

“DISABLED HEIRS”

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Permanently disabled heirs are “forced” heirs no matter the age of the child. If you are the parent of a child that is permanently disabled, under Louisiana Laws that child is a “forced heir” which means you cannot prevent that child from inheriting his portion of your estate. If you have one forced heir, his portion is one-fourth (1/4). If you have two or more forced heirs, their portion is one-half (1/2) of your estate.

Most parents of a disabled child are well aware of the governmental assistance programs available to them to help with the medical and other expenses of that child. But some are not aware of the fact that should the child inherit money or get a settlement from a lawsuit, the disabled child will quickly become disqualified from receiving public assistance until his countable assets are reduced to \$2,000.00.

For example, Johnny’s parents have died without wills, leaving him what some would consider a “modest inheritance,” i.e. readily available cash in the bank. This modest inheritance would be used up very quickly for Johnny’s care should his Medicaid or Social Security Income be taken away. Or perhaps Johnny is in an auto accident and receives a settlement for injuries received in the accident. Again, such money would be quickly used up for maintenance and care when the governmental assistance is taken away.

This is indeed a dilemma for a disabled child and his parents. What is the solution? The government allows the establishment of Special Needs Trusts to insulate such money from being considered as an available resource to the disabled person for governmental assistance programs.

There are two types of Special Needs Trust; the Self Created Supplemental Needs Trust and the Third Party Trust. The Self Created Supplemental Needs Trust is a trust created for the disabled person to take receipt of the assets of the disabled person, such as money from the settlement of a personal injury case. At the death of the disabled child, the assets remaining in this trust must be used to reimburse the governmental agencies that provided services. The trust, itself, should provide for such reimbursement.

The third party trust is created by a parent to shelter assets that the disabled child would inherit. A parent can create a testamentary trust or inter vivos trust from which a parent’s assets are “poured” into the Special Needs Trust at his death. This Special Needs Trust limits the use of the trust assets to supplement the primary support of the governmental assistance programs such as Medicaid, Medicare, Social Security Income and Social Security Disability. Distributions from this trust would be made to provide the disabled child with more sophisticated medical, rehabilitative or education aids in order to provide the disabled child with a better quality of life. The trust would be for the lifetime of the disabled child and is insulated from being considered as an available resource to the beneficiary by a public support provider. At the death of the disabled child, the principal beneficiary (a non-disabled person) will receive what is left in the trust.

If a parent fails to create a Special Needs Trust for the disabled child, that child cannot

revoke his inheritance in order to maintain medicaid eligibility.

In conclusion, it is extremely important for the parents of a disabled child of any age to consult with a professional relative to estate planning for the child in order to protect and provide the disabled individual with the best quality of life available to him.

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