

William J. Kovatch, Jr.

Attorney at Law, PLLC

Estate Planning
Special Needs Planning

Newsletter



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Do I Need a Special Needs Trust for My Child's Litigation Award?

Parents of a disabled child may spend long hours fighting insurance companies in a lawsuit. Finally, they may come to a point where an acceptable settlement is offered, or a verdict rendered. This is it, right? This is the end of the long road?

Perhaps not. Many times, trial attorneys and well-meaning parents caught up in the heat of a lawsuit focus on winning the case, and do not consider how the child will receive health insurance as the child gets older.

A child cannot stay on a parent's health insurance forever. At some point, a child who has become an adult is no longer eligible for coverage in most employer-provided health insurance policies. If the child is unable to work, then that child will most likely need to rely on public benefits, such as Supplemental Security Income or Medicaid.

These public benefits programs, however, are means tested. That means, a person must only have a minimum amount of income and assets available to them in order to qualify. A large litigation award, if not structured properly, can prevent a child from qualifying for Medicaid.

The answer to this dilemma could be a special needs trust. A special needs trust is a legal arrangement where one person, a trustee, holds and manages some assets for the benefit of another, called the beneficiary. The beneficiary of the special needs trust does not own the

William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

William J. Kovatch, Jr. is a member of the National Academy of Elder Law Attorneys, and admitted to practice law in:

- The District of Columbia
- New Jersey
- New York
- Pennsylvania
- Virginia

assets, and can never direct how the assets are to be used. However, the trust agreement provides that the assets are to be used for the benefit of the disabled child, at the discretion of the trustee. By arranging the assets in this way, they are not “available resources,” and will not disqualify the beneficiary for the public benefits program. But, they do remain available to be used to supplement the beneficiary’s benefits.

Talk to your lawyer to see if a special needs trust is the right solution for you and our disabled child.■

“Convenience Accounts”: What Are the Risks?

Some people realize that as they get older they may need some help with their finances. Perhaps they want someone they trust to have the ability to pay their bills if something comes up like an extended hospital stay. So, they add the trusted person’s name to their bank account, creating what some people call “convenience accounts.”

But is this really a wise move? In many cases, by adding a person’s name to your bank account, you are making that person a joint owner of your account. That means that the person now has all of the rights and privileges you have with that account. The person could withdraw money, and even add another name to the account.

You may think, “Well, I trust this person. She won’t try to steal from me.” But, that is not really the problem. The problem is with the creditors of your new joint-owner.

For example, let’s say your trusted person gets into a car accident. A lawsuit ensues, and your trusted person is found liable. If she does not have enough insurance or assets of her own, the plaintiff from that lawsuit now has every right to attach your bank account to satisfy the judgment.

Adding a person as a joint owner of your bank account simply opens your money up to additional risk. The same goal can be achieved with a very inexpensive document that also avoids the additional risk. That is the power of attorney.

Through a properly drafted power of attorney you appoint a trusted person to be your agent. Your agent can do everything you have the legal right to do, such as draw checks on your checking account. However, all of your assets remain yours, and do not become the joint assets of your agent. This means that your assets can not be used to satisfy the debts of your agent.

Your lawyer can help you create a power of attorney that is right for you, creating powers for your agent that are as broad or as narrow as you want. You should also consult with your bank, as many banks either have their own power of attorney form or their own rules for appointing a power of attorney. A power of attorney can be an important part of your estate planning package.■

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.