

trust can be created now with its own bank or credit union account, and other individuals, such as your siblings or parents, may contribute funds to the trust, either during their lives or at death.

Guardianships & Conservatorships

Parents of children with disabilities age 18 or over will want to have themselves or other family members appointed to serve as a guardian and conservator for that adult child in a brief court proceeding. A **guardian** controls where the child (known as the “**ward**”) resides, and can consent to and approve medical care to be provided to the ward. Generally speaking, a guardian has all of the powers, rights and duties that a parent has for his or her own minor child. A **conservator** is a **fiduciary** generally responsible for the ward’s financial matters.

To become a guardian and/or conservator, court approval is required. A brief petition is filed in the local district court in the county in which the child resides. Several weeks thereafter, the case will be set for a brief hearing before a district court judge. The proposed ward should meet with an attorney who can verify that a guardianship and conservatorship is appropriate. The ward and their attorney must generally be present at the hearing.

It is also necessary to obtain a medical opinion that a guardianship and conservatorship is appropriate. Assuming these issues are all in order, the court will approve the petition and the clerk will issue “letters” demonstrating the appointment.

CALVIN CURTIS ATTORNEY AT LAW, PLLC

Services

- Special Needs Trusts
- Guardianships & Conservatorships
- Estate Planning (Wills & Trusts)
- Long-Term Care and Medicaid Planning
- Administration of Trusts & Estates
- Probate
- Trustee Services
- Will Contests & Estate Litigation
- Financial Exploitation and Elder Abuse

About Us

Calvin Curtis has been recognized in *The Best Lawyers in America* ©(2009); Mountain States *Superlawyers* ©(2008); consistent recognition as one of “Utah’s Legal Elite” by *Utah Business* magazine; and is one of three attorneys in Utah certified by the *National Elder Law Foundation*.

Melody Seal has been admitted to the Bar in both Arizona and Utah. Prior to joining the firm, she practiced law for several years in Arizona, where she was a frequent speaker on guardianships and conservatorships, probate of decedents’ estates, and advance directives.

Darcy Fewkes is the firm office manager and administrative assistant. She is also a licensed real estate agent and has significant experience in financial services.

How Much Will It Cost?

Our estate planning services generally begin at \$600 per couple (including wills with testamentary trust provisions, financial powers of attorney, and advance health care directives). If you wish to include a revocable trust with special needs provisions, or a “stand alone special needs trust” in your planning, the fee will be several hundred dollars more. Our fee for obtaining appointment of a guardian and conservator generally begins at \$1,950, plus the \$360 court filing fee. (The cost of an additional attorney to represent the proposed ward is not included in this fee. We can recommend appropriate attorneys to represent the proposed ward.)

Our firm has a general policy of providing discounts from our standard fees to members of recognized disability groups. We can also reduce our fees when performing multiple services (like estate planning and a guardianship & conservatorship proceeding).

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**Legal Solutions for Families, Seniors
and Persons With Disabilities**



Darcy Fewkes – Melody Seal – Calvin Curtis

**Estate Planning,
Special Needs Trusts, &
Guardianship &
Conservatorship Services**

“I am recommending you to my friends with special needs children because you are thorough, you explain things well, and you are empathetic.”

LP, Provo, Utah

Estate Planning, Special Needs Trusts & Guardianship & Conservatorship Services

There are several important legal issues common to parents of adult and minor children with disabilities.

Estate Planning Issues

First, in a *Last Will and Testament* a parent can nominate a *guardian* and/or *conservator* to care for minor children, and any children with disabilities, upon the death of the parent or parents.

Second, parents should also have *financial powers of attorney* and *healthcare directives* in place. In a financial power of attorney, an individual can appoint agents (typically a spouse or adult children) to handle their financial affairs in the event they are unable to do so themselves. In the new Utah Advance Healthcare Directive, individuals can select agents to make decisions regarding medical care and treatment to be provided to them and set forth their personal directives regarding end of life issues.

Special Needs Trusts

Third, parents often struggle over how best to leave an *inheritance* to an adult child with disabilities and minor children with disabilities. In most cases, parents want to involve one or more of their other adult children, or close family members (and perhaps financial advisors), to assist their children with disabilities to properly manage, invest and apply funds for their benefit.

Often times, it is not advisable to leave a bequest or inheritance directly to a child with disabilities. The child may not be able to manage, invest and apply the funds in a judicious manner, and such a bequest or inheritance may interfere with, or disqualify a child with disabilities from receiving certain government benefits and other assistance, like *SSI* (Supplemental Security Income) and *Medicaid*. Nor is it advisable to leave the child's share of the estate in care of another child, intending that child to use the funds to provide for the care of a child with disabilities. While such planning may have the best of intentions, the recipient of the funds may misuse or spend the funds, or may suffer financial difficulties that jeopardize the availability of the funds for your child with disabilities. Moreover, in the event the "caretaker" child should pass away (perhaps with a spouse and children), there can be confusion over the proper ownership of the funds. For these and other reasons, lawyers prefer to clearly describe an appropriate estate plan in writing, rather than relying on others to carry out the terms of your estate plan based only on your discussions with them.

Trusts are often particularly appropriate estate planning devices in these circumstances. A trust is simply a written set of instructions whereby the person creating the trust (known as the *grantor* or *trustor*) drafts a set of instructions and directives for a *trustee* to carry out for the benefit of one or more *beneficiaries*.

Trusts commonly are used in all manner of estate planning situations. When properly funded, a trust can assist individuals in managing and administering their financial affairs during life, even if they should become incapacitated. For individuals with significant wealth, trusts can assist in avoiding the possible imposition of estate taxes. And when funded properly, trusts can also help individuals minimize or avoid the need for probate.

When children with disabilities are involved, trusts serve an important additional purpose. This can best be explained with some background. Generally speaking, children do not have an absolute right to inherit from a parent. Accordingly, if a parent conditions a bequest or inheritance to a child in a particular manner, the child generally is bound by and subject to those conditions. And if a child has no absolute right to demand funds from an estate or trust, generally government programs (such as SSI and Medicaid) cannot deem the funds to be available to the child, or make a demand on the child's behalf, as these programs have no greater right to the assets than the child has.

Accordingly, a parent may choose to leave a sum of money in trust for a child with disabilities, perhaps with one or more close family members serving as successor trustees upon the parent's death. If the terms of the trust provide that the Trustee is to utilize the funds in the Trustee's discretion to provide for the "*supplemental needs*" or "*special needs*" of a child with disabilities, the child has no

absolute right to demand an outright distribution of the funds, and government benefit programs cannot deem such funds to be available for the child's use or benefit. On the other hand, the Trustee can insure that the child's needs are met, and that the terms of the trust are followed properly.

With these principles in mind, a parent may choose to provide in their estate planning documents for the direct distribution of funds to children without disabilities upon the parent's death, while utilizing a "*special needs trust*" to provide ongoing benefits for a child with disabilities. In such a trust, the parent can describe the terms and conditions for which funds should be applied to benefit the child with disabilities, and provide the trustee with suitable discretion to apply funds to meet future needs. If drafted properly, such a trust can be an indispensable benefit to a child with disabilities.

The trust provisions described above can be incorporated in a will, known as a "*testamentary trust*." Drafting a will with special needs provisions is often less expensive than other alternatives, but it is not effective until the parent dies. A testamentary trust generally will require probate to be created. Alternatively, special needs provisions for a child with disabilities also can be included in an individual's *revocable or living trust*, which can be created and funded during the lifetime of the parent. Finally, a separate or "*stand alone*" *special needs trust* can be created for the benefit of a child with disabilities. Such a