



JULY 2022, ISSUE 11

YOUR TRUSTED LEGAL COUNSELOR



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The Uncommon Trusts Issue

Written by Francine D. Ward

What is a supplemental needs trust?

Are you a planner? If so, you probably plan for the many “what if” scenarios that could occur. For example, if you are going to San Francisco, you would probably plan to take layered clothing. Understanding how different the Bay Area’s weather systems are, you plan for any contingency. Therefore, when packing for a vacation, you plan accordingly.

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Likewise, when planning for your future, consider what happens if one of your loved ones becomes disabled.

How often do we think that being disabled impacts others? Yet, according to the CDC, around 61 million adults in the US live with some form of disability. More than one in four 24-year-olds will become disabled before they reach retirement. Disability is impulsive, it's random, it's unpredictable, and can impact anyone at any time. It can be the result of a birth condition, an accident, or even a mental or physical condition, e.g., cancer or mental illness.

We have no idea when we will die, nor do we know if and when a loved one might become disabled. For that reason, we do our best to prepare for the “what ifs.” Because we do not know what condition a beneficiary will be in at the time of our death, it is important to address what happens if your loved one becomes disabled at a future time.

If your loved one becomes disabled, they might need financial assistance from the government. For example, they may need Medicaid or Social Security Disability Insurance. If that is the case, you leaving them a monetary gift or inheritance might disqualify them from receiving the public benefits they need. Consequently, your thoughtful, well-meaning gift could become a curse rather than a blessing.

Standby Supplemental Needs Trust

To prevent your disabled loved one from losing government benefits, you may want to

61 Million

ADULTS IN THE US LIVE
WITH SOME FORM OF
DISABILITY



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consider the inclusion of a standby supplemental needs trust in your estate plan. The terms of this trust would make the money available only to supplement the government benefits a beneficiary might be receiving. The money in a supplemental needs trust is not included as an available resource when determining a beneficiary's eligibility for government needs-based benefits. A standby supplemental needs trust is on standby. It only comes into existence if your beneficiary is disabled at the time of your death or, becomes disabled at a later date. That date depends on the eligibility rules of the state of residency. And each state has its own rules and requirements for receiving government assistance.

Since no one knows what the future holds, nearly every estate plan could benefit from including standby supplemental needs trust provisions. If the standby supplemental needs trust is not needed at the time of your death, then the trust will not come into existence. But it does not hurt to include it—just in case.

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SPECIAL NEEDS TRUSTS FOR CHILDREN OR GRANDCHILDREN

Written by Francine D. Ward

All children are a blessing. From the day they are born, you begin making plans to ensure their future. What will their interests be? What job will they have? Whom will they marry? While these are common concerns for most families, this concern is heightened when that child is a Special Needs Child. Their health and safety become paramount, due to the additional hurdles they may face. To help provide a prosperous future for your special needs child or grandchild, we suggest the following steps:

Have a Special Needs Trust Prepared

Start by establishing a special needs or supplemental needs trust (SNT) for the benefit of your child or grandchild. The SNT is a special type of trust designed to provide for a beneficiary, who may qualify for public assistance. Such assistance can be for medical or other care expenses. This type of trust can be added to an existing trust, or drafted as a standalone.

Most government programs providing aid to disabled individuals have strict requirements. There are rules as to how much money and property a person can own and how much money they can receive on a regular basis. For that reason, it is important to make sure any inheritance you leave your special needs beneficiary is structured in a way not to disqualify them from government benefits. Even if your child or grandchild is not currently receiving government benefits, this does not mean that they won't need benefits in the future. Therefore when planning, think long term. Consider possibilities that will allow you to maximize all opportunities available to them. To accomplish this, it is crucial that the trust be carefully drafted by an attorney who is familiar with the eligibility requirements for government benefits.

In addition to providing for your child's or grandchild's financial future, an SNT allows you to appoint a care manager or an advisory committee. As opposed to a trustee, whose job is to manage the money and property in the trust and make distributions, the care manager acts as your child's or grandchild's advocate. Depending upon the level of care your child or grandchild needs, the care manager may only need to check on them periodically or may be responsible for their day-to-day care. For those needing more assistance, the care manager may also serve as part of an advisory committee made up of multiple friends, family, and/or professionals.

