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Handle with Care: Planning for the Fragile Beneficiary

Today, planning can encompass more than addressing your potential exposure to taxes. It frequently requires protection of a fragile beneficiary. Many want their assets available to support their fragile loved ones, who can include disabled family members, individuals struggling with addiction, spendthrifts and even minors. If you intend to leave assets to any of these types of beneficiaries, there are planning options available.

Providing for a Minor Beneficiary

Almost every estate plan contemplates that a minor beneficiary may receive an inheritance. In fact, the primary motivation of many to complete their estate plan is to address the needs of their minor children. Planning for minors includes addressing their care and custody as well as management of the financial assets available to support them. If you have minor children, you should articulate your wishes for who will care for your children and how your children's financial needs will be met. You should nominate individuals to serve as their guardian and conservator. You can also delegate temporarily the ability to make medical and educational decisions for your minor children if you are unavailable.

If a minor child inherits property outright, a conservator often must be appointed to handle the property until the minor reaches 18. Conservatorships can be expensive and restrictive. They also result in the minor receiving all of the assets in the conservatorship at age 18. Many parents are hesitant for their children to receive assets outright at that age. One alternative is to leave the assets in a custodianship created pursuant to the Missouri Transfers to Minors Law. Any type of asset may be transferred subject to a custodianship, and the custodianship generally is terminated when the minor turns 21. Many, however, believe 21 is still too young for a child to be given unfettered access to property.

The use of a trust is attractive if you want assets to be

available for a minor's benefit but held under terms you set. The trust can be created during your life, through the use of an irrevocable trust, or at your death through a will or revocable trust. Customarily, the trust agreement directs that the trustee distribute the funds for the minor's health, support, education or maintenance. You will determine if and when the trust should terminate (for example, at a specified age or staggered over certain ages). However, many parents are no longer specifying an age at which the trust will terminate, but rather directing the assets be held in trust for the beneficiary's lifetime. Doing so under Missouri law provides a level of asset protection.

Planning for a Disabled Beneficiary

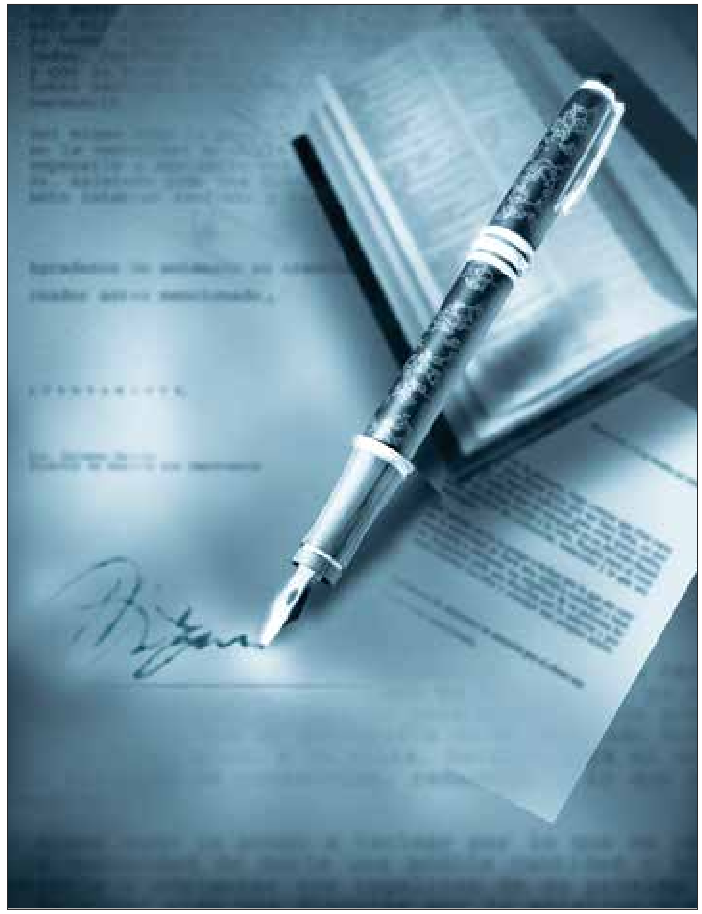
Planning for a disabled family member is a key component of a comprehensive plan and should not be overlooked. A family frequently is motivated to complete their estate plan in order to arrange their affairs in a manner that is beneficial to the disabled individual, particularly if he or she is receiving needs-based government benefits.

