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Child Support and Special Needs: Six Important Questions

Parents of a child with special needs know that they must plan for the child's care and support way into the future. This is especially so if the individual is unlikely ever to be able to earn an income.

But what happens in cases of divorce? How does the issue of child support come into play, now and in the future, when the child is no longer a minor? Before you start the separation process, be sure to understand the answers to the following key questions.

What is the role of child support? Any divorce involving children must take their needs into account. Usually, the noncustodial parent is required to provide money to the parent who has custody of the children. The purpose of this support is to provide the same degree of financial security that the children had prior to their parents' separation.

How long does child support last for a child with special needs? In most cases, child support ends when children reach the age of majority and can earn their own living. But for those who will never be able to earn an income due to a permanent disability, support obligations can continue into the future,

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beyond childhood.

Although family law varies from state to state, in most cases courts will recognize the parents' obligation to support their special needs child even in the event of a divorce. This extends beyond childhood for those who require money for their care and support throughout their lives, and a portion of this funding is supplied by the noncustodial parent per the original divorce settlement.

Are there exceptions to child support once the person with special needs becomes an adult? Yes, depending on when the disability occurred. If the person became disabled as an adult, no child support payment would apply as part of a divorce settlement.

Courts will also look at the financial resources of the child with special needs. If these are sufficient to pay for that person's care and living expenses into the future, the noncustodial parent may not face support obligations, unless the assets are all held in a special needs trust.

How would a special needs trust affect child support requirements? Courts generally don't take income and assets in a special needs trust into account when determining the amount of child support to award the custodial parent.

Will ongoing child support affect the individual's eligibility for Supplemental Security Income (SSI)? Because access to SSI depends on a beneficiary's income and resources, even small increases in income can cause a reduction or loss of SSI benefits. Unfortunately, when an SSI beneficiary's parent is ordered to pay child support, those payments can end up ruining the beneficiary's access to government benefits. To protect against this outcome, it may make sense to create a special needs trust for the child's benefit. The court can then order the non-custodial parent to make support payments directly into the special needs trust. The trust will shelter the income and allow the beneficiary to retain SSI benefits, and, in many cases, the support payments can be retained in the trust if not immediately used.

How might estate planning figure in? In many cases, courts will require that the noncustodial parent provide for the special needs child in his or her will.

If you are in the beginning stages of separation or divorce, and you have a child with special needs, it is important to plan long into the future. Make a point to fully understand these key questions as you talk to your special needs planner and your divorce attorney.