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As an advocate, the care manager or advisory committee can advise the trustee about the beneficiary's needs and the best ways to use the funds.

Within the SNT, a statement of intent can be included to instruct the trustee, and if necessary, the court, as to why the trust was established and how the money and property should be used. Although your intentions may seem obvious, including this section in the SNT can act as a safety net should there be a change in the law causing the special needs beneficiary to become ineligible for government benefits. If you include a statement of intent, it can be easier to change the trust to ensure that your original objective is carried out after you have passed away in the event of unforeseen changes.

Write Down Your Special Needs Instructions

In addition to creating an SNT, writing a letter or memorandum of intent can provide excellent instructions to the trustee you choose about what is to happen after you have passed. Although this document is not legally binding, it can give your trustee insight into your true intentions. You can include instructions regarding the types of things you want the money to be used for (so long as they are allowable under the various government rules), milestones you would like to see the beneficiary achieve, and the standard of living you would like the beneficiary to have.

Consider Life Insurance for Your Special Needs Child

Supporting a special needs child or grandchild can be expensive. While you are working or have a stream of income, you can allocate money as you see fit. However, not everyone has enough of a nest egg to continue covering these expenses for their special needs child or grandchild once they have passed away. By purchasing life insurance and naming the SNT as the beneficiary, you can guarantee that there will be sufficient money at the trustee's disposal to care for your child or grandchild. Life insurance can be an attractive option because it is paid out as a lump sum and does not have the same income tax liabilities as retirement accounts.

Review Your Retirement Accounts

With the passage of the SECURE Act, most beneficiaries lost the ability to stretch distributions from an inherited IRA over their life expectancies. However, Congress created a new class of beneficiaries called "eligible designated beneficiaries," which includes disabled beneficiaries. These beneficiaries retain the ability to receive distributions over their life expectancies, reducing the amount of income tax due when those distributions are made. Congress also passed additional rules allowing the disabled beneficiary's life expectancy to be used for certain types of trusts. If you have a large retirement account, it is very important that we meet to discuss ways this money can be distributed after your death to maximize its benefits to all of your beneficiaries.

Give Me a Call

Ensuring that your special needs child or grandchild is cared for after you are gone is likely a top priority for you. Our priority is to assist you in crafting a plan that will ensure continued support and prosperity for your loved ones. Call me today to schedule your appointment.





Modern
dads



Unmarried
parents



End of gender-focused
parenting

Do Domestic Partners Have Legal Rights?

Written by Francine D. Ward

What Legal Rights Does a Domestic Partner Have?

Do Domestic Partners Have Legal Rights? Sadly, domestic partners have very few to no rights as compared to married couples when it comes to estate planning. In large part, it depends on where the domestic partners reside. In some cases, it even depends on the city and county within the state.

What Is a Domestic Partnership?

Before we can answer the question, Do Domestic Partners Have Legal Rights, we need to define domestic partners. Most people know what a marriage is. In short, it's a union between two people in the eyes of the law. And with marriage comes several legal benefits. Not everyone understands the concept of domestic partnership. In understanding what legal rights a domestic partner may have, let's define the term. Domestic partnerships are alternatives to marriage. These unions were initially structured to support same-sex couples who could not legally get married. In 2015, the U.S. Supreme Court legalized same-sex marriage making marriage an option for everyone, including same-sex couples.

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Any couple may choose to enter into a domestic partner relationship when they feel marriage is an undesirable option.

Generally, a domestic partnership is a relationship between two people who have chosen to live together indefinitely. They intend to be the other's only domestic partner and they may choose to be financially responsible for each other. In some cases, they choose to enter into a legal agreement that defines their respective responsibilities and rights. Each state determines how it treats such unions and the benefits it allows. As of today, most states offer NO domestic partnership benefits. In fact, very few states offer full benefits to domestic partners. The remaining states offer some benefits. Included in the list of benefits offered by some states are:

- health insurance
- sick leave
- parental leave
- death benefits
- the power to make financial and medical decisions on the partner's behalf
- adoption rights

In order to receive domestic partnership benefits, some states require that a couple registers with the state. Therefore, if you are in a domestic partnership, it's imperative that you know and understands your state's laws.