Many do not realize the options available for supporting their disabled loved one financially. The traditional options — such as outright bequests or transfers to a custodial account — are troublesome. The disabled beneficiary may lack capacity to handle the inheritance; the assets will likely be counted as an available resource for government benefit eligibility purposes; and the assets will be available to creditors. Many families believe incorrectly that the only option is outright disinheritance of the disabled beneficiary, which can be disastrous and devastating.

With the best intentions, a family may decide to leave the assets to another trusted family member, relying on that family member to care for the disabled beneficiary. There are numerous potential risks to this type of informal arrangement. For example, the assets gifted will be under the legal control of the trusted family member and, therefore, subject to claims by his or her creditors. Often, the family's wishes are not carried out.

A valuable technique for a family with a disabled family member for whom they wish to provide financially is a special needs trust (SNT). This trust can be created during your life or at death. It can be established by a revocable or irrevocable trust, or through your will. In general, it is an irrevocable discretionary trust created by someone other than the disabled loved one and funded entirely with assets from the individual creating the trust. The disabled beneficiary typically is the primary beneficiary of the SNT, and maybe even the sole current beneficiary. The trustee has complete discretion to determine how to use the trust assets for the disabled beneficiary — generally, the SNT directs that the trustee may supplement, but not supplant, the government benefits that the disabled beneficiary receives. This is done with a goal that the SNT will not be considered an available resource for the purpose of determining eligibility for needs-based government benefits. The SNT should name remainder beneficiaries to receive the trust assets after the death of the disabled beneficiary.

Extra care should be taken with regard to the decision of who should serve as the trustee of the SNT. The trustee must understand and respond to the needs of the disabled beneficiary. He or she must have knowledge of government benefit programs and must understand how trust distributions will affect those benefits. The trustee must be trust-worthy, reliable and financially astute and must not have a conflict that would prevent him or her from serving.



For the first time, individuals with disabilities and their families have a flexible savings tool created by the Achieving a Better Life Experience (ABLE) Act. Specifically, the ABLE Act creates tax-advantaged savings accounts for disabled individuals in an effort to allow them and their families to save for disability-related expenses.

An ABLE account is a type of special savings account that allows people with disabilities to save up to $100,000 without losing eligibility for Social Security Income (SSI), Medicaid and other needs-based government benefits. Although contributions made to an ABLE account are not tax-deductible for federal income tax purposes, the income earned by the accounts will not be taxed. Each state is responsible for establishing and operating its own ABLE program.

An individual with significant disabilities, or families and friends of such individuals, can open an ABLE account.

Many want to influence their loved ones' values and future behavior. Incentive planning can accomplish this.

However, to qualify, the onset of an individual's disability must have occurred before 26 years of age.

The funds in an ABLE account may be used to supplement government benefits for qualified disability expenses, which are any expenses related to the designated beneficiary incurred as a result of living a life with disabilities. Examples include education, housing, transportation, employment training and support, assistive technology, personal support services, health care and dental expenses, financial management and administrative services.

Only one ABLE account may be opened per eligible individual, and there are limitations on the amount that can be contributed. States may be able to recoup expenses paid through Medicaid from the ABLE account upon the individual's death.

An ABLE account will offer individuals and their families a simple, flexible option for tax-advantaged savings to help cover the extraordinary expenses associated with living with disabilities. However, given its limitations, an ABLE account alone cannot provide the level of financial security and support a special needs trust offers. Families may find that the use of a special needs trust will ensure their estate planning goals are met. Ultimately, an ABLE account may be best suited to complement, rather than replace, a special needs trust when planning for a family member with disabilities.

