

**WILLS AND TRUSTS
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](http://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**

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How should a parent with a Special Needs Child treat the Special Needs Child in the parent's estate plan?

An outdated and poor technique is to disinherit the special needs child and leave an additional share to another child.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 special needs 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 "special needs 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/retirement-services/publications-forms/pamphlets/ri83-5.pdf>). 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 special needs 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 special needs 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, or rent. 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 is a pooled or community trust?

Special needs trusts can get very complicated. They can also have high ongoing expenses because frequently the trustee needs professional advice on what types of distributions from the trust are allowable and won't cause your child to lose their public benefits, like Medicaid or SSI. For many people, it is more cost effective to use a pooled or community trust. These are trusts run by non-profits. The non-profit attorneys are experts in the area of special needs trusts, and because multiple parties are pooling their money together (each with their own separate account) the ongoing expenses are usually very reasonable. Pooled and community trusts are great because they overcome the problems many special needs trusts eventually run in to, namely high ongoing expenses and lack of trustee expertise.

What is an ABLE account?

The ABLE Act was passed at the Federal level, but now states must pass enabling legislation. The law allows for a 529 like savings plan for people with special needs. Under current law, \$14,000 per year can be placed into an ABLE account. The beneficiary can have as high as \$100,000 in the account before it causes them to lose access to public benefits like SSI or Medicaid. We must now wait for the State of Wisconsin to take action and pass enabling legislation before we can use these.

Securing a Financial Future for the Special Needs Child

Dealing with an uncertain future can make estate planning a wrenching experience for parents with a special needs child. One of the main problems the parents face is being sure the financial needs of their special needs child will be provided for adequately. It's important for the parents to recognize that their special needs 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 only a few **Board Certified Elder Law Attorneys** of the 800 Elder Law Attorneys of the total of 21,000 Attorneys in Wisconsin. Less than 25% of the Elder Law Attorneys who take the National 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 262-634-6659. We have offices located in Brookfield, Glendale, Milwaukee and Racine.

(FEB 2015)