CASE STUDY

Multi-Generational Estate Planning with a Focus on Special Needs

Case Background

Client Profile
Parents of three children in Georgia are exploring how to protect the interests of their special needs son, Oscar, age 18, while also protecting the interests of their other children, two daughters, Ashley, age 22, and, Rebecca, age 25.

Business Context
The parents, Ben and Abby, ages 54 and 53, have been clients of ABC Advisory Firm for five years and have a net worth of around $6,000,000. The goal is to help them implement an estate plan that ensures their children are protected and the advisory services of ABC Advisory Firm are in place for both this generation and the next. Therefore, to accomplish this goal, Ben and Abby's advisor, Greg, introduces them to Advocacy Trust LLC ("AT"), a privately owned Tennessee state-chartered trust company to help implement their estate planning objectives.

Investment Limitations
Ben and Abby do not have any investment restrictions at present. Provided, however, as they get older, they want to protect some of their wealth to ensure there are funds available to provide for Oscar's long-term needs.

Primary Concern
The long-term protection of Oscar's eligibility for government benefits and asset protection for the surviving spouse, and eventually, Ashley and Rebecca.

Primary Estate Planning
A planning team at AT meets with Greg, the ABC advisor, and Ben and Abby to discuss the planning goals outlined above. During the planning discussion and introduction to AT, the planning team identifies that it is best to separate the planning into two phases. The first phase is to implement a base-estate plan for Ben and Abby. The second phase is to implement a third-party special needs trust, similar to the trust outlined under federal law at 42 USC §1396p(d)(4(A) without the Medicaid reimbursement obligation.

- **Base-Estate Plan**
  Ben and Abby will both execute a last will and testament (a "Will"), revocable trusts that mirror one another, durable powers of attorney, healthcare surrogates/living wills, and HIPAA authorizations. These documents will ensure that all of Ben's and Abby's assets are transferred as they desire upon their death as opposed to being transferred according to state law (which can have unintended consequences, such as splitting assets between a surviving spouse and children). Generally, tangible personal property, such as equipment, jewelry, vehicles, boats, and furniture, will be transferred directly to individuals per the terms of the Will, while the remaining assets, such as investment accounts and real estate, will be held in trust for the benefit of a surviving spouse and Ashley and Rebecca. The goal with holding assets in trust for the benefit of a surviving spouse and children is the assets are available to the trust beneficiaries for their health, education, maintenance, and support ("HEMS"), and generally protected from claims of outside creditors and divorce proceedings.

The goal will be to have all non-tangible assets held in trust for the benefit of surviving spouse and children upon the first spouse's death, and then for the assets to be divided into three equal shares (this can always be adjusted to meet the goals of the client) for the benefit of Rebecca, Ashley, and Oscar. Provided, however, the trusts for Rebecca and Ashley will be permit distributions for their HEMS needs and will allow Rebecca and Ashley to become their own trustees upon the age of 35. Provided further, the share for Oscar will be transferred into an existing third-party special needs trust, as outlined below.

- **Third-Party Special Needs Trust for Oscar**
  At the time that Ben and Abby establish their base-estate plan above, they will also establish a third-party special needs trust for Oscar. This type of trust enables Oscar to benefit from unlimited amounts of assets (so long as they are held in this trust) without negatively impacting his eligibility to receive means-tested government benefits, such as Supplemental Security Income (SSI), Medicaid, and other forms of government assistance. Without the protection of this third-party SNT, Oscar will likely be ineligible to receive means-tested government benefits if he has assets greater than $2,000. This means that the acceptance and investment of an inheritance or gift — in an amount greater than $2,000 — will disqualify him from accessing means-tested government programs.

  It is important to note that not only can this trust receive assets from Ben and Abby upon their death, but also since it will be established immediately upon the execution of their base-estate plan, this trust will be in place for Ben and Abby to transfer assets into, as desired, during their lifetime. Additionally, this trust is available for other family and friends to leave gifts to without negatively impacting Oscar's eligibility for means-tested government benefits.

  The trust is designed to pay for items not covered by government benefits. For example, this can provide for Oscar's education, counseling, recreation, supplemental medical and dental expenses, annual check-ups, special medical equipment, transportation, electronic equipment, household furnishings, and vacations. Funds can also be used to purchase food and shelter, provided that these items run the risk of causing a reduction in Oscar's receipt of SSI benefits. Therefore, food and shelter purchases are often best satisfied through an ABLE account[1], when available.

  These trusts are not payback trusts because the assets used to fund it do not come from the trust beneficiary. Instead, the assets are transferred from a third party, such as Ben and Abby (or other family and friends), to the trust to support Oscar. Therefore, upon Oscar's death, any remaining assets held in trust can be disbursed to Ashley and Rebecca or as otherwise desired by Ben and Abby.

Finally, while a corporate trustee may or may not be valuable for the administration of the trusts identified in the base-estate plan above, AT recommended that it serve as the trustee of Oscar's third-party special needs trust so Oscar and his family have the immediate benefit of AT's expertise in administering special needs trusts and accessing government benefit programs available to individuals with disabilities around the country.

If you would like more information about any of the planning identified above, please contact planning@advocacytrust.com.

1. An ABLE account is a savings account for disabled individuals where the money held in the account does not impact the individual's eligibility for means-tested benefits. The disability, however, must have occurred prior to the individual's 26th birthday. The account can receive up to $19,000.00 per year (annually adjusted to align with the annual gift tax exclusion).

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