Special needs children need specialist estate planning

By Alex Simeonides, issued by Capital Legacy

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Being a parent is both challenging and rewarding. From the day our children are born they need us for everything. Obviously, babies require attention almost 24 hours a day - but every stage of their lives requires a new level of input and investment. Time, money, guidance, counsel and advice (when they take it). Then, one day, they spread their wings and fly the proverbial coop.

Getting our children to this point is no mean feat, as any parent will testify to. To be able to release them as self-sufficient adults into this world is a real achievement. It also marks a very significant life stage in a family's life cycle called the empty nest stage. It's usually at this stage that families have their lowest costs (no more school fees and extra mouths to feed) and their lowest debt (houses and credit cards are normally almost paid off). This is supposedly when you can catch-up on retirement savings and plan for the second half of your life and, of course, shore up for the legacy of the inheritance that every parent wants to leave for their children – however big or small.

The thought of one day passing away and leaving your grown-up children behind is tough but made easier if you know they are able to care for themselves financially – and hopefully any inheritance you leave behind can further assist them.

But what about parents of children who have special needs? What happens if your child is never in a position to leave home and the financial responsibility that all parents bear, never alleviates – in fact, potentially increases with age? What happens if you were to pass away? Who looks after your adult special needs child? Who manages their finances?

In SA, there are 700,000 children with disabilities under the age of 19 years.

In the 2011 national census, it was reported that there were 2.8 million people with disabilities in South Africa. At least 700,000 were under the age of 19 years, 1.2 million were between the ages of 20 and 59 years old and 900,000 were over the age of 60 years. How many of these people have outlived their parents and find themselves in very difficult financial situations?

The 2011 census also goes on to note that “there is low labour market absorption of persons with disabilities.” This is an understatement in a country that has one of the highest unemployment rates in the world.

The bottom line is that special needs children need specialist estate planning in order to properly secure their long-term financial security.

Parents of special needs children need to consider the following in their estate plan for their children:

1. Who will look after them and act as their legal guardian in the parent’s absence?
2. Where will they live and how will they afford basic living expenses such as utilities, rent, food etc.?
3. How will they afford to pay for medical bills and any specialist medical care?
4. If they are not yet grown-up, how will they afford education and a chance to live a productive life?
5. Who will have financial oversight of their inheritance to make sure it’s not squandered or misappropriated?

Good financial and estate planning starts with your will.

The reality is that establishing a good financial plan for your children starts with your last will and testament. This exercise forces you to think through and plan for both worst- and best-case scenarios and implement solutions now.

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Taking the time to draft your will now, allows you to consider the previously mentioned questions and strategically address each one of them. There’s no doubt that it’s difficult to manage the costs of raising a child with special needs and that it leaves little room for additional savings for retirement or their financial security when they grow up. But this is where life insurance and the right estate plan can be a game changer. Here’s why:

1. **Life insurance is cheaper when you’re younger.**
   It would take a lifetime to try to save a few hundred thousand rands to leave to your children, but through life insurance you could leave them an inheritance of millions of rands. The cost of life insurance increases as you get older so the sooner you start planning the better.

2. **Trusts are your friend.**
   It’s not a great idea leaving large sums of money to people who have never had to manage this before. This is where trusts are vital. A type A testamentary trust is a vehicle that has beneficial taxation regulations and can be used to provide for a child who is physically or mentally incapable of providing for themselves or is unable to manage their own finances. Professional trustees are charged with managing the finances to the sole benefit of your child, protecting them from abuse or just well-meaning mismanagement of the funds. This money needs to last them their lifetimes once you’re gone.

3. **Nominate a guardian who cares.**
   The role of the legal guardian is more than just to have signing power if your child is a minor or mentally or physically incapable of doing so. Their role is to love and care for your child and meet their emotional needs too. Any guardian who accepts this responsibility shouldn’t have to take on the additional financial burdens too – although this happens all too often. This is why life insurance paying to a trust to the benefit of your child is such a simple but powerful solution.

Type A testamentary trusts are also tax efficient – preserving more of your child’s inheritance.

A trust created for the sole benefit of a person with special needs who has a mental illness as defined in section one of the Mental Health Care Act, 2002 (Act No. 17 of 2002), or from a serious physical disability or illness as defined in section 18(3) of the Income Tax Act, No. 58 of 1962, may qualify as a type A special trust. This type of trust is taxed at a sliding scale from 18% to 45%, the same as natural persons, as opposed to a flat rate of 45% as for a normal trust. A type A special trust is also entitled to the annual R40,000 exclusion on capital gains.

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To trust or not to trust

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Being a parent is indeed challenging but conducting proper financial and estate planning now, will certainly alleviate huge stress and address very real challenges when we're no longer with our children.

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