

Episode 4: Legal and Long-Term Financial Planning (Part 1)

EFMP & Me podcast transcript

Karen Terry:

You are an EFMP family looking into a special needs trust or you're considering visiting your installation legal office. What can you expect? We'll talk about that and more in this podcast for EFMP families. Hi, I'm Karen Terry and today we're going to be talking about long-term and financial planning.

Hi, welcome to our podcast series about EFMP & Me and the Exceptional Family Member Program. In this podcast, we explore the many resources you can find on EFMP & Me, which can help you navigate the EFMP and find the answers you're looking for whenever and wherever you need them.

I'm Karen Terry, program analyst for the Office of Special Needs and your host for this episode. In today's podcast, we will be exploring the checklist and resources that you can find under the long-term and financial planning category of EFMP & Me. Within these checklists, you will find guidance for financial planning, transitioning to adulthood, secondary dependency, hospice care and much more.

Two of the main topics in long-term planning are financial planning and legal considerations. Those two topics intersect in a number of areas, but we're going to focus on estate planning today. We are going to be talking with legal and personal financial readiness subject matter experts to learn about what you should start thinking about in order to prepare for your family's future. It is never too early to start thinking about these things, especially when a special needs family member is involved who may require long-term care or other considerations. Of course, most of these processes being highlighted today are, obviously, applicable to every family member, regardless of whether or not they are part of EFMP. But they can take on a different level of complexity when you have a family member with special needs.

With that in mind, we will be discussing wills, special needs trust, guardianship and conservatorship, and legal and financial assistance that are available on installations. Now, that's a lot of ground to cover, so we have broken this episode into two parts. Part one will be discussing wills and the special needs trust, and financial and legal assistance that is available on installations. And part two's going to talk about guardianship and conservatorship, and planning for your future.

So, we have two subject matter experts we want to introduce, so let's get started with that. Planning for the future, both financially and legally, is an ongoing process that should be reviewed and updated regularly, or as family situations change or evolve. In this episode, we're talking with Lt. Col. Graham Bernstein, who is the associate deputy general counsel for the Office of the Deputy General Counsel for Personnel and Health Policy. Wow. And Mr. Andy Cohen, director of the Office of Financial Readiness.



Before I start with questions, can each of you take a minute to tell us about yourself and the work your team does for military families?

Lt. Col. Graham Bernstein:

Thanks Ms. Terry, I know that my title can be a little bit of a mouthful there. The Office of the Deputy General Counsel for Personnel and Health Policy is the primary legal counsel for the Under Secretary of Defense for Personnel and Readiness and its reporting offices. I know that's a lot of words right there. So, trying to make it as concise as possible, if a DOD policy matter has to do with people, our office is the legal support for the policy team working on that issue. From military justice, to health care, to families.

My portfolio includes, among other things, family policy, the Family Advocacy program, EFMP, military education and voluntary education, and legal assistance. As for me, personally, it might be helpful for your listeners to know that I am a military spouse myself. My wife is also an active-duty Air Force JAG, and we have two young children, who are very much part of the military family ecosystem. We also have a cat who goes by Colonel Snickers. He is not only the senior ranking member of our household, but also avails himself of DOD care and services from time to time. It's a pleasure and honor to be here. Back to you, Ms. Terry.

Karen Terry:

Oh, I'm not sure which I like more, the use of ecosystem in your intro, which is seriously one of my favorite words, or that you have a cat named Colonel Snickers. So thank you, Col. Bernstein.

Mr. Cohen, how about you and your team at the Office of Financial Readiness?

Andy Cohen:

Thank you, Karen.

Before I talk about the Office of Financial Readiness, I'd like to share a little bit about myself and my perspective on this important topic. I'm a military retiree, and a parent of a special needs child. And about 15 years ago, while planning to retire from the Army, much of what my wife and I learned was on our own without benefit of having resources, such as this podcast and the topics we'll talk about today readily available. So, I'm honored to be a part of today's podcast and see it not only as a part of my current job, but also as a way of paying it forward to those who helped us, and still do navigate this continuing journey. It is a continuing journey as needs resources and other factors change over time.

