Long-term thinking

Creating a will that looks after the needs of a disabled adult child can be complex | *by Linda Silver Dranoff*

If you have an adult disabled child who needs your help, you probably worry about how to protect him or her after your death. Planning your will is going to be complicated.

Your decisions will depend on the level of his ability to care for himself physically and financially, the nature of his disability, whether he can be employed and whether he can live independently or requires supervision or institutional care. You may or may not have other children or family members who are willing to take responsibility for him.

Possible solutions

If you are not able to leave enough to support your child for his lifetime, then government assistance will be needed. Provincial governments generally have financial support programs in place for the impecunious mentally and physically disabled, which is paid until they reach age 65. Check the eligibility rules in your province or territory.

If you leave a bequest that isn't enough to care for him for his lifetime, you should investigate the impact on the availability of government funding. In Ontario, for example, the courts have ruled that if a recipient of government benefits receives occasional modest gifts from a trustee of discretionary amounts, he can still receive government benefits, including a monthly stipend and health and other benefits and support services.

The federal government provides a disability pension for contributors to the Canada Pension Plan. Both provincial disability and the federal disability pension end at age 65. After 65, a disabled person may get Old Age Pension and Guaranteed Income Supplement.

Choosing a trustee

You may appoint a trustee to manage any funds you leave and to pay discretionary amounts to your child. Appoint someone you trust and who knows and loves your child and is familiar with his needs and your wishes for him.

Consider choosing several trustees to work together and alternates if your trustee can't serve or also appoint a trust company.

Your will should specify whether a group of trustees must all agree on a decision or whether a majority will suffice. You can stipulate the extent of discretion and whether he or she may encroach on capital for the benefit of the child.

Annuities are often a very effective solution. You can instruct your executor to use a lump sum of capital to buy a life annuity from an insurance company, naming your child (or a trustee) as the beneficiary. The contract will provide that the insurance company guarantees a specified sum of money each month to your child for the rest of his or her life. The sum paid is a blend of interest and capital and attracts tax only on the interest portion of the payment.

Insurance companies have a fund to ensure the payment of a specified (maximum) monthly annuity sum, so your executor may need to purchase more than one annuity.

If you were supporting your child when you died and you do not leave a will or you leave a will that does not adequately provide for your child in view of your assets, your child or someone on his or her behalf (including Family Benefits or Welfare) has the legal right to apply under the provincial Dependant's Relief Laws for support based on need to be paid by the estate.

The Planned Lifetime Advocacy Network (PLAN) has organized another way for parents to provide for their children after their death. It facilitates the creation of surrogate families as support networks and offers estate planning advice to avoid institutionalization of children with disabilities. This organization started in B.C. in 1989 and has inspired a number of affiliated organizations across Canada.

Registered Disability Savings Plan

The Canadian government in its 2007 budget created a Registered Disability Savings Plan (RDSP) to allow tax-free saving for disabled persons. Contributions can be made starting in 2008 that will allow funds to be invested tax-free until withdrawal. People who qualify for the Disability Tax Credit will be eligible to open a RDSP. In addition, a Disability Savings Grant and Bond will provide a federal contribution to match contributions for 20 years up to a maximum of $3,500 a year.

The plan provides for a $200,000 maximum lifetime contribution with no annual limit, which may be made by the individual, family members or friends. Contributions will grow interest-free and will be permitted until the end of the year in which the child attains 59 years of age.

Consult a lawyer and financial adviser for expert help. This is not something you should plan on your own.

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