

Planning for the Special Child

(Part 1 of 2)

One of the most difficult (and rewarding) challenges for planners concerns special children. These are children who have a physical, mental, or emotional difficulty that makes them dependent on someone throughout their lives. Such children may require constant professional care, sporadic supervision, or parenting for life.

Their parents face a unique planning problem: ensuring that the children will receive the special care they need after the parents become disabled or die. If a client dies or become disabled, guardians and conservators may have a major role in the upbringing of the special child. It is important to understand the functions of those caretakers.

Generally speaking, special children whose parents are deceased or are disabled become wards of the court. This means that the probate court, or another tribunal designated by the state, appoints a guardian as a substitute parent to care for the special child. A guardian is charged with the personal supervision of the child. Although given great latitude in carrying out these details, the guardian is always subject to the control of the judge.

Anyone who is a ward of the court cannot own property outright. His or her property must be owned by someone else who manages the property for the benefit of the disadvantaged child, and who is charged with making recommendations as to how and why the funds are to be spent. This financial guardian, known in most states as a conservator, is appointed by the court as well. The roles of the conservator and the guardian are separate and distinct, and are usually not filled by the same people or institutions.

A conservatorship can be very expensive because it involves meticulous record keeping, high liability, and reliance on the judge's constant approval. Actions taken by the conservator, including extraordinary expenditures, special needs, and annual accountings, are subject to the judge's approval. Such approval can be difficult to obtain in a timely

manner. Many times, conservatorships, which traditionally are not a high priority in our legal system, get shuffled to the side as more immediate and urgent matters arise. Because conservators must often spend an inordinate amount of time attempting to get judicial approval, delays occur and expenses mount up.

Conservators are not necessarily family members. In fact, they are usually banks, other professional money managers, or lawyers.

Because of their concern with the monetary side of the equation and their liability, they are not as sensitive to the needs of their wards as the client would be. This is especially true if the client failed to leave them any instructions. In such cases, they must rely totally on the recommendations of the guardian and the approval of the probate judge before taking any action.

Next time, we'll look at some planning solutions!



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