Estate Planning for Unmarried Couples

If you are an unmarried couple in a domestic partnership relationship or contemplating one, it is important that you understand the estate planning issues you may face. Each state has rules regarding what happens to someone's assets when they die or become incapacitated. If you are married, the default person is your spouse. Legally, they get to make decisions on your behalf. But if you are not legally married, what happens?



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Here are a few problems that could arise:

- If there is no power of attorney naming your partner as your agent, most institutions will not permit them to access your accounts if you become incapacitated or die. Without legal intervention, that would make it nearly impossible for your partner to manage your affairs. If there is no spouse, many states grant priority to children, parents, or other relatives, and in some cases, the state might just appoint a conservator.
- Another problem that could arise is without a legal document, your domestic partner would be unable to make medical decisions for you. Further, they might not be able to visit you in the hospital or obtain healthcare information about you if you become seriously ill or incapacitated. Again, most states' default laws specify that the person authorized to make those decisions and receive medical information is usually a child, parent, sibling, grandchild, or grandparent if there is no spouse.
- If there is no spouse, the domestic partner could lose out on income, government benefits, insurance benefits, or retirement benefits that are exclusive to a deceased person's surviving spouse.
- The marital deduction would not apply for federal estate or gift tax purposes if there is no spouse or a state exemption for unmarried couples.
- There would be no permitted tax deferral by rolling over retirement accounts since this benefit would only apply to the deceased account owner's surviving spouse.
- If there is no will or trust in place appointing the domestic partner as executor or trustee, by default only a family member would be allowed to serve in that position.
- If the domestic partner is not named as an owner or joint owner of certain property or on the accounts of the deceased, the domestic partner will likely not be able to receive.
- Finally, if you have children with your domestic partner but you are not the legal parent, you will lose out. Legal parentage can be demonstrated by adoption or some other legal proceeding giving you parental rights.

Sadly, this list shows that unmarried couples face several estate planning hurdles. That is why it's so important to know the law. Depending on your state and the extent to which your state recognizes domestic partnerships, some benefits might be available to unmarried couples. Other benefits, however, such as benefits under federal estate and gift tax laws or retirement account laws, are available only to married couples.

Because domestic partnership laws vary so much, it is important to consult with a lawyer. That attorney should be someone who not only understands the law but also how it applies to you. Know your rights before it's too late.



A WORD FROM YOUR

Trusted Legal Counselor



A question came In recently from social media: “Do you think that America is experiencing a low self-esteem epidemic that, if so, is rubbing off on our children?”

My answer is – ABSOLUTELY! And it’s not a new phenomenon. It may seem like low self-esteem, depression, and self-loathing are recent occurrences, but in truth, these mental plagues have been developing and building momentum for many years.

To understand this, we have to establish first that the building of self-esteem is a process. Likewise, the tearing down of one’s self-esteem also happens over time. You don’t just wake up one day and hate yourself—you have to be carefully conditioned into the mindset of overwhelming shame.

The Esteemable Acts® Concept suggests that a combination of things influences the way we see ourselves. Inappropriate, unhealthy, and unwholesome behavior contributes to that vision of who we are. In large part, how we act determines how we feel. If the truth is known, much of that behavior we learn at home. Here's something to think about:

1. Our addiction to and reliance upon our devices is passed on to our kids. We are the role models that kids are looking to when it comes to monitoring screen time.
2. Self-esteem is not always about telling someone how great they are, nor should criticism be the order of the day. Balance is critical and constructive feedback is essential.
3. Making safe choices by avoiding life’s challenges is not the road to building real and lasting self-esteem. Instead, developing tools that enable you to face life. Walking through fear will not only make you stronger but help you realize your goals.
4. Even for adults, understanding the anxiety comes not only from peer pressure but from social media. Reassess your relationship with social media.

I do think low self-esteem has reached pandemic proportions—you betcha! I also think that with a little self-awareness and being intentional with how we mitigate our own problem-solving, we can live fully and out loud. Until next time...



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