

Understanding Special Needs Planning

A GUIDE FOR PLANNING FOR YOUR SPECIAL NEEDS
LOVED ONE IN NEW YORK AND NEW JERSEY.



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Caring for an individual with special needs is one of the most challenging and rewarding experiences for any family. Are you prepared if something happens to you? It's imperative to have a plan in place, like a special needs trust, to ensure that your special needs loved one will be covered for years to come.

What is Special Needs Planning?

Special needs planning refers to the legal planning process for any person or family member with a disability. Disabilities can be diagnosed at birth, occur in adulthood, or may be caused by illness or injury. Special needs planning can start at any point in life; however, the earlier planning can occur, the better. Planning as soon as possible can ensure significant government benefits are not jeopardized for your special needs loved one.

The legal strategies you should consider with special needs planning include:

- Establishing a special needs trust and appointing primary and successor trustees
- Appointing a guardian of person and property
- Creating a letter of intent



◆ Special Needs Trust (SNT)

A special needs trust is a unique instrument designed to protect the assets of a loved one who receives benefits due to a mental or physical disability or payments arising from a personal injury. A special needs trust is designed to hold the assets of a disabled person and distribute funds in a manner that allows that individual to still qualify for public benefits while providing for additional support. The goal of a special needs trust is to ensure that the trust assets are not countable resources of the disabled person when determining the eligibility for governmental programs.

A special needs trust is one way parents of special needs children can provide for their child in their estate plan. One of the most effective strategies is to create a trust for the benefit of the person with special needs that can be used to supplement their lifestyle. The trust cannot be used for basic needs, such as rent and groceries, but can be utilized for recreation, travel, education, and medical expenses not covered by Medicaid. This trust must be carefully set up while keeping in mind all the federal and state rules for the recipient's benefits. The services of an experienced special needs planning attorney are crucial to ensure that the trust is successful in meeting its goals.



◆ Guardianship

Some special needs cases are so severe that guardianship before or after the person turns eighteen needs to be considered. If it seems that the child will not make their own legal and medical decisions, you should commence guardianship proceedings well before they turn 18. Guardianship should only be employed when there is clear and convincing evidence that the person's disability will substantially impair their ability to make decisions.

It is vital to designate a successor guardian and successor trustee of the special needs trust in your estate plan in an unfortunate event that both parents become unable to care for the person with special needs (even due to the parents age) or the parents die. The best case is for an adult sibling or close family member to be the guardian for the adult with special needs. If a family member is not an option, then a close friend may be the way to go. Even though these are commonly considered the best options, a specialized public agency or not-for-profit may become guardians as an alternative. The guardian is someone who agrees to take on the responsibility over the ward's person or both the person and the property.

Planning for guardianship is the best thing to do for an adult with special needs so that the best interests of the alleged incapacitated person (AIP) are protected. If parents die or can no longer continue the role of guardian, having a family member or friend can help to create a smoother transition

for the adult with special needs through what is already a tumultuous time. An experienced special needs planning attorney can draft these documents and/or commence a legal action to enable a parent to assist with some decisions and access medical records.



◆ Letter of Intent

This letter is an informal document that should be part of the estate plan of any parents with children with special needs. It is a very detailed account of your child's medical, educational, social, and behavioral requirements. A letter of intent gives future caregivers or guardians an inside look at the person with special needs that they can only get from the parent, a party who knows their child better than anyone. This document has no legal authority, but this set of instructions will be a great benefit for any person taking over the care of your child.

A letter of intent gets to the heart of caring for an adult with special needs. It may contain family history and memories of the person. It should include an overview of the disability and the medical history, and address ongoing medical needs. Often adults with special needs value routine and struggle with change. It is important to include daily schedules and routines that are important and things like what foods they do and do not like. Parents may wish to include their wishes for their child's future. Parents should outline the benefits received by the person with special needs in the letter of intent. Including the plan for future living arrangements and plans for future care are essential pieces of information to include as well.

In addition, it would be helpful to discuss the social interaction of the adult with special needs and any behavior management techniques that may help in caring for the person. A parent must attempt to think of all the necessary information when writing the letter and then remember to update the letter from time to time. A special needs planning attorney can help you draft an appropriate letter as part of your estate plan.



Start Planning with an Experienced Special Needs Attorney

Planning for the care of an adult child with special needs can be tedious and confusing. Parents can get help through an attorney with legal considerations and estate planning. No matter what, parents must plan. If there is no plan, then parents are leaving the care and decision-making for their loved one up to someone else, and this doesn't always end up being the people with the child's best interests at heart.



Take the first step and contact our New York office at 212-920-6371 and [schedule an appointment](#) with us. The Law Offices of Vlad Portnoy, P.C. has locations in Midtown Manhattan, Brooklyn, and Northern New Jersey to serve your legal needs.



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