



# Estate Planning Essentials: A Guide for Families with a Loved One Who Has a Disability

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As the parent of a child with a disability, I've come to realize that my responsibilities don't end when my child turns 18—or even when I'm no longer here. My child may need support, advocacy, and financial stability for the rest of their life. That's why thoughtful, comprehensive estate planning isn't optional for families like mine—it's essential.

This guide outlines the key legal tools and strategies we can use to protect our child's future. Whether it's preserving government benefits, appointing trustworthy decision-makers, or making sure assets are managed wisely, estate planning gives us the ability to extend our love, protection, and guidance far beyond our own lifetimes.

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## Core Estate Planning Documents:

### Last Will and Testament

Directs how your assets will be distributed after death.

#### Why It's Crucial for Families Like Ours:

- Designates a **guardian** for minor or dependent adult children.
- Names an **executor** to manage your estate without court involvement.
- Allows you to direct your child's inheritance into a **Special Needs Trust (SNT)**, protecting eligibility for SSI and Medicaid.
- Can include protections in case a surviving parent remarries or becomes incapacitated.

### Revocable Living Trust (RLT)

A trust you create during your lifetime that becomes the legal owner of your assets.

#### Benefits for Long-Term Planning:

- Avoids probate—simplifies the process of transferring assets upon your death.
- Provides ongoing management of your child's inheritance through a trustee.
- Keeps financial matters **private** (unlike a will, which becomes public record).
- May reduce estate taxes if structured properly.

- Useful for holding real estate in multiple states or separating premarital property in blended families.

## **Durable Power of Attorney (POA)**

Allows a trusted individual to manage your financial affairs if you become incapacitated.

### **Key Powers to Include:**

- Managing Social Security, Medicaid, or other benefits for your child.
- Making gifts to your child's Special Needs Trust.
- Buying or selling real estate, managing business assets, filing taxes.
- Transferring property into your trust during your lifetime.

*Tip:* Ensure your POA specifically allows the agent to take actions in support of your child's ongoing needs and long-term financial planning.

## **Health Care Power of Attorney & HIPAA Authorization**

Authorizes someone to make medical decisions on your behalf and access health information if you're unable to do so.

### **Why It Matters:**

- Ensures someone who knows your values can make medical decisions if you're incapacitated.
- HIPAA authorization ensures that your health care agent can speak with doctors and access your records.

*Best Practice:* Use your state's official form, when available, to reduce issues with medical providers.

## **Living Will / Advance Directive**

Specifies your wishes regarding life-sustaining treatment.

### **For Parents:**

- Clarifies your preferences for end-of-life care, avoiding burdening your child or other family members with difficult decisions.
- Works in tandem with your Health Care POA.

# Lifetime Gifting Strategies to Support a Child with a Disability

## Annual Gift Tax Exclusion

- You can gift up to the federal exclusion amount (\$15,000 in 2018; indexed for inflation) to an unlimited number of recipients annually, tax-free.
- Gifting to a **Special Needs Trust** ensures the assets won't affect your child's government benefit eligibility.
- Gifting to an ABLE account is another great option which is simple and does not require additional administration that might be triggered when gifting to a Special Needs Trust.

## Medical and Educational Expense Exemptions

- Pay tuition or qualified medical expenses **directly to the provider** without triggering gift tax or affecting your child's benefits.
- These gifts do not count toward the annual exclusion limit and can be powerful planning tools.

## Why Trust Planning Is Often Better Than Outright Gifts

### Using a Special Needs Trust (SNT)

#### Why It's Essential:

- Direct gifts or inheritances can disqualify your child from benefits like SSI and Medicaid.
- A properly drafted SNT can:
  - Hold and manage assets for your child's benefit.
  - Pay for supplemental needs without affecting eligibility.
  - Be managed by a trustee with your child's best interests in mind.

#### Advantages of Trusts:

- Protects assets from misuse, creditors, and outside influence.
- Allows you to include instructions about how and when assets should be used.
- Can include "incentives" for life milestones or safeguards against substance abuse or financial exploitation.

*Tip:* A third-party Special Needs Trust (funded with your assets) is preferable to a first-party trust (funded with your child's own assets), when possible.

## Trustee Considerations

- Choose someone with financial knowledge and personal sensitivity to your child's needs.
- Consider naming a **professional co-trustee** (e.g., a bank or trust company) for ongoing oversight.
- Avoid naming your child as trustee if doing so would interfere with benefit eligibility.

As a parent, I've spent years advocating for my child's education, therapies, and daily needs. But true long-term security requires something more—a **legal and financial framework that outlives me**. With the right plan, I can rest knowing that my child will be protected, their dignity preserved, and their quality of life maintained.

Estate planning isn't just paperwork. It's a legacy of love, protection, and responsibility. For families like ours, it's one of the most important gifts we can give.