

Due Diligence

Will for child with special needs

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Families with a special child need to consider a few things before making a will

A well-written will can resolve many succession planning issues. The need for a clearly spelt-out will is even more important for families which have a child with special needs. Here's why:

Differential allocation

For one, among the siblings, the special child may need lifetime support and the parents may want to allocate a higher share to him/her.

Hence, there are chances of disputes if clear reasons are not spelled out in the will or siblings do not agree.

So it is important to build consensus and spell out the reasoning for any differential allocation.

Also, since the will contains favourable provisions towards the special child, it is necessary that this document mentions the exact nature of disability.

It can contain a statement such as "My daughter has mental retardation and having limited academic progress, is in need of special attention and support". This will help others to know the nature of the disability.

Provide for guardian

A guardian is an important person for families with a special needs child. He or she is the one who will manage the child's affairs when parents are no longer there.

Even in the eyes of law, once the disabled child attains the age of 18, any person, including parents, taking decisions on their behalf, will have to obtain guardianship legally.

Who will be the guardian and in what capacity he/she will manage the affairs of the child needs to be spelt out clearly in the will. Ideally, the will should contain provision for alternative guardian if the first choice is not available.

Sometimes, you may not want to appoint a single person as a guardian for both personal and financial affairs.

You may wish to appoint a caretaker for the child who will manage personal affairs while the guardian could manage the financial affairs.

The will should have the appointment and identity of the caretaker in detail.

Besides, there will be expenses when your child's guardian or caretaker assumes the role. It may be travel expenses for the guardian or transportation expenses of the child to the individual.

How these expenses will be paid for should be illustrated in the will clearly.

Funding through a trust

A trust is the most viable option for securing the child's future, given the limitations of the child with special needs.

A private trust is a separate legal entity; so, there are no individual owners. The child is designated as the beneficiary wherein he/she derives the benefit of all the income generated by the trust.

To manage the assets of the trust, two or three trustees are appointed. Families, relatives or friends can gift movable or immovable assets to the trust.

With a trust structure, parents ensure that the assets they have accumulated for their child goes to an entity that works only for the child's benefit.

The life insurance, investments such as mutual funds, fixed deposits, PPF, as well as assets such as property is transferred to the trust when the parents are no more.

This is done based on instructions from the will. Hence, it is important that the will clearly specifies the provision of bequeathing assets to the trust.

Other considerations

Many establishments such as defence have their own set up for drafting a will for their employees. Even then, in case of families with a special needs child, a detailed will is required for ensuring the effective distribution of the legacy towards the trust created for the child. In such an instance, the will created at the employer level should be mentioned in the current will.

There may be other considerations, based on your specific situation, which may emerge as you start writing your own will. It is important to think more deeply what you want and how and include the provisions in the will so that the executor can clearly understand your intentions.

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