Now, about the department's Office of Financial Readiness. We are set up to support service members and their families through each phase of their military journey. Our mission is to lead the department's financial readiness efforts to ensure service members' confidence in their financial well-being through training and counseling, and to reduce stress so that they can focus on their military missions.

Karen Terry:

Paying it forward, I like that idea. And I approve of the clever pun from the Office of Financial Readiness.



So, welcome to you both. Just a quick reminder for our audience before we get started, the information provided by our guests today during this podcast is for general information purposes only and does not constitute formal legal or financial advice. Nor is it intended to establish an advisor-client relationship. For specific legal or financial advice you should contact your lawyer or financial advisor.

OK enough for the disclaimer. So, gentlemen, to be honest, I'm not sure where to start. There is so much to talk about. I feel that when you talk about long-term or estate planning for families with special needs, the legal and financial considerations quickly become entwined. So, it is difficult to talk about one without talking about the other. And I want to make sure we discuss each topic from both sides, so listeners can get a good understanding of what is involved in these kinds of plans. And give them a really solid place to start with their own research.

Now, a perfect example of this is estate planning. Col. Bernstein, first of all, can I call you Graham because Col. Bernstein is just a little too formal right now.

Lt. Col. Graham Bernstein:

Not at all. Please do.

Karen Terry:

OK. Graham, can you give us an overview of some of the common special needs legal services families can receive on their installation?

Lt. Col. Graham Bernstein:

Well, for starters, it's important to know that the legal services provided by your local installation can vary both in the type of services provided, and by who can qualify for those services. This is because the local commander and the staff judge advocate have the authority to moderate or expand services depending upon the needs of the local military community and available resources. So, for example, one installation might be willing to assist clients with a more detailed testamentary trust, which is the type of trust commonly used in place of a will, because they have an attorney with the necessary expertise on staff. Whereas, another installation may need to cut legal assistance services offered dramatically because there is a heavy population of deploying service members that are taking up all the available legal assistance bandwidth.

I know this can be frustrating for a lot of military families when you show up at your legal office and it's closed, or they're not providing the service that you want. So, the solution here, bottom line is, it's best to check with your local installation legal office to see what services they provide to whom, and when.

Karen Terry:

Makes sense.

Lt. Col. Graham Bernstein:



The Air Force hosts a great resource website for finding your local installation legal office and its contact information. You can find that at legalassistance.law.af.mil, again, all one word legalassistance.law.af.mil. That link is also available through the Military OneSource legal assistance splash page. So, this tool on this website is going to allow you to search legal assistance offices by branch of service and geographically by zip code or state to find contact information for your nearest legal assistance office. You'll get a phone number, an email address and, in some cases, you'll also get a link to that legal office's website. So, that's what I've encouraged you to do first is find your local legal office's contact information, and reach out to them to find out when they provide services, and what services they provide.

Karen Terry:

Oh, that sounds like a really good resource. We will be sure to include that in our episode description.

So, are there basic services a family can expect?

Lt. Col. Graham Bernstein:

Yeah, there are. Most installation legal offices can assist authorized patrons with drafting and executing wills, living wills and powers of attorney, which include health care powers of attorney, which are all part of your basic suite for estate planning.

Karen Terry:

OK.

Lt. Col. Graham Bernstein:

In addition to that, legal issues that your installation legal office should be able to help you with include adoptions, domestic relation issues, such as divorce, or child custody, or family care plans, landlord-tenant advice, immigration citizenship issues, tax issues and crime victim support. And then, recently, the military services have been expanding legal assistance offerings in the area of educational law in response to feedback from the military community regarding the challenges that our military families are facing in interacting with neighborhood school districts.

As a rule of thumb, your installation legal office is a good first stop for just about any noncriminal legal issue you might have, because even if they can't provide you with direct counsel, they should almost always be able to vector you to helpful resources and help you understand the way ahead in pursuing a self-help option to address your issues. Almost every legal office on your installation is also going to be able to provide you with referral services to find you a private attorney, if that's necessary.

Karen Terry:

OK, great.

Mr. Cohen, do you mind if I call you Andy?