Protecting the Spendthrift Beneficiary

Even if your intended beneficiaries are of age and do not have health issues, it is possible that the beneficiary has other issues that make an outright distribution at your death undesirable. The beneficiary may be inexperienced with money or may have debt. The beneficiary may have existing creditors who would have rights in an outright distribution. Likewise, a parent may wish to protect an easily influenced beneficiary from the consequences of his choices or, at minimum, protect the trust assets from such consequences. The beneficiary may be in an unstable marriage where divorce is a possibility or be struggling with addiction issues. In these situations, you may wish to leave the beneficiary assets in trust instead of outright.

There are several benefits to leaving assets to children in an irrevocable discretionary lifetime trust. Assets in a discretionary trust, under Missouri law, are protected from the beneficiary's creditors. Specifically, if the trust gives the trustee the sole discretion to decide whether to make a distribution to the beneficiary, the trust assets cannot be reached by a creditor of the beneficiary and a court cannot compel the trustee to make distributions. You can specify whether the beneficiary's income and other resources should be considered when determining whether to make distributions. The trustee can be directed to maintain the beneficiary's standard of living.

Unlike a trust that mandates distributions to a beneficiary, a discretionary trust gives the trustee broad authority to look at the beneficiary's situation and determine whether a distribution will be in the beneficiary's interest. It is these types of trusts that best protect a beneficiary with possible creditor or divorce issues. Simply said, these trusts can provide a safety net for the beneficiary and preserve the trust assets.

Shielding Easily Influenced Beneficiaries and Implementing Incentive Planning

Instead of seeking to safeguard the inheritance a beneficiary may receive, you may be motived to influence your loved one's values and future behavior. Incentive planning can accomplish this. By adding incentive or disincentive provisions, you may be able to guide the choices and actions of your family, even after you have passed.

Incentive provisions regarding a beneficiary's education are common. They may be structured to reward a beneficiary for reaching a particular educational milestone, such as receiving a college degree, or may be tied to a beneficiary's grade point average or course load. Likewise, these provisions may be used encourage (or discourage) the educational institution or major selected.

A parent may also wish to reward the employment choice of, or the salary received by, a beneficiary to incentivize

hard work or certain types of employment. For example, provisions can be included to increase distributions if the beneficiary is engaged in a specific type of work, such as teaching or social work. The trust can vary the distributions made to a beneficiary based on his or her salary or other compensation.

A parent may use incentive provisions to encourage a loved to make certain life choices. The trust could encourage home ownership by authorizing distributions for a down payment on a residence. Similarly, to encourage entrepreneurship, the trust could authorize distributions or loans from the trust for a beneficiary to start a business. The trust may require that the beneficiary own a majority interest in a business venture or have management rights in order to qualify.

If a trust includes incentive planning, it is again important to choose trustees wisely. If a trustee is to make values-based decisions, the trustee should either share these values or be sufficiently aware of the goals to be accomplished by the distributions in order to make such decisions. You may wish to write a letter to future trustees outlining your views on the beneficiaries and making recommendations regarding distributions. This letter, while not legally binding, would provide the trustee with guidance.

Implementing Advanced Planning for Successful Beneficiaries

Beneficiaries without spendthrift, addiction or relationship issues can also benefit from advanced planning. A parent with successful family members may believe that advanced planning is not necessary and opt to simply make outright distributions. However, it is usually worth a second look.

If you plan to leave assets to a beneficiary who has the potential to incur personal liability due to his or her profession, you should consider an irrevocable discretionary lifetime trust. Individuals working in certain professions, such as doctors, attorneys, accountants and general contractors, may be individually liable if they are found to be negligent or engage in professional malpractice. Even though these individuals should carry insurance against such risk, it is always possible for an individual to be sued outside the limits of their policy or to experience a lapse in coverage. If an inheritance is left to such a professional individual outright, the amount could be attached by a judgment creditor upon distribution.

An inheritance left in a lifetime trust will not be subject to attachment until the distribution is made to the beneficiary. If you want the beneficiary to control investments and distribution decisions, the beneficiary can be appointed a trustee. Lastly, a successful beneficiary may also have a need for tax planning. If the beneficiary's inheritance is properly left in a lifetime trust, it may be removed from his or her taxable estate for federal estate tax purposes.

You may consider estate planning to be the transfer of your assets to your loved ones in a tax-efficient manner. However, it is also the process by which you motivate, and at times protect, your loved ones.

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