

Published November 19th, 2014

## Lynn's Top Five

By Lynn Ballou, CFP(r)



Lynn Ballou is a CERTIFIED FINANCIAL PLANNER(tm) professional and co-owner of Ballou Plum Wealth Advisors, LLC, a Registered Investment Advisory (RIA) firm in Lafayette. Lynn is also a Registered Principal and Branch Manager with LPL Financial (LPL). The opinions voiced in this material are for general information only and not intended to provide specific advice or recommendation for any individual. This information is not intended to be a substitute for specific individualized tax or legal advice. We suggest that you discuss your specific situation with a qualified tax or legal advisor. Financial Planning offered through Ballou Plum Wealth Advisors, A Registered Investment Advisor and a separate entity. Securities offered through LPL Financial, member FINRA/SIPC.

Sometimes, the job of trustee can be split between two family members: one who will handle the financial issues and the other who handles the care issues. But more often than not, there are no family members who are available to take on this task. In that case, there are people who manage special needs trusts as a profession. They are called 'private professional fiduciaries,' they are licensed by the State, and the Private Professional Fiduciary (PPF) Association of California, which

According to the 2010 U.S. Census, nearly one in five Americans has a disability. While some are able to work and support themselves, many others depend on public benefits for their health care and very basic needs. A well-meaning family member or friend who wants to provide financial assistance, housing or food to a person who receives public benefits risks compromising or completely undermining the benefits eligibility of the very person they are trying to help. This is where a special needs trust comes in. The special needs trust is an estate planning tool that allows a family or friend to provide assistance to a person with a disability without interfering with that person's eligibility for public benefits - if that trust is properly drafted.

As you might imagine, this is a highly technical area of estate planning law. We are fortunate that local attorney, Polly Levin, an estate planning attorney whose focus is this specialty, practices in Walnut Creek. She kindly agreed to lend a hand to this column to shine a light on the issues surrounding this topic that you need to think about. Here are five of the most important elements to consider when establishing a Special Needs Trust (SNT).

1) Is a Special Needs Trust necessary? Polly's advice is that "if the family is planning for a child who is still young and it is unclear what her or his capabilities will be at adulthood, I recommend setting up a SNT." She adds, if not needed, it is revocable during the parents' lifetimes.

2) Choice of Trustee. Family member? Professional Fiduciary? Polly cautions that this is one of the most critical considerations, advising that, "Parents need to consider that the trustee will be charged with doing everything that the parent does for the child, which is generally a lot. I know of many families where the mother (usually) has stepped back from her career in order to be available to care and advocate for the child who has a disability. People generally assume that a family member will be willing to take over this huge role.

has a website."\* Polly strongly suggests to her clients that they interview a number of qualified professionals who have experience specifically in this field to see if they can find someone who they think would be a good fit. She also cautions, "The other issue is whether that person will still be around once the parents are gone. There are a few PPFs who have a large enough organization and a succession plan, but it is crucial to build a system into the trust for removing and replacing a PPF trustee."

3) Where will the child with a disability live after the parents are gone? Many issues have to be considered including if the child can afford to stay in the parent's home and what this means to all the other siblings regarding an equitable estate split. And a huge issue, Polly mentions, is: "Can the disabled child get the support needed if he or she continues to live in the home? Alternatively, can the parents set the child up in an independent living situation with appropriate support?" In essence, what's affordable, what's realistic - issues that should not be glossed over without in-depth consideration.

4) Costs. What's involved? Interestingly, it's typically not the price of setting up the specialized estate plan that's daunting, but the on-going costs to administer it during the life of the disabled child. Polly notes: "A small trust cannot indefinitely support having a PPF as trustee, which is often an issue because not every family has a large family support system to oversee and help with the day to day care of the child who is disabled." She notes that PPFs either charge a percentage of the assets under management (usually around 1 percent), or on an hourly basis. However, even with a small estate, some protection of benefits is better than none, so a SNT is still helpful for however long it lasts because it preserves eligibility for government benefits. A family with limited resources might develop a plan that involves a coordinated effort of family and friends who are willing to serve in some limited roles for little or no compensation alongside professionals who can do the more technical work and will need to be paid.

5) How to modify your estate plan to include a SNT for a child. Most of you grappling with this issue may already have a well-crafted estate plan in place, but for a variety of reasons have come to a cross-roads in your family planning where you see that the need to protect a child has become an increasingly prominent part of your thinking. Most estate planning attorneys are very open to letting you know that SNT planning is not an area of expertise for them, and they instead collaborate with those for whom this is a specialty. Some will continue to manage your estate plan and have someone with Polly's expertise expand on this newer part of the plan. Others will simply advise you to work solely with an estate planning attorney with a SNT specialty and will advise that they transfer to them your entire planning process.

There are no easy answers for those of you facing these tough choices of balancing available and crucial government benefits and the needs of a family member with a disability alongside potential future family asset availability. Surrounding yourself with an expert team of financial and estate planning advisors who can collaborate with you and your family will go a long way toward giving you some peace of mind. Staying current and communicating with your team will be an important part of this process, too, because this field continues to evolve as government funding and estate planning changes come into play. The following resources were referenced above and I hope you find them helpful.

2010 United States Census:

<http://www.census.gov/newroom/releases/archives/miscellaneous/cb12-134.html>

Private Professional Fiduciary Association of California:

<http://www.pfac-pro.org/whatis.php>

Reach the reporter at: [info@lamorindaweekly.com](mailto:info@lamorindaweekly.com)

[back](#)

Copyright © Lamorinda Weekly, Moraga CA