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Estate Planning for Your Special Needs Children

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WHEN IT COMES TO ESTATE PLANNING, PARENTS OF SPECIAL NEEDS CHILDREN ARE IN A UNIQUE SITUATION. UNLIKE MOST CHILDREN, MANY OF OUR KIDS WILL REQUIRE LIFELONG SUPPORT.

As those of us who are parents of special needs children know, life's journey follows a path which is usually different than one travelled by families with non-disabled children. Day-to-day living often involves making decisions that require careful thought and consideration.

Where you decide to live, go on vacation or even the vehicle you drive tends to be based on your family's needs, determined in part by the level of support your special needs children may require.

When it comes to estate planning, parents of special needs children are also in a unique situation. Unlike most children, who mature and progress into self-sufficient adults, many of our kids will require lifelong support. From a legal perspective, these children will continue to be your dependents and thereby create an obligation for you to adequately provide for their ongoing care.

Good planning ensures everybody in your family will have what they need after your passing.

Here are four things parents of special needs children should consider when planning their estate.

1. Know Your Estate

Understanding the size of your estate is essential to good planning. This involves creating a detailed inventory of your assets and liabilities.

- Assets include your home, retirement savings plans, pension plans, investment accounts, tax free savings accounts, cash, vacation and investment properties, and insurance policies.
- Common liabilities are items like outstanding loans, mortgages, and credit card balances.

The assets available to your estate less current liabilities is your net estate and is referred to as the “residue” of your estate. This amount is what your Executor, or personal representative, has to distribute in accordance with the terms of your last Will.

In addition, understanding the flow of your assets as a result of your death is critical to the planning process. Jointly held assets, such as a home or bank account, will fall outside of the estate. A designated beneficiary in an insurance policy, RRSP or Tax Free Savings Account will receive those funds outside of the estate and not from the Executor (who only controls assets within the estate).

2. Know Your Child

Estimating the financial requirements of your special needs child is also a critical component of good estate planning. The financial requirements of your special needs children will be determined by their functioning ability and levels of support required throughout their lifetime.

To assess requirements, imagine what it would be like without you around to care for them. Where will your children live? How much support will they need day-to-day? Will they work? How will they spend their leisure time?

These considerations, along with cost estimations for rent, food, transportation and other necessary items, can help you craft a budget to determine the cash flow requirements needed to fund your disabled child's needs.

3. Know Government Programs & Benefits

Your child may be eligible for provincial and federal government programs that will assist in providing financial help and other benefits to compliment your estate. A couple of programs are described below.

AISH

In Alberta, when your child turns 18 years of age, he or she may be eligible for the Assured Income of the Severely Handicapped (AISH) program.

AISH is a disability income program providing financial and medical benefits to adults with a permanent disability that affects their ability to earn their own income and support themselves. There are limits, however, with respect to income and assets of the disabled individual that cannot be exceeded to qualify for AISH and also to remain eligible for the program.

It's important to understand that an AISH recipient can not own more than \$100,000 of non-exempt assets. The AISH regulations detail what is an exempt asset and what is considered non-exempt.

Under the current AISH regulations, the monies in a trust fund for the AISH recipient can be attributed as being owned by the AISH recipient. Careful planning is required in drafting the trust to provide your Trustee as much flexibility as possible and avoid the risk of disentiing your disabled child from his or her AISH benefits.

RDSP

In 2008, Canada became the first country to introduce a financial vehicle to facilitate long term saving for a disabled person called the Registered Disability Savings Plan (RDSP).

The RDSP is a tax-assist savings plan that encourages parents and families caring for people with severe and prolonged disabilities to save for their long-term financial security. Anyone may contribute to the plan with the written consent of the holder. There's a lifetime contribution limit of \$200,000 excluding grants and bonds, no annual contribution limit and contributions can be made anytime, up to the end of the year the beneficiary turns 59.

RDSP At A Glance

Beneficiary's Family Income	Grant	Maximum
\$87,123 or less*	\$3 for every \$1 contributed on the first \$500	\$1,500.00
	\$2 for every \$1 contributed on the next \$1,000	\$2,000.00
\$87,123 or more*	\$1 for every \$1 contributed on the first \$1,000	\$1,000.00

Source: Government of Canada

*Income amounts are shown for 2013 and are indexed each year based on the rate of inflation.

The Government of Canada will pay a matching Canada Disability Savings Grant annually of \$3,500, assuming an annual contribution of \$1,500, subject to the beneficiary's family income (if below the age of 18) or subject to their income (if above the age of 18). The Bond is for beneficiaries of the RDSP with income below \$24,863 or less and the annual contribution is \$1,000 subject to the income test.

Any of the income or capital in an RDSP is considered exempt for purposes of the AISH regulations.

The RDSP is an important element of a sound estate plan but it is not the only solution. The cornerstone of such a plan is the right testamentary trust for your disabled child.

4. Build Your Estate Plan

Now that you've got a handle on the size of your estate, estimated financial requirements for your children and knowledge of government programs and benefits, you can begin to plan for how to structure the inheritance your children will receive.

Because your disabled child will, in all likelihood, be unable to ever manage their own financial affairs or, even if they could, there are issues of vulnerability regarding their finances, it is important to have their inheritance controlled by responsible person in the form of a trust.

Since the trust we are speaking of arises at the time of the death of a parent, it is referred to as a "testamentary" trust. The other type of

trust that one can create is a trust in one's lifetime, often referred to as an "inter vivos" trust. We are only referring to testamentary trusts here.

The structure of a testamentary trust for your special needs child has to balance a number of goals and objectives. There is not a one-size-fits-all answer. The balancing act is to be creative in addressing the needs of your special needs child and ensuring their financial well being into the future but also providing a financial legacy for your other children, if that's applicable. Do you split the estate equally between your children? Do you structure multiple trusts or perhaps one trust fund for all your children? Who will manage this trust fund (being the "Trustee"). Are there mandated capital distributions? How much discretion concerning access to income and capital is provided to the Trustee? A properly structured, discretionary, testamentary trust should provide the Trustee(s) with flexibility to adjust payments and beneficiaries based on changing requirements of the beneficiaries. It should also explain any changes in government programs, benefits or legislation.

A Changing Plan

Families with special needs children have complications that need to be addressed and reviewed frequently. A good estate plan will evolve to account for changing family circumstances.

Although the road of life can be unpredictable for all families, there's no doubt those with special needs children do encounter some unique detours. Careful estate planning can help you meet your estate planning goals, reducing costs and minimizing the stress of those who survive you.



VanderLeek Law

Gordon VanderLeek is the Owner and Founder of VanderLeek Law. He has 24 years of experience practicing law. His practice area is focused in the area of wills and estates, in addition to servicing his entrepreneurial client base with their business law needs. Gordon has assisted owner-managers, professionals and high net worth individuals with both their business and personal legal needs for over two decades.

VanderLeek Law (“VanderLeek”) is a boutique firm, specializing in the areas of Wills, Estates, and Business Law. They seek to establish a relationship with their referral sources and clients that allows them to be a “trusted” advisor in these areas of law.

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