

Have You Planned for the Future of Your Loved One with Special Needs?

By Howard S. Krooks, JD, CELA, CAP

Caring for a child or loved one with special needs carries certain challenges that many cannot understand, and yet too many of us are confronted by these challenges on a daily basis. A Special Needs Planning Attorney can assist you with Medicaid Planning, planning for your loved one with special needs trusts and comprehensive estate planning. A Special Needs Planning Attorney recognizes that caregivers typically do not add up the cost of support and caring for an individual with a disability. Caregivers provide many services “naturally” and willingly to loved ones to help enhance their quality of life. These services might include any one or more of the following:

- Advocate
- Social service coordinator
- Companion
- Guardianship
- Job coach
- Chauffeur
- Personal care attendant
- Money manager
- Recreation director

If you become unable to provide these services or die without planning for the continuation of these services, your loved one’s quality of life may suffer.

An experienced Special Needs Planning Attorney will:

- Establish comprehensive care plans organized so that monies for your loved one with special needs will not be at risk from estate taxes or the long-term care costs of caregivers
- Assist with applying for SSI benefits for a person with disabilities
- Apply and qualify for Medicaid for a person with disabilities
- Provide for a person with special needs in your Will
- Apply for Guardianship

- Set up a Special Needs Trust
- Set up a Supplemental Needs Trust
- Assist in the creation of a Letter of Intent
- Inform you of the estate planning options available to you
- Assist families with long term care planning for loved ones with special needs

What is a Special Needs Trust?

A **special needs trust** (usually funded with the assets of the disabled individual) or a supplemental needs trust (usually funded with the assets of a third party, such as the parents of a disabled individual) makes it possible to appoint a trustee to hold property for the benefit of your disabled child after you’re gone. A special needs trust provides for the needs of a disabled person without disqualifying him/her from government benefits programs such as Social Security and Medicaid.

Why Can’t I Leave My Assets to Other Family Members?

While it might seem like a good idea simply to leave a certain amount of money to your disabled child’s sibling or other close relative, with the understanding that the money will be spent on the disabled child, this approach is not the best strategy and often produces negative consequences. For example, any one or more of the following can occur by leaving your assets to another family member:

- The money can become subject to judgments, divorce settlements or bankruptcy decrees against the relative
- The disabled person has no legal right to force the relative to use the money to benefit the disabled person
- The relative to whom the money is left may be taxed at a higher income tax rate than the disabled child or a trust
- Should the relative die before the disabled child, the money would go to the relative’s heirs and not the disabled child

A special needs trust avoids these potential problems without putting an emotional strain on family relations.

Monthly SSI benefits can be spent on food and shelter. The special needs trust money can be used to pay for additional items that will enhance the quality of life of your disabled child. Such things might include:

- Summer camp
- Lessons
- Educational expenses
- Airline tickets for travel
- Electronic video games
- Vitamins and grooming supplies
- Funeral and burial expenses

Preparing a Letter of Intent

One way to set forth what your intentions are for your disabled child's future is to sign a "Letter of Intent." This letter can be given to the trustee of the special needs trust at the time of your death. This document gives family members and others the benefit of your knowledge about your child's capabilities, needs and interests. Once completed, you can update the letter as necessary should the child's needs change or should your goals for your child change.

A typical letter of intent will include:

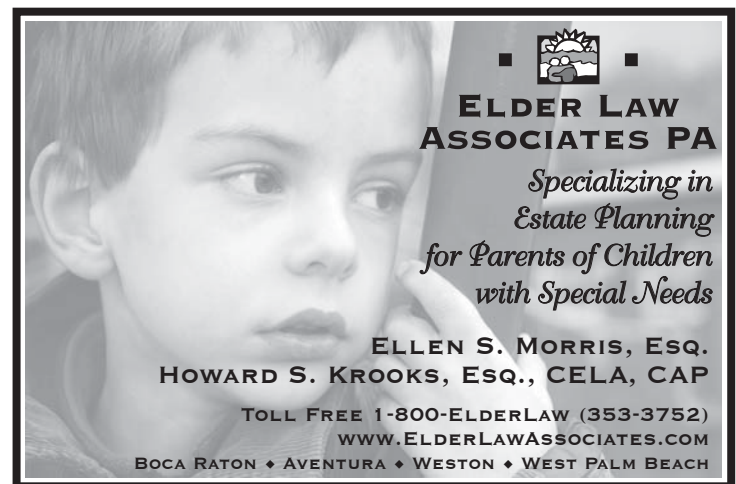
- Biographical information
- Financial details
- Medical history and needs
- Social contacts
- Any negative influences you would like to guard against
- Personality traits
- Skills, hobbies and physical abilities
- Goals your child is working toward

While the challenges facing your disabled loved one are daunting, they can be even more so if you are not around to attend to his or her needs. However, with a little forethought and planning, you can make your disabled child's future potentially much brighter.

Howard S. Krooks, JD, CELA, CAP is a partner of Elder Law Associates PA, which has offices in Boca Raton, Aventura, Weston and West Palm Beach. He is admitted to practice law in Florida and New York, where he serves as Of Counsel to Amoruso & Amoruso LLP in Westchester County. His professional practice is devoted to elder law and trust and estate matters, including representing seniors and persons with special needs and their families in connection with asset preservation planning, supplemental needs trusts, Medicaid, planning for disability, guardianship, wills and trusts.

Mr. Krooks is certified as an Elder Law Attorney by the National Elder Law Foundation and is a member of the Council for Advanced Practitioners of the National Academy of Elder Law Attorneys (NAELA).

He is an active member of the Special Needs Planning and Elder Law community on the local, state and national level. Mr. Krooks currently serves on the NAELA Board of Directors and is an officer of NAELA (Secretary). As a member of the Joint Public Policy Task Force of The Florida Bar Elder Law Section and the Academy of Florida Elder Law Attorneys, Mr. Krooks works to protect the rights of the state's most vulnerable citizens. He recently was invited to join a special sub-task force to review policies of The Florida Department of Children and Families (DCF) that may not be in compliance with federal law. The special task force will also determine whether DCF policies have followed proper rule-making procedures.



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