

Estate Planning Essentials: Estate Planning IRL (‘In Real Life’)

Section 1.01 Case Study

Sarah is the sole caregiver for her disabled adult daughter, Jane. Jane has a history of mental health issues and severe diabetes, which have prevented her from living the ‘normal’ life of a 40-year old. She does not work and lives at home. She has been almost completely dependent on her mother for financial support and housing throughout her adult life.

Thankfully, Sarah is well-educated and employed in a professional career. She has a healthy income and a robust retirement. Through the years, Sarah has tapped into her savings – including her retirement account – to pay for her daughter’s bad loans, run-ins with law enforcement, necessary medical treatment, and other unexpected (and challenging) emergencies.

Sarah is aware of Jane’s dependence on her. To make things as easy as possible for her daughter, she has made sure that Jane is named as the beneficiary on her retirement accounts and as the Pay-On-Death (POD) beneficiary on all bank accounts. Sarah has a standard will, leaving everything to Jane.

Then one day, Sarah’s whole world is turned upside down. She is diagnosed with terminal cancer and passes away in less than a month’s time. Jane is understandably distraught, but things go from bad to worse.

Here is when I get involved. I am called by the Court when Sarah’s will is probated and the named executors decline to serve due to the complicated situation. I am appointed as Sarah’s executor, and the circumstances of Sarah’s daughter’s situation quickly come to light. Jane is on Medicaid, which is needs-based, and she is dependent on her benefits for insurance, disability income, and health care. If all of Sarah’s assets come into Jane’s hands as the will and beneficiary designations provide, Jane will be disqualified from all benefits. Taking into account her unique situation, our team proposes a self-settled special needs trust to hold the assets coming from Sarah’s estate, as well as the assets that pass directly to Jane like bank and retirement accounts. Jane agrees, thankfully, and takes the necessary steps to protect her benefits through a self-settled special needs trust and by enlisting the aid of our care coordination team.

To her credit, Sarah at least had a plan. She met with an attorney and had a basic will prepared. She put beneficiary designations on her financial assets. But, all this hard work was done in the context of an idealized view of Jane’s abilities and needs. It just didn’t work for Jane’s situation, IRL (in real life). Sarah intended to make sure Jane was provided for upon her death, but her planning failed to address how Jane’s situation would be impacted.

By implementing a special needs trust for Jane, we were able to ‘fix’ Sarah’s basic estate plan so it could benefit, rather than seriously burden, Jane. But, the story doesn’t stop there though; we still have work to do. Jane has never lived alone and has very little work experience. Her disability income is insufficient to cover most daily needs, so additional benefits are sought through our care coordination team. At this point, we advise Jane to move out of her mother’s house so it can be sold to fund Jane’s trust, and our team assists her in finding a suitable apartment which the trust will lease for her.

Jane is currently enrolled in programs for individuals with disabilities to provide some social support and a place to go during the day. Unfortunately, her mental health issues and uncontrolled diabetes are exacerbated by the loss of her mother, and soon Jane needs emergency medical attention. Our care coordination team immediately assists in finding the right team of physicians to diagnose and treat Jane's conditions, and we're glad to see the improvement is rapid. Our work with Jane is far from over, but now she has a 'circle of support' in place for her future.

Section 1.02 Moral of the Case Study

I wish I could say that Jane is the only client we have seen in these circumstances – when a parent's estate plan fails to properly address the needs of a child. Fortunately for Jane, she was within the age limit and had planning options available that allowed her to keep her benefits and protect her future. Other clients who come to us are sadly not as fortunate; they may be over the legal age limit to execute a self-settled special needs trust and a parent's estate plan leaves them with an inheritance which disqualifies them from current benefits and which must be spent down in order to qualify again.

We strongly encourage parents, grandparents, and caregivers to be realistic about the abilities of their children, grandchildren, and loved ones despite the tendency to look at situations with rose-colored lenses. In the context of estate planning, it is critical to examine the possible outcomes that an inheritance can have on family members, especially loved ones with disabilities. To create a plan that truly serves the purpose of being a benefit, rather than an unfortunate burden, **it must work IRL.**

When our team meets to discuss existing or new estate plans, clients have the opportunity to put protective measures in place for their beneficiaries if needed. We urge our clients to be realistic – and open – with us so we can best support their personal goals and help make them a reality.

If you or someone you know have questions about estate planning as it relates to loved ones with special needs or questions involving a unique situation, please reach out to us. Our team works with clients on simple plans all the way to very complex, sophisticated plans. Obtaining legal advice does not have to be scary or intimidating. We meet our clients where they're at and figure out how to provide the best solution possible.