

New Jersey Law for Special Needs Children

NEWS & UPDATES ON ESTATE PLANNING FOR NEW JERSEY FAMILIES WITH SPECIAL NEEDS CHILDREN

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Special Needs Planning Just in Case

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Many parents, especially parents of young children, may be unsure at the time they are drafting their Wills if a child will qualify for government assistance in the future. The parents may be concerned that a child has a special need but may not know the extent when that child is young. Therefore, parents are hesitant to mandate that assets pass to their child in a special needs trust when such child may or may not need a special needs trust in the future.

An effective way to handle this situation is to draft a discretionary trust for the benefit of such child that allows the trustees the flexibility to create a special needs trust if the need arises in the future. A discretionary trust allows the trustees to distribute principal and income to a child for any reason in the trustee's discretion. Alternatively, the trust could be drafted as a special needs trust now but could direct the trustees to convert the trust to a purely discretionary trust if the child no longer receives government benefits.

Parents should carefully consider the appointment of trustees of such a trust. Because this is a lifetime trust, a parent should consider naming younger successor trustees and possibly even a corporate trustee to serve if all of the individuals appointed can no longer serve.

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