

Free Estate Planning Workshop

“Using Special Needs Trusts for Special Needs Children and Grandchildren”

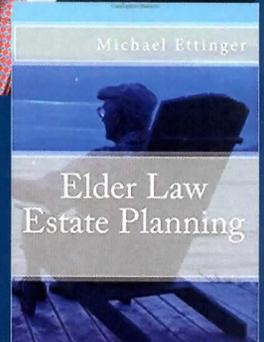
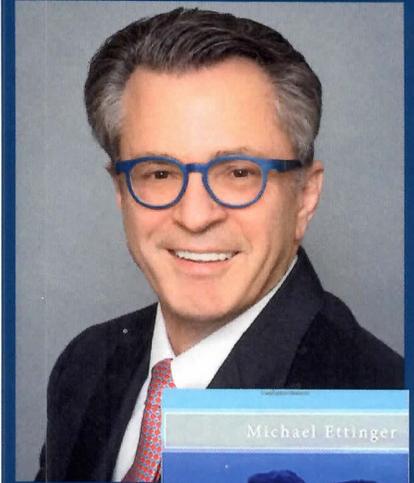
Parents or grandparents of a special needs child or adult child should leave inherited assets in a special needs trust, to avoid disqualification from receiving government benefits, such as SSI and Medicaid. Topics covered at this workshop include:

- Rationale and Benefits
- First Party v. Third Party Trusts
- Choosing the Trustee
- Funding the Trust
- Social Issues to Consider
- Letters of Intent

SATURDAY, OCTOBER 5
10:00 a.m.
Melville Marriott
1350 Walt Whitman Road

Seating is limited and reservations are required.
Please call now for your reservation.

All workshop attendees will be offered a free consultation with elder law estate planning attorney Michael Ettinger at one of our six convenient Long Island locations. Mr. Ettinger was a founding member of both The American Academy of Estate Planning Attorneys and The American Association of Trust, Elder Law and Estate Planning Attorneys. A complimentary copy of Mr. Ettinger’s book, *Elder Law Estate Planning* will be provided at the consultation.



Michael Ettinger,
Attorney at Law and
author of *Elder Law
Estate Planning*.

Ettinger Law Firm Elder Law Estate Planning

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Special Needs Trusts for the Disabled Child or Grandchild

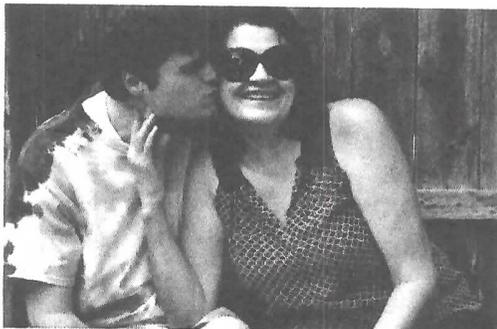
Parents or grandparents of a disabled child should leave assets in a Special Needs Trust, to avoid the child being disqualified from receiving government benefits, such as SSI and Medicaid. The reasoning behind these Special Needs Trusts is simple — prior to the protection now afforded by these trusts, parents would simply disinherit their disabled children rather than see them lose their benefits. Since the state wasn't getting the inheritance monies anyway, why not allow it to go to the disabled child for his or her extra needs, above and beyond what the state supplies, such as:



- Clothing
- Essential dietary needs
- Education
- Hobbies, sports, exercise
- Tickets for events
- Health care costs and medical procedures
- Vocational rehabilitation
- Household goods (appliances, furniture, computer, television)
- Personal care products
- Personal services (lawn mowing, housecleaning, babysitting, etc.)
- Music
- Real property
- Automobile (including gas and insurance)
- Transportation (buses, cabs, trains, domestic airfare)
- Vacations
- Burial costs

These trusts, however, offer traps for the unwary. Since payments to the child will generally reduce their SSI payments dollar for dollar, trustees of such trusts should be advised to make payments directly to the providers of goods and services. Preserving SSI benefits is crucial since eligibility for SSI determines eligibility for Medicaid.

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There are two types of Special Needs Trusts. First party and third party. The first party trust is set up by a parent, grandparent, legal guardian or court using the child's own money, either through earnings, an inheritance that was left directly to them or, perhaps, a personal injury award. Recent changes in the law allow the special needs child to establish their own first party Special Needs Trust if they are legally competent to engage in contractual matters. These first party trusts require a "payback" provision, meaning that on the death of the child beneficiary, the trust must pay back the state for any government benefits received. In other

words, the state is saying that, we will let you use this money for your special needs, but whatever was not needed should go back towards your basic care. These trusts require annual reporting and accounting to the state and are limited to children under age sixty-five.

A third party trust is usually set up by a parent or grandparent, using their own money. Here, no "payback" provision is required because it was not the child's own money that funded the trust and the parent or grandparent had no obligation to leave any assets to the child. Indeed, requiring a payback provision would discourage many parents from setting up a Special Needs Trust at all. Generally, on the death of the child beneficiary, the balance of the trust is paid out to the disabled child's children first, if any, otherwise to the surviving siblings, then nieces and nephews, etc.

A major issue for parents today is the increased life expectancy of their disabled child. With major advances in medical care, many disabled children, who would have in earlier days predeceased their parents, are now surviving them. In order to solve this problem, parents often leave a disproportionate share of the estate to the disabled child. This can engender hard feelings in siblings who, although agreeable to such an arrangement initially, may find themselves in need of funds later on and resentful of the uneven distribution in favor of the disabled child. The surviving siblings are often the only support network available for the special needs child so it is all the more important to keep peace and harmony in the family.

Often, an analysis with the elder law estate planning attorney will reveal that the assets from an equal division of the estate will, in fact, be sufficient to provide for the disabled child's needs. If such is not the case, "second-to-die" insurance may be purchased to provide for any additional funds needed. These policies are written over both parent's lives. Since the insurance company only has to pay when the second parent dies, the premiums are significantly lower than on a single life policy. Consideration should also be given to having the policy owned by an Irrevocable Life Insurance Trust for tax purposes.

Finally, in order to assist those who may have to care for the disabled child after the parent is gone, a "Letter of Intent" is often used. Here, the parent advises about any daily medical needs, their daily routines, their likes and dislikes, etc. Samples of the "Letter of Intent" for a special needs child are available on the Internet.

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