

# THE ALL NEEDS APPROACH TO ESTATE PLANNING



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# The All Needs Approach to Estate Planning

Estate planning is a crucial aspect of ensuring the financial well-being and security of your loved ones after you're gone. For special needs families, this process becomes even more critical. Special needs individuals may require ongoing care, support, and financial assistance throughout their lives, making thoughtful estate planning a vital tool for providing a secure future for both the individual and the entire family.

To address these challenges effectively, estate planning should be driven by the support needs of the individual with a disability and based on the financial resources needed for life. It should also be guided by the legal protections required and include the documents necessary to provide the individual with lifelong access to their financial resources. While some people attempt to take on this complex task on their own, in our experience, the resulting lack of coordination among expert professionals poses a risk to the estate plan's success, and often to the individual with special needs. Conversely, having the right professional guidance and proper coordination among experts better positions the estate plan to succeed over time.

At All Needs Planning, we focus on coordinating special needs and estate planning using a three-step approach designed to help you relate to and engage in the process with understanding and confidence. Our multi-family office model brings financial, tax, legal, and therapeutic professionals to the same table to design and execute a comprehensive plan that reduces risk to the individual with a disability and supports all family members. The culminating plan comprises a Funding Strategy, Legal Strategy, and Support Strategy.

Estate planning is a key component of your Legal Strategy, which is designed to ensure you have the legal protections and decision-making options you need at every stage of your family's journey. This also includes ongoing monitoring to ensure your strategy is always up-to-date, and that it reflects modern language and current regulations and is appropriate for your current needs.

With this in mind, let's look at some of the key issues that must often be addressed, and strategies that are often used in the process of estate planning for special needs families.

## Establishing a Special Needs Trust

A Special Needs Trust (SNT) is typically a cornerstone of estate and financial planning for families with special needs individuals. This type of trust allows you to set aside funds for the benefit of your loved one without jeopardizing their eligibility for government assistance programs. Although assistance programs such as Medicaid waivers and Social Security cover the costs of services along with room and board, there are often supplemental costs related to things like technology, recreational programs, and exceptional needs that are not covered by the benefits.

Therefore, the Special Needs Trust, which is often also called a Supplemental Needs Trust, is a legal entity that can house these additional funds for the benefit of the person with a disability. An SNT does not need to contain a specific amount, and often they are funded upon a parent's passing. Parents may choose a trust as their life insurance beneficiary or as beneficiary of a retirement account. Since parents are often covering the supplemental costs during their lifetime, it makes sense to designate funds to be transferred after their passing.

## **Choosing the Right Trustee**

Selecting a responsible trustee is a crucial decision in special needs estate planning. This individual will be responsible for managing the SNT, making financial decisions, and ensuring the well-being of the beneficiary. When possible, families ideally should choose someone who understands the unique needs of the individual, has financial acumen, and can provide ongoing support. If you feel you cannot identify a trustee, the following are some options you may want to consider:

- You can serve as the trustee or co-trustee for now if there is another person you think might fill the role in the future but is currently too young or not yet ready. If you can identify such a person, you can designate him or her as a Successor Trustee to come into the position when you are no longer able to fill it.
- You can also designate a professional trustee. There should be language in your SNT about how a professional would be used and compensated. A trust may also allow for trust protectors and provide guidance on what their role is. This can help you feel more confident about making this choice should it suit your situation. Here again, a professional trustee could be a Successor Trustee so that you remain in the role as long as you are able.
- You can also use a trust company or pooled trust option to manage the trust. There are various options in this area, so due diligence is important. When looking into trust companies, work to understand how they administer funds from the trust, how they evaluate fund requests, and what additional costs may be involved. Understand the company's Board of Directors and its role and what happens to the fund once your loved one passes away. Also, interview other families using the company's services. A trust company can be a good option but since it means the trust will be managed outside of your family, it is important to have all the information you need to plan around the company's processes.
- Another good strategy, regardless of what type of trustee you choose, is to consider creating a formal long-term circle of supporters for your loved one. We envision this as the Microboard, which is a formal, registered collective of people who care about your loved one. This will include you, of course, and other family members along with friends, teachers, therapists, and anyone else you feel understands your loved one's needs and could help advocate on his or her behalf. Typically, the best people to call on are those who have said to you at some point, "Let me know if you ever need any help."

