



SPECIAL NEEDS ALERT

SPECIAL NEEDS ALERT is a commentary on topics of current interest – usually topics relating to planning for special needs individuals and changes to current tax and social assistance legislation. Professional advice should be obtained before acting on any of this information. ed.3/11

FINANCIAL SUPPORT, ASSET OWNERSHIP AND LEGAL CAPACITY

Structuring the overall finances of special needs individuals is a tricky job. Too often integrated financial planning is ignored even though Henson trusts, social assistance and perhaps even an RDSP have all been put in place. The missing ingredient is a plan that brings everything together.

I have prepared the attached chart, *Special Needs Individuals, Financial Support, Asset Ownership and Legal Capacity*, to illustrate important choices in the big picture. The components are first divided between special needs individuals who are legally competent and those who are not. Then there is a further break down between those who are self supporting and those who are not. Finally, each of these areas and situations is then expanded on in terms of Day to Day Financial Support, Long Term Financial Support and Property Ownership and Legal Capacity.

Planning for special needs individuals with cognitive issues is quite different than planning for those who are legally competent. The major problem for those with cognitive issues is that they are unlikely to be able to own property, make a will or control their finances. Ownership of their assets usually must vest in a trust or in someone else but should be structured so that trust assets eventually pass to other family members (when no longer needed) tax efficiently and as easily as possible.

All is not Black and White

Most special needs individuals will qualify for the benefits of the social assistance. Some will choose to take it or must take it to meet their financial needs. Others will choose not to receive social assistance because it is not necessary and if taken would constrain the quality of life which otherwise would be available.

Take a look at the attached chart to see where you or a special needs person in your family fits. Perhaps they qualify for social assistance, perhaps they don't, perhaps they can own property or maybe they cannot. What is important is to examine the constraints of each situation and then go to work on a comprehensive and long term financial plan.



**SPECIAL NEEDS INDIVIDUALS
FINANCIAL SUPPORT
ASSET OWNERSHIP AND LEGAL CAPACITY**

	LEGALLY COMPETENT			NOT LEGALLY COMPETENT		
	SELF SUPPORTING	NOT SELF SUFFICIENT		SELF SUPPORTING	NOT SELF SUFFICIENT	
		RECEIVING ODSP	NO ODSP		RECEIVING ODSP	NO ODSP
DAY TO DAY FINANCIAL SUPPORT						
CAN RECEIVE MINIMAL FAMILY SUPPORT	YES	YES	YES	YES	YES	YES
CAN RECEIVE SIGNIFICANT FAMILY SUPPORT	YES	NO	YES	YES	NO	YES
ELIGIBLE FOR ODSP	NO	YES	YES	NO	YES	YES
LONG TERM FINANCIAL SUPPORT						
CAN HAVE AN RDSP	YES	YES	YES	YES	YES	YES
CAN UTILIZE HENSON TRUST	N/A	YES	YES	N/A	YES	YES
CAN UTILIZE DISABILITY EXPENSE TRUST	N/A	YES	N/A	N/A	YES	N/A
CAN UTILIZE OTHER TRUSTS	YES	NO	YES	YES	NO	YES
CAN HAVE A LIFE ANNUITY	YES	NO	YES	YES	NO	YES
CAN RECEIVE SIGNIFICANT BEQUESTS	YES	NO	YES	NO	NO	NO
PROPERTY OWNERSHIP AND LEGAL CAPACITY						
CAN MAKE A WILL	YES	YES	YES	NO	NO	NO
CAN OWN A HOME	YES	YES	YES	NO	NO	NO
CAN OWN A VEHICLE	YES	YES	YES	NO	NO	NO
CAN OWN SIGNIFICANT OTHER PROPERTY	YES	NO	YES	NO	NO	NO

The Yes and No answers set out above are practical answers and could change depending on particular circumstances. We have assumed Ontario social assistance (ODSP) rules for social assistance which vary from province to province.

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