

**Kile Law Group, P.C.**  
Estate Planning & Elder Law Newsletter

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5010 East Shea Boulevard, Suite D200, Scottsdale, AZ 85254 •Phone: (480) 348-1590 March/April, 2010

### Special Needs Trusts

**SPECIAL NOTICE: We are excited to announce that effective April 1, 2010, we will be open at our second office, located in Carefree—call for details!!**

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Every day we meet amazing families. Some families we have worked with are coping with the needs that exist as a result of the disability of a child or grandchild. Individuals who receive government and other need-based benefits and services may lose those benefits if they receive an inheritance. Therefore, it is important for families dealing with a child, grandchild or other potential beneficiary who has special needs to do proper estate planning.

The services and benefits provided through government programs can be substantial. For example, medical coverage through Medicaid (AHCCCS in Arizona) can make a dramatic difference in the health and life for a beneficiary of that program. However, actual cash benefits are generally very small. For example, the maximum SSI (Supplemental Security Income) benefit for a single person is \$674 per month. As a result, those with disabilities often are forced to live below the poverty level to maintain benefits and services that they need. This means that for an individual with special needs to have a reasonably comfortable lifestyle, family or charities must provide supplemental assistance. Government benefit programs will allow the family to provide some assistance, but the programs regulate this assistance and the regulations are very strict.

In our practice, we sometimes come across an estate plan that disinherits a family member with

special needs (for example someone with a diagnosis of Down Syndrome, Autism or Traumatic Brain Injury). In this scenario, the parents leave their assets to the other child or children (or some other relative) with a moral obligation to “take care of” the person with the special needs. The problem with this strategy is that no matter how good the intentions, life happens. The family member holding the money may get sued or divorced or otherwise lose the money, and there is no guarantee that it will be used properly and in the manner that you intended.

The best way to ensure that a disabled family member will be provided for after you are gone (or while you are alive if you are currently helping financially) is to create a special needs trust. This trust is recognized by government agencies and does not interfere with a beneficiary’s eligibility for public programs. Essentially, a trustee manages the money for the person with the disability. Special needs trusts are regulated and must be drafted specifically to comply with the rules and regulations of need-based programs in order to maintain the eligibility for those programs. A special needs trust can be created either upon your death, which is called a “testamentary” trust or while you are alive.

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*The Kile Law Group, P.C. provides services related to: Wills, Trusts, Powers of Attorney, Estate/Trust Settlement, Medicaid (ALTCS) and VA benefits information, conservatorships and guardianships.*

Please call us at: 480-348-1590 with questions.