



1163 S. Beretania St
Honolulu, HI, 96814
Office: (808) 527-8818
Branch: (808) 536-1933
Cell: (808) 258-3733

kirk@specialneedshawaii.com
<http://www.specialneedshawaii.com/>

Top 10 Mistakes Caregivers of Dependents with Special Needs May Make When Planning

1. Disinheriting your dependent with special needs

Many people with special needs rely on government benefits to help provide food, shelter, and medical care. If you have been advised to ‘disinherit’ your dependent, remember that these public benefits provide no more than ‘bare bones’ necessities.

2. Having assets in your dependent’s name

In order to qualify for government benefits, such as Medicaid or Supplemental Security Income (SSI), a person cannot have more than \$2,000 in assets, in most states. If you leave funds or convertible assets directly to your dependent with special needs, they may have to be ‘spent down’ in order to qualify for these important benefits. Assets in your dependent’s name are subject to predators (who are attracted to those with limited capacity) and creditors. In addition, they are open to law suits, bankruptcy, and spendthrift situations.

3. Relying on your other children to take care of their sibling with special needs

You may be thrusting a moral obligation on one sibling to become the future caregiver of their sibling with special needs. Shouldering this type of burden can cause resentment. If the sibling without special needs gets married, would taking care of their brother or sister interfere in their lives? Will the spouse understand?

4. Leaving money to your other children to support their sibling with special needs

Closely related to the above...What if the sibling without special needs dies, gets divorced, sued, goes bankrupt, or just mismanages the funds? The funds may be lost forever. There is also no accounting here, and money can be used for other purposes by a spouse or child.

5. Having a 529 College Savings Plan, UTMA account or Savings Bond in your dependent’s name

If these total more than \$2,000, your dependent with special needs may be ineligible for government benefits.

6. Failing to Communicate Your Plan to Family Members

The best laid plans can ‘blow up’ because they are not communicated to immediate and extended family members. A well-meaning, but uninformed relative may leave funds directly to your dependent. This may undo all the hard work and expense you have gone through in setting up a plan. A plan is only as good as its weakest link, and communication and reviews are for many, the keys to success.

7. Failing to fund your trust properly

A special needs trust without assets is useless to your loved one with special needs. Any asset you wish to put into the trust requires a change in title or ownership. For example, if you want life insurance or retirement plans to pay into the trust when you die, you must be sure you’ve completed the proper owner and beneficiary designation forms.

8. Having the wrong kind of trust

There is more than one type of special needs trust. A common mistake is having a ‘payback’ provision (where the state can recover its expenses upon the death of the dependent with special needs) when it is unnecessary. A payback trust (OBRA ’93 Trust) is used only when the trust is funded with the assets of the dependent with special needs. A third-party trust is funded with assets from someone other than the dependent with special needs and does not require payback to the state. Any leftover assets can go to your named beneficiary.

9. Having the trust created by an inexperienced attorney

There are many types of attorneys, and many types of estate planning attorneys. Having a special needs trust set up properly requires specialized expertise. There are only a handful of attorneys who understand the process and ramifications. If the trust is not set up properly your loved one with special needs may be deemed ineligible for government benefits – and you will not be here to advocate your intentions. The state can deny coverage for essential services if the assets in the trust are considered to be ‘available’ to the dependent with special needs.

If your friend is an attorney and offers to author your trust, ask them if they have any experience in this area. Additionally, beware of trusts offered in ‘packages’ or ‘online’. In these cases, you may truly get what you pay for.

10. Dying intestate (without a will or trust)

Everyone has a will, because even if you didn’t create it, your state has one for you. A portion goes to your spouse and another portion goes to your children. Dying without a will may cause your child with special needs to receive over \$2,000. This may cause them to lose government benefit eligibility. Due to the complexity of federal and state laws, you may need to seek advice from your own legal counsel who can work with your other advisors to help you plan for the future of your dependent with special needs.

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