

The Legal Side of Financial Strategies

Creating a financial strategy – which includes financial and legal elements – is smart, practical, and satisfying. Especially when a family member has special needs.

“A sound financial strategy takes your family’s current and future financial needs into consideration, especially when planning for the future care of a family member with special needs”, says Kenneth E. Phipps, CLU, ChFC, ChSNC, a Special Care Planner who’s earned the Chartered Special Needs Consultant (ChSNC)* designation and is with MassMutual Oregon (www.oregon.massmutual.com) in Lake Oswego, Oregon, a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). “Not only does it incorporate ways to manage income and expenses, wealth accumulation, and save for college and retirement, but a good plan also likely includes legal instruments to ensure your family’s well-being – wills, trusts, guardianships, and other legal documents. It’s important to understand what your options are and how they can benefit you and your family.”

Wills

“If you die without a will,” explains Phipps, “the intestate succession laws of your state determine how your assets are distributed.” For example, all assets may go to your spouse or divided between your children and spouse. If you’re unmarried and childless, your parents or siblings may inherit your assets. Leaving it up to state law means giving up your wishes.

Creating a will allows you to:

- bequeath your estate as you desire, giving to specific people, organizations, and charities,
- provide for your family member with special needs in a way (such as directing an inheritance to a trust) that won’t jeopardize government benefits he or she may receive currently or in the future,
- name guardians for your children,
- reduce estate settlement administration time and expense, and
- name the executor of your estate.

“I’ve found that many people know the value of having a will, but are concerned about the cost,” says Phipps. “Certainly, a will for a couple with a child with special needs will be more complex, and more expensive, but it’s incredibly important for you to have one, especially when that child will need financial support long after you’ve passed on. We can recommend attorneys who’ll consider waiving their fee for the initial meeting and offer financing arrangements. Find an experienced special needs attorney who’ll work with you.”

Powers of Attorney

A power of attorney (POA) is a legal document that gives authority to one person (the agent) to manage the finances or health care of another person (the principal). There are five types: general, limited, durable, medical, and springing. Each provides specific direction regarding how and when authority can be used.

For example, a durable or medical POA can enable parents of a person with special needs to continue to have access to medical information and make decisions regarding medical care after their child becomes a legal adult. Without this authority, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, which ensures the privacy and security of individuals’ medical records, could prevent parents from this access.

A POA document must be worded precisely to avoid misuse of the power you give and to ensure the document works in conjunction with your financial strategy. Your financial and legal professionals, as well as certain others on your team (your accountant, banker, social services representatives, medical providers, your agents/proxies, and the



person with special needs, depending on competency) should be aware of your intent regarding care, where original documents are kept, who's been given authority, and when authority is revoked.

Phipps suggests, "Be prudent in authorizing someone to act on your behalf, and be diligent about notifying others when you rescind that power." There's no way to verify if a person has authority except with the document issued, and there's no central system to check if a POA is rescinded.

Trusts

A trust is an agreement describing how property held in a trust may be distributed on behalf of a person (the beneficiary). There are a variety of trusts to choose from, each suiting a particular need (immediate or future), and each having its own tax implications.

A trust created to benefit a person with special needs can:

- receive assets, such as an inheritance, a court settlement, an insurance claim payment, gifts of money, life insurance proceeds, and more,
- protect government benefits the person receives now or in the future, and
- be a source of financial support for medical care, special equipment, education, entertainment, transportation, and more.

Your financial professional can work with your attorney to help you review your trust options, whom to name as successive beneficiary(ies) who'll inherit trust funds when the trust beneficiary dies, and whom to name as trustee(s). Trustees could be a friend, relative, or professional (such as an attorney, accountant, or bank/trust company representative), or a combination of these individuals.

"Trusts can be invaluable in a family's financial plan," says Phipps, "and they're not as costly to create or as difficult to fund as most people realize. Talk to your financial professional and attorney before writing off this important option."

Medical directives

"Everyone should have a medical directive," says Phipps. Medical directives are legal documents that authorize someone to assume responsibility for your health care (to be your proxy or agent) or ensure your wishes are followed if you become unable to make decisions for yourself. There are a variety of documents that may be used – health care proxy, living will, durable (or medical) power of attorney, or guardianship – which vary by state in how they work.

continued on page 12

Directives are especially valuable:

- to clarify a person's wishes regarding resuscitation or life support,
- in times of illness or injury (a fall, accident, or emotional/mental breakdown) causing unconsciousness, confusion, or mental impairment, and
- whether or not the medical situation is temporary or long term.

