



**Information
of interest to
people with
disabilities
and other
special needs
and their
families.**

Working Together While Getting Divorced: *What You Should Know*

Going through a divorce is tough. Raising your kids with an ex-spouse, each of you on your own, makes it more difficult. And if you have a child with special needs, the challenge can be even more arduous. At this time, it's even more critical for spouses to work together for the financial wellbeing of their child – and themselves.

“When a couple who has a child with special needs decides to divorce, the first aspect to consider is non-financial, really,” says Randall D. Johnson, who has earned the Chartered Special Needs Consultant (ChSNC)¹ designation and is a Special Care Planner with HighPointe Financial Group² in Overland Park, Kansas, a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). “It’s keeping communication open and civil. It’s important that the couple isn’t fighting against the best ways to benefit their child.”

Often, spouses try to get the upper hand, especially if the split is acrimonious. One spouse may not be able to refrain from lobbing sarcastic barbs at the other, or one spouse may not want to pay alimony and child support even if affordability isn’t an issue. “Sometimes the couple argues because they can’t help it,” Johnson explains. “Other times it’s just for the sake of arguing to make things difficult for the other. Either way, it’s because emotions are raw and issues haven’t been worked out. Unfortunately, they’re ignoring the needs of their child. Instead, they should be working together to help ensure the child’s needs are met. And their financial strategies, though separate now, should do the same.”

As a Special Care Planner, Johnson says he considers his role to be to act on behalf of the child. “I have to keep the child’s needs at the forefront when parents don’t,” he says. “I try to get them to refocus, reminding them that getting their financial strategies in order will benefit them all, but especially their child.”

Sometimes further intervention is necessary. If one spouse refuses to be involved with planning, the other can consider taking court action. It can be challenging, but your divorce attorney, along with a financial professional and attorney skilled in serving people with special needs, can help you negotiate the process. They’ll help you review your present and future needs, determine costs, know what to petition the judge for, help you complete paperwork, and more.

This same process may need to be done if a couple is already divorced and the divorce agreement doesn’t include financial support when the child reaches the legal age of majority. “It can be costly to rewrite a divorce agreement,” warns Johnson, “so I encourage divorced clients to review their agreements and plan ahead for the expense, if possible.”

Determining custody

When making decisions about custody, again, it’s important to put your child first. Who’s been the primary caregiver? Who’ll be able to provide the best care now? Will shared custody be too disruptive to a child who depends on routine structure in his or her life?

This is also a good time to consider guardianship. Who’ll care for your child when the custodial parent no longer can? Is the non-custodial parent the best choice? Someone else? Will the child be capable of independent care when he or she is a legal adult? If not, you’ll need legal guardianship to make legal and medical decisions for your child.

Child support

Once you’ve determined the best custodial arrangements, work with your divorce attorneys and a special needs attorney, to develop agreeable child support arrangements. “You know there are extra expenses in caring for child with special needs,” says Johnson. “The custodial parent, obviously,

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will have higher living expenses. Understand what those expenses will be and what will be paid for with child support payments. Think ahead to future needs, such as educational costs or modifications to your home or car as your child ages. What supports, such as occupational therapy or physical therapy, does your child receive? What supports will be provided in the future? Assign dollar values to these needs so your child support payments cover the costs. It's also prudent for you and your spouse to decide how unforeseen or overlooked expenses will be handled. Your divorce attorneys can help you work this out and document your decisions."

Some state laws allow for the continued care (child support and alimony payments) of a person with special needs throughout adulthood. Check your state laws. If continued care is not provided by law, and your child will need financial support as an adult, have it written into your divorce agreement.

Alimony

Often a divorce agreement will include alimony payments, especially if one parent will stay home to care for child with special needs. The potential cost of hiring a caregiver – skilled (someone with a specialized degree and/or training) or unskilled (an

individual to provide personal assistance in eating, bathing, dressing, etc.) – is used and calculated into the alimony amount. In essence, the caregiving spouse is compensated for giving care, and if at some point the spouse gets a job, funds will be available to help pay for a caregiver.

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Education

“Come to terms with how you want your child educated,” suggests Johnson. “Financial support for the expense should be included in the divorce agreement. Additionally, be aware that only one parent’s signature is needed on an IEP [Individualized Education Program], so if both parents want to be included in decisions, the special education administrators must be notified that two signatures are needed. Be sure to discuss this with your divorce attorneys so your divorce agreement states how expenses incurred for recommendations made in an IEP will be shared.”

Estate planning

When a family has a person with special needs, the estate plan may include a special needs trust (SNT, often a third party trust). When a couple divorces, it’s prudent for each spouse to have an SNT in separate estate plans. “It’s vital to use a special needs attorney to ensure the legal aspects of the spouses’ plans are aligned to protect, not harm, their child’s eligibility requirements for government benefits such as Supplemental Security Income (SSI),” say Johnson.

The divorce agreement is revisable

Are you already divorced? If you have a written divorce agreement that doesn’t include your child’s financial interests, meet with your team of experts – your divorce attorney, a special needs attorney, and a special care planner – to determine if changes are needed. “Review your agreement soon,” Johnson suggests. “In my experience, 99.9% of divorce agreements provide support for children up to age of majority. Your child may need more than that, and you may see other issues you didn’t realize when your agreement was first written.”

1 Chartered Special Needs Consultant (ChSNC®) – a professional designation awarded to those individuals who’ve completed 120 hours of academic classes in addition to holding either Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Certified Financial Planner (CFP) designations and previously completing the Special Care Planner certification program. The ChSNC designation was developed by The American College in Bryn Mawr, Pennsylvania. The certification program and the professional designation evolved from MassMutual’s SpecialCareSM Program.

2 www.highpointfinancial.com

* The Special Care Planner received advanced training and information in estate and tax planning concepts, special needs trusts, government programs, and the emotional dynamics of working with people with disabilities and other special needs and their families. The certificate program was offered by The American College in Bryn Mawr, PA, exclusively for MassMutual financial professionals. State insurance departments recognize that the Special Care Planner certificate program provides essential information on the profession of special care by granting continuing education (CE) credits (varies by state).

A Special Care Planner through MassMutual’s SpecialCareSM program can assist parents in drafting Letters of Intent and can help make a difference in the quality of life for an individual with special needs, their caregiver and other family members. Through SpecialCare you will learn valuable financial strategies, identify financial strategy solutions, access vital information, and meet certified specialists who will work with you and your professional advisors – your banker, accountant or financial planner, lawyer, social workers and health care providers – to review your financial picture and offer options to fit the needs of each situation. For more details, visit MassMutual’s website at <http://www.MassMutual.com/specialcare>, or call 1-(800)-272-2216.

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