person and property
 - General
 - Limited