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Five Ways to Distribute Assets to your Special Needs Child

When planning for your family's future, you might have questions about the best way to take care of a child with Special Needs. Here are 5 potential ways to address *Special Needs Estate Planning*, along with their pros and cons:

1. Distribute Assets Directly to the Child. Although this is the easiest and least expensive option, distributing monies directly to the Special Needs beneficiary carries risk. You can't do it if the beneficiary is still a minor. If an adult, is he/she capable of managing money? Who else could access the funds and are they trustworthy? Will he/she lose government benefits because these assets are in his/her individual name? This option is rarely the wisest choice.

2. Leave Money to Other Family Members. This usually happens with the understanding that the others (typically siblings) can and will take care of the *Special Needs* child. Unfortunately, there is no guarantee that they will do so. Or, the sibling might pass away, leaving money that **was** earmarked to his/her spouse and/or children, effectively cutting out the *Special Needs* child. Likewise, a divorce, accident or bankruptcy/lawsuit could put those funds in jeopardy.

3. Disinherit the Child Completely. Leaving "extra" money to your other children with the expectation that they will care for the *Special Needs* child is a risky assumption for the same reasons as noted in #2 above. After you pass, you won't have control of what actually transpires on behalf of the *Special Needs* child.

4. Establish a 3RD Party Discretionary Support Trust. "Third-party" in this case refers to the Trust being funded by assets that are not owned by the *Special Needs* beneficiary. The Trustee would have the discretion to use and distribute the Trust assets. As with the preceding options, it leaves the distribution of the assets vulnerable to decision-making that may not be in the best interest of the *Special Needs* child.

5. Establish a Special Needs Trust. Unlike the *Discretionary Support Trust* above, a *Special Needs Trust* ("SNT") insures the money will be used solely for the intended *Special Needs* beneficiary and not interfere with access to important governmental benefits. Whether it is a 1ST party SNT (funded by the beneficiary) or 3RD party SNT (funded by someone else for the beneficiary's benefit) determines how the assets are distributed at the death of the *Special Needs* beneficiary. It is important to discuss these differences with a qualified, experienced attorney before making a decision as to which one fits your situation. However, either option ensures that the funds shall be used for the benefit of the *Special Needs* beneficiary during his/her lifetime without jeopardizing any benefits or risking the loss of the assets because of outside forces.

Although every *Special Needs* child is different, worrying about what happens to your *Special Needs* child when you die is universal. Many of you know that I have a very special *Special Needs* daughter who made me a member of a very special "club", and it gives me great pleasure to serve the *Special Needs* community by assisting families in the same club. So, feel free to give me a buzz to discuss the things to do to best protect your own *Special Needs* child.



Adam and Ava Gumson

Guardianship of a Special Needs Ward is complicated.



Guardianship can provide certain protections for a *Special Needs* ward, but it is not always the best option. It can be expensive, involve the Court making decisions which are better left to the family, and sometimes results in designating a Guardian whom the parents might not have chosen. So, make sure you do the proper planning now. Guardianship should be a last resort – not a first.

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Attorney Adam S. Gumson of **JUPITER LAW CENTER** graduated from *Duke University (1988)* and the *University of Florida College of Law (1991 with Honors)*. In addition to preparing and reviewing Contracts, he primarily handles matters involving *Estate and Business Planning (including Wills, Trusts, Durable Powers of Attorney, Health Care Surrogates, Living Wills, Succession Planning, Contracts & Purchase/Sale Agreements)*, *Probate Estates, Family Law (Divorce, Custody, Alimony, Timesharing, Same-Sex relationships, Pre/Postnuptial Agreements, Modification actions and Collaborative Law)* and *Real Estate (Community Association, Residential/ Commercial Transactions, Deeds, Closings)*. He is married and resides in Jupiter with his wife and three children.

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