A financial professional and attorney familiar with the various documents and who have experience serving individuals with special needs can help you decide which to use. They'll also ensure that the document wording is HIPAA compliant; otherwise, your proxy/agent will have the authority you've given, but won't be allowed access to information they need to make medical decisions for you.

Guardianships

A guardianship or conservatorship is a legal appointment made by the court for one or more persons to oversee the financial and/or personal affairs of another person. What it's called and how it's structured varies by state law.

If a family member has special needs, there may be a time when that person can't or shouldn't make certain decisions on his or her own behalf. For example, a person with a debilitating illness may eventually need to relinquish decision-making to his or her spouse. Or, for a child with special needs who's unable to make his or her own decisions, parents will need legal authority to continue making those decisions when their child is a legal adult. "In each of these examples, it's important to establish guardianships before they're actually needed," says Phipps. "Be prepared and avoid problems."

Decide what's right for you

Do you need any of these legal documents? A will and medical directive are likely necessities, but whether or not other documents are needed will take some thought. Consider your complete financial picture and the needs of your family. Talk with your financial and legal professionals (and others on your strategy team, including the family member with special needs, if appropriate), ask questions, get recommendations, and make your decisions when you've evaluated all of your options.

** The Special Care Planner, a title used by MassMutual financial professionals, who have 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. Additionally, a designation of Chartered Special Needs Consultant (ChSNC), which evolved from the certificate program, is now offered through the American College for financial professionals. MassMutual financial professionals who have completed the certificate program, or received the ChSNC designation can use the Special Care Planner title.*

* The Special Care Planner, a title used by MassMutual financial professionals, who have 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. Additionally, a designation of Chartered Special Needs Consultant (ChSNC), which evolved from the certificate program, is now offered through the American College for financial professionals. MassMutual financial professionals who have completed the certificate program, or received the ChSNC designation can use the Special Care Planner title.

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.

About MassMutual

Founded in 1851, MassMutual is a leading mutual "http://www.massmutual.com" life insurance company that is run for the benefit of its members and participating policyholders. The company has a long history of "http://www.massmutual.com/aboutmassmutual/financialinfo/strength" financial strength and strong performance, and although dividends are not guaranteed, MassMutual has paid dividends to eligible participating policyholders consistently since the 1860s. With "http://www.massmutual.com/productsolutions/individualsfamilies/producttype/lifeinsurance/wholelife" whole life insurance as its foundation, MassMutual provides products to help meet the financial needs of clients, such as "http://www.massmutual.com/productsolutions/individualsfamilies/producttype/lifeinsurance" life insurance, "http://www.massmutual.com/productsolutions/individualsfamilies/producttype/disabilityincome" disability income insurance, "http://www.massmutual.com/productsolutions/individualsfamilies/producttype/longtermcare" long term care insurance, "http://www.massmutual.com/retire/plansponsors" retirement/401(k) plan services, and "http://www.massmutual.com/productsolutions/individualsfamilies/producttype/annuities" annuities. In addition, the company's strong and growing network of financial professionals helps clients make good financial decisions for the long-term. MassMutual Financial Group is a marketing name for Massachusetts Mutual Life Insurance Company (MassMutual) and its affiliated companies and sales representatives. MassMutual is headquartered in Springfield, Massachusetts and its major affiliates include: Babson Capital Management LLC; Baring Asset Management Limited; Cornerstone Real Estate Advisers LLC; The First Mercantile Trust Company; MassMutual International LLC; MML Investors Services, LLC, Member "http://www.finra.org/" FINRA and "http://www.sipc.org/" SIPC; OppenheimerFunds, Inc.; and The MassMutual Trust Company, FSB.

The information provided is not written or intended as specific tax or legal advice. MassMutual, its employees and representatives are not authorized to give tax or legal advice. Individuals are encouraged to seek advice from their own tax or legal counsel. Individuals involved in the estate planning process should work with an estate planning team, including their own personal legal or tax counsel.