Andy Cohen:

Not at all. Please do.

Karen Terry:

OK, great. Thank you.

Andy, what personal financial readiness services can be found on installation and where should people go to find them?

Andy Cohen:

That's a great question, Karen. The department has a number of financial and other resources available both on and off an installation. Installation resources include financial counselors located at an installation's military family readiness center. And for those who may not be near an installation such as members performing recruiting duty, or members of the guard and reserve, assistance may be provided, or contacted by credited financial counselors. And to contact those individuals, individuals should contact their family readiness support centers, or regional support centers.

In addition, counselors are available 24/7 via Military OneSource. details on these and other resources can be found on our official websites, which are finred.usalearning.gov and milspousemoneymission.org.

Karen Terry:

Let me interrupt a moment here just to assure listeners that are frantically trying to write these websites down, that all the websites mentioned will be listed in the episode description for part one and for part two of this episode.

Andy Cohen:

Thank you, Karen.

Finally, as we discuss available services today, we must remember or realize that estate planning for individuals caring for those with special needs is not a topic to be viewed as just a legal or financial issue. It's a combination of legal, financial and medical considerations that must inform each other and work together. We want to ensure families, caregivers, legal and financial people all talk and consult with one another to ensure the best outcomes.

Karen Terry:

Oh, thank you both. I think we have a number of things we can follow up on with the information you've given us so far. Let's start with the special needs trust, because this is a common topic I hear about and discussions on long-range planning.



Graham, can you tell us what a trust is and how a special needs trust differs from just your regular run-of-the-mill trust?

Lt. Col. Graham Bernstein:

I sure can, Karen. OK so, as simply as I can put it, a trust is a legal relationship in which the ownership of some form of property is split between the legal interest or title, and the equitable interest or benefit of that property. So, to put it in another way, you give your stuff to a trusted third-party and may promise to use that stuff in the way that benefits you or your designated beneficiary.

As a simple example, my 5-year-old son loves to run and play, like most children do, but he often gets thirsty while he's doing so. For that reason, he is very fastidious about having a water bottle with him wherever he goes. However, of course, he hates holding onto that water bottle so a common request, whenever we go out to the park or out around, is, "Dad, hold this." I'll spare you the specifics of that inevitable lecture about how to ask for something politely that this demand provokes. But I will go into detail about the trust that has just been formed between me and my son.

My son has property, his water bottle. He is the trustor or grantor of our trust. He has given his water bottle to me, his trustee, to care for. Implicit in his demand, "Hold this," was that I would hold onto his water bottle for his future benefit. He'd get mad at me if I drank all his water, or if I lost his water bottle. Rather my job as his trustee is to care for that water bottle and provide its benefits to the beneficiary, in this case also my son, whenever he comes around complaining that he's thirsty. This is an implicit trust right here.

Karen Terry:

OK, great. I think every parent can relate to that example.

Lt. Col. Graham Bernstein:

Hopefully, most other parents have had more luck in instilling manners into their young children. But yeah, I hope that example helps for people.

Now, switching to grownup trusts, those usually formalized in writing, but they follow the same basic dynamic. There's a grantor, who gives legal ownership of property to a trustee on the condition that the benefit of that property is reserved for a beneficiary, which may or may not be the person who gave the property, that grantor. There are literally dozens of variations on this theme used for various purposes from inter-vivos trust, to pet trusts, to testamentary trusts, all of which are outside the scope of what we're talking about right here. But as you mentioned, Karen, the one trust that is relevant particularly to this discussion is the special needs trust, a key tool for the care of special needs individuals.

A special needs trust follows the same conventions that we just discussed. There is a grantor, a trustee and a beneficiary. One of the biggest motivators behind a special needs trust is preserving the receipt of government benefits, such as Supplemental Security Income and Medicare benefits. These benefits are basically pots of money that the government will pay out to low-income individuals with disabilities. That's great news for special needs families. But the rub here is that there is a cap on what qualifies as low income. And that cap is quite low.