Inviting them to join the Microboard can be as simple as asking, “Would you be willing to come to a few meetings throughout the year to learn more about my loved one and help make sure their needs are met?” Microboards typically meet proactively at least once a year (although we recommend quarterly meetings) and follow a meeting agenda you create. The Microboard might discuss any number of issues related to the individual such as services, housing, and their day-to-day needs.

When first forming a Microboard, it helps to thoroughly educate each member about your loved one, ensuring that they are aware of things you know are important but are not easily seen by others. As their understanding grows, their ability to help you and to guide advocacy will increase as well. All Needs Planning can help you develop a Microboard, recruit members and train members, and ensure that regular meetings and advocacy efforts are occurring.

### **Clearly Outlining Care Instructions**

In addition to financial considerations, it’s essential for special needs families to clearly outline care instructions for their special needs loved one in their estate plan. This information can be included in a Letter of Intent, which is a non-legal document that provides guidance for future caregivers about the individual’s preferences, routines, and personal history. In our Support Strategy, within our three-step process, we develop a comprehensive Care Plan reflecting the day-to-day needs of the individual as well as information about their activities, programs, expert professionals, and important contacts as well as other information that informs others on the best way to provide ongoing care and support.

### **Maximizing Government Benefits**

Maximizing government benefits is a key aspect of estate and financial planning for special needs families. It is best to work with professionals who specialize in this area to navigate the eligibility requirements and ensure your loved one can access the support they need without losing vital benefits. A special needs trust will have language about how it protects eligibility for government benefits. At All Needs Planning, this component of the trust is directly tied to our Funding and Support Strategies by linking the required resources to the care needs and protecting both through the comprehensive estate plan.

### **Regularly Updating the Estate Plan**

You should regularly revisit and update your estate plan to reflect changes in your financial situation, family dynamics, or the needs of the special needs individual. This ensures that your plan remains relevant and effective over time. We recommend setting an annual time on the calendar to review your estate plan, your successors, and beneficiaries, and to update the Care Plan.

## The All Needs Planning Approach

At All Needs Planning, we focus on helping you create a special needs estate plan that includes a Legal Strategy that helps you examine, understand, and address all the above issues as they may apply to your situation. Other components of your Legal Strategy not covered above include: Supporting Your Loved One's Decision-Making: Supporting your loved one's decision-making involves considering how best to support his or her needs and choices throughout life. There are several ways to do this, including:

- **Supported Decision-Making Designation:** Supportive Decision Making is a newer process for helping an individual with a disability designate specific people to help them with decisions related to their everyday life, medical needs, financial needs, and various other support considerations. Designating a Supportive Decision Maker is handled through the court system, but because it is a newer process, some courts are more familiar with it than others. Therefore, if this process seems like a good option for you, you may need to look into how this can be done in your local jurisdiction.
- **Power of Attorney:** A Power of Attorney identifies someone to make financial, legal, and health decisions on your behalf should you become incapacitated or unable for another reason to make these decisions yourself. The person you designate as power of attorney can access your information, accounts, contracts, and so forth as noted in the Power of Attorney documentation you create. This is a helpful tool when you have a loved one who may be vulnerable and need assistance in these areas.
- **Guardianship and Conservatorship:** This process grants a responsible individual the authority to make decisions on behalf of a person with special needs, particularly in areas such as healthcare, finances, and daily living. It is crucial to determine the right level of guardianship that respects the autonomy of the individual while ensuring their safety and well-being.

## Healthcare Decision-Making

Special needs life planning must include clear directives regarding healthcare decision-making. Advanced healthcare directives allow people to designate trusted individuals to make medical decisions on their behalf. This ensures that the person's preferences and values are respected even when they are unable to communicate their wishes. These kinds of issues and considerations are especially important when an individual with special needs is involved.

## **Retirement Planning**

Although retirement planning isn't a legal issue per se, it is still important to ensure that your estate plan is aligned and coordinated with your broader long-term financial/funding strategy. Our process ensures that you have that coordination, and a strategy designed to help you create a secure future for your entire family. We believe it is especially important for special needs families to have a financial strategy that makes asset protection its top priority. In our experience, that means an investment strategy geared specifically toward retirement income rather than portfolio growth.

## **Conclusion**

Estate planning for special needs families requires careful consideration, specialized knowledge, and a commitment to securing the future of your loved ones. At All Needs Planning, we'll help you build a comprehensive Legal Strategy that covers all the estate planning needs and issues relevant to your situation!



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