



## **Leaving a Residence to a Person with a Disability**

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Finding an affordable place to live can feel nearly impossible due to the US housing shortage of millions of homes. Several factors make the challenge worse for people with disabilities. First, affordable housing is a challenge because a person with a disability who relies on means-tested benefits may have limited income and resources. Second, accessibility may be a challenge because affordable housing stock is generally older and may need costly renovations to be suitable for a person with a disability. Third, a person with a disability may have unique needs or behaviors that are difficult to accommodate in communal housing situations. As a result, parents often ask whether they should consider leaving the family home to a child with a disability. Sometimes, the child has lived with the parents, and the parents are considering whether the child should continue to live in the family home after the death of the parents. Other times, the child does not live in the family home, but the parents believe that the family home could provide a higher quality or more stable living situation.

This is a complicated question, and each situation is unique. Homeownership can be empowering and meaningful, but it is not practical in every case. A few of the important considerations are described below.

### **Practical considerations**

The first practical consideration is the child's interest in and ability to manage the home. If possible, the parents should involve their adult child in the decision-making process. Parents may be surprised to discover that their child prefers to choose their living environment and doesn't want to be restricted by the constraints of the family resident. If the child has limited executive function or cognitive impairments, managing a home can be overwhelming without an adequate support system.

The parents should critically review the physical suitability and location of the home for the child with a disability, both currently and as the child ages. If the child has physical disabilities, consider whether bathrooms, entrances, and living areas are sufficiently barrier-free considering the child's particular needs and assistive devices. Most homes can



be modified, but selling the family residence and purchasing a house that already fits the proper specifications may be a better option for a child with a disability. As with any decision involving real estate, location is also a key factor. A rural home may be great for an adult with a disability whose parents are primary caregivers. However, after the parents are gone, transportation, availability of caregivers, and access to medical providers may be more difficult.

If the person with a disability can't live alone, families must consider whether there is someone available to move in and provide support. Alternatively, government funded services, or hired personal care assistants could provide care, subject to eligibility requirements and family financial resources. Further, the family will need to determine a person who will be responsible for the expensive and time-consuming logistics of managing the house including bill payment, yard work, cleaning, and repairs.

### **Financial Considerations**

Owning a home can be expensive. Funds tied up in the home are unavailable for other purposes that might enhance the quality of life of the person with a disability. As the family contemplates this transition, it is important to prepare a detailed budget which takes into consideration the cost of taxes, insurance, landscaping, snow removal, utilities, upkeep, modifications, and repair. Parents may have sufficient assets to create a fund to cover these expenses, but if not, homeownership may simply be financially impossible to maintain after the parents' death.

### **Legal Title to Residence**

If a family decides that owning a home is both financially viable and in the best interest of the person with a disability, the next question is legal ownership of the home.

Parents may consider giving direct ownership of the home to the person with a disability. Direct home ownership can be a source of pride, dignity, and stability in a person's life. In addition, home ownership can ensure that the person can provide for their spouse or children by transferring the home to them at death, giving those individuals stability as well. Most governmental benefit programs do not consider the home an asset for purposes of determining eligibility for means-tested benefits. However, there are significant risks when the residence is owned directly by the person with a disability. If the person is vulnerable to financial exploitation, they may be convinced to transfer title, or agree to ill-advised encumbrances. A residence held in the person's individual name may be subject to



creditor claims and divorce judgments. States with estate recovery programs may impose a lien on the house if the person is absent from the home for a period of time, or at the death of the owner.

### **Special Needs Trust**

Instead, most families choose to transfer ownership to a third-party special needs trust (SNT) established by the parents. The parents name a trustee who has the responsibility of managing the home, handling financial issues, and monitoring maintenance. Additional assets may be added to the trust to provide funding for the expenses of home ownership, as well as other expenditures for the care of the person with a disability who is the beneficiary. The trust can include guidance as to the disposition of the home after the beneficiary can no longer live there, discretion to purchase a new home or to use the proceeds to pay for a different living arrangement. Because the home is not owned by the person with a disability, it is not subject to the beneficiary's creditor claims or government liens and is protected from individuals who might try to exploit a vulnerable beneficiary.

There is a common misconception that a special needs trust is prohibited from paying for shelter expenses. In fact, there is no restriction on a special needs trust paying for food or shelter, unless the trust document contains a specific restriction. For individuals who receive Supplemental Security Income (SSI), if a third-party, including an SNT, is providing in-kind support in the form of rent-free housing, the individual's SSI benefit will be reduced under Social Security Administration guidelines. This can be mitigated by requiring the beneficiary to pay rent to the trust. Note that this benefit reduction only applies to SSI and does not apply to individuals who are exclusively receiving payments under a program other than SSI.

### **Conclusion**

Housing is always a challenge in future planning for persons with disabilities and other complex needs. Arranging for a stable living situation is a high priority, and families and counselors must be increasingly creative as they struggle with the housing shortage. Families should realistically review practical and financial considerations and, when possible, involve the person with a disability in the decision-making process. A qualified attorney can help ensure that each family's unique needs and objectives are met.