OK, individuals with disabilities who receive even modest inheritance or financial assistance from their families may quickly find themselves disqualified for these benefits. To avoid losing these benefits, inheritance or other monies can be paid into a special needs trust set up on behalf of the family member with disabilities. Since the special needs family member does not technically own those assets, the special needs trust does, they are not counted as part of the family member's financial assets and do not affect their access to government benefits such as Supplemental Security Income and Medicare benefits.

Another benefit of the special needs trust is that it provides a set of rules on how special needs family members will be cared for. And that set of rules is locked down in a written legal document. Having a formalized plan can provide tremendous peace of mind in assuring caregivers that their family member will be taken care of no matter what happens to the caregiver.

As a final note, before I shut up on this topic, I apologize, I am rather long-winded sometimes when you get me juiced up about an exciting topic like trusts. Some of your listeners might be thinking that special needs trusts don't apply to them. They don't make enough money to worry about the low-income cap, or they have a trusted family member who they can call upon and rely upon to care for their special needs family member in the event that something happens to the caregiver. To those folks, I say that all may be true, but please, please consider that your circumstances can easily change. You are planning for the long haul here. You are planning for the life of your special needs family member.

If you're a service member, consider that Servicemembers Group Life Insurance, commonly known as SGLI, and the military death gratuity, as well as other benefits you might be entitled to upon your death mean that your family stand to gain north of \$500,000 if something ever happens to you. That money could easily disqualify your special needs family member from receiving Medicare, or Supplemental Security Income benefits. If you are a special needs family, it is worth at least looking into the benefits and process to establishing a special needs trust.

Karen Terry:

I wholeheartedly, absolutely agree with what you just said.

Do you recommend a special needs trust instead of a will, or in addition to a will?

Lt. Col. Graham Bernstein:

Great question, Karen.

To start it's important to note that special needs trusts are not exclusively an estate planning tool, often caregivers of a special needs individual will set up a special need trust to be funded upon the caregiver's death through life insurance payouts, or other death-triggered lump sum payments. However, that is not a requirement. A special needs trust could be set up and partially funded while the caregiver is still alive and caring for the special needs individual. Indeed, it is an excellent option for family and friends seeking to contribute for the special need individual's care without accidentally disqualifying those special needs individuals from government benefits. So, if Cousin Larry wins the lotto and wants to donate \$50,000 to the support of his special needs family member, he can put that into a special needs



trust that already exists rather than giving it directly to the individual, because that will safeguard those federal benefits.

Money put into a special needs trust while the primary caregiver is still alive, could be used to pay for care not covered by government benefits, like adaptive equipment or specialized treatments.

So, moving on to answer your actual question, classic lawyer, right? I like to talk so much that I'll talk around your question for a little while before I actually answer it for you. To answer your question specifically, the special needs trust is generally only used for the care of the beneficiary. Therefore, if parents or caregivers have other assets to distribute, or last wishes to express another testamentary instrument is likely needed. That could be a will, or a testamentary trust or some other option. But the bottom line here is, is that usually you'll have a special needs trust in place, as well as some other option to take care of your personal benefit, your personal estate as the caregiver, not just what you're providing for your special needs individual after you are gone.

Karen Terry:

OK, that makes perfect sense the way you explained it. And I appreciate you taking the time to put the detail on to help everyone understand that because that makes sense.

So, family decides to create a special needs trust, is that something that the installation legal office can help with?

Lt. Col. Graham Bernstein:

Yeah so, all legal offices should be able to provide information on special needs trusts and referral services for families seeking a special needs trust. But the ability of an installation legal office to actually draft that special needs trust for a family is on a case-by-case basis. This is what we talked about at the start of the podcast that different installation legal offices have different levels of expertise, and different resources available to them.

So, special needs trusts are complicated documents that require specialist legal expertise. And, in addition to that, state-specific knowledge that not all installation legal offices are potentially going to have on tap for you. So, again as I said before, best advice is to call your local installation legal office and ask. At the bare minimum, they're going to give you some education on the process of establishing a special needs trust. And they're going to help walk you through the start of the process. You may find that your installation can do more than that. All you need to do is give them a call to find out more.

Karen Terry:

OK, yeah. And what I've heard