

Securing a Financial Future for the Disabled Child

Dealing with an uncertain future can make estate planning a wrenching experience for parents with a disabled child.

One of the main problems the parents face is being sure the financial needs of their disabled child will be provided for adequately. It's important for the parents to recognize that their disabled child may continue to need their assistance long after they are dead. That means a careful plan is required. And, it needs to be made flexible enough to work despite an uncertain future.

The answer, for many parents, is a Special Needs Trust (SNT). Such a trust provides additional financial security to a beneficiary without endangering present or future public benefits. Call Attorney Timothy P. Crawford to get more information.

What is a Certified Elder Law Attorney?

There are less than 15 **Board Certified Elder Law Attorneys** of the 800 Elder Law Attorneys of the total of 21,000 Attorneys in Wisconsin. Less than 20% of the Elder Law Attorneys who take the exam to become Board Certified pass the exam.

Attorney Timothy P. Crawford has passed the exam and the other requirements and has been Nationally Board Certified as an Elder Law Attorney by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

What is your next step?

To get more information concerning the above, call for your free conference. Please call Attorney Timothy P. Crawford at 634-6659 or (888) 634-6675. We have offices located in Brookfield, Glendale, Milwaukee and Racine.

(JULY 2011)

ESTATE PLANNING FOR PARENTS WITH SPECIAL NEEDS CHILDREN

Timothy P. Crawford

CPA - CELA *

840 Lake Avenue

Suite 200

Racine, WI 53403

(262) 634-6659

E-Mail: tpc@tpcelderlaw.com

(Website: www.TpcLaw.com)



**Member of the National Academy
of Elder Law Attorneys**

*** Attorney Timothy P. Crawford has been Board Certified as an Elder Law Attorney by the National Elder Law Foundation which has been Approved as the Sole Certifying Organization for Elder Law Attorneys by The American Bar Association**

This pamphlet is issued to inform, not to advise. This pamphlet is not intended to render specific legal advice. For specific legal advice, see Attorney Timothy P. Crawford.

**Copyright
Attorney Timothy P. Crawford
All Rights Reserved**

How should a parent with a disabled child treat the disabled child in the parent's estate plan?

An outdated and poor technique is to disinherit the disabled child and leave an additional share to another child. Using this technique, the parent imposes a moral obligation upon the other child to use the additional share to assist his or her disabled sibling. Why is this a poor technique? The other child may die, become incapacitated, be entangled in a divorce, or become bankrupt. In all of these cases, the "disabled child's share" may be seriously at risk.

How should the parent plan his or her estate?

First the parent should project what the child's needs and means of support will be. A child that became disabled before age 22 will be entitled to Medicare and Social Security Disability Income when his or her parent retires or becomes disabled. These benefits are not income or resource tested. (See the provisions for adult disabled children at www.ssa.gov). If the parent was a Civil Service employee and if the child became disabled before turning age 18, then the child, if unmarried, is entitled to a Civil Service survivor's annuity and health insurance. These benefits are not income or

resource tested. (See <http://www.opm.gov/retire/html/ri25-27/index.htm><http://www.opm.gov>). If these benefits, together with the child's share of the parent's estate, meet the child's needs, then the parent should consider leaving the disabled child's share in a spendthrift, discretionary, support trust.

What should the parent do if the child will need Supplemental Security Income (SSI) or Medicaid?

For example, the child may have become disabled after reaching the age of 22, or the child may need Medicaid to pay for long-term care or prescription drugs. In these cases, the parent should consider leaving the disabled child's share of the parent's estate in a third party Special Needs Trust (SNT). Although a third party SNT is not considered a resource for SSI or Medicaid eligibility, distributions from the trust can be considered income for eligibility purposes if the distributions are to the child or to pay for food, clothing or shelter. Where the distribution is to a third party vendor for food, clothing or shelter, then under the In Kind Support and Maintenance rules (ISM) these distributions may result in a reduction in the child's SSI benefit (limited to a 1/3 reduction in the SSI benefit).

What are the requirements for a third party SNT?

The Social Security Administration POMS provide: "If an individual does not have the legal authority to revoke the trust or direct the use of the trust assets for his/her own support and maintenance, the trust principal is not the individual's resource for SSI purposes." (SSA POMS SI 01120.200). Medicaid is administered by each state. Therefore, you must refer to the rules for the state of the child's residence.

For a Wisconsin resident disabled child, the trust should be irrevocable, fully discretionary spendthrift trust. To clarify the parent's intent in creating the trust, Attorney Timothy P. Crawford recommends that the trust agreement provide that the trust is not a resource for eligibility purposes, and that the trust agreement direct the trustee to consider the effect of distributions on the disabled child's eligibility. Since the child may move to another state or public benefits rules may change, Attorney Timothy P. Crawford recommends authorizing the trustee to have a limited right to amend the provisions of the trust to protect the child's public benefits when the child moves to a different state.