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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 1<sup>ST</sup> party SNT (funded by the beneficiary) or 3<sup>RD</sup> 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.



**Adam and Ava Gumson**

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.

## 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.

## Our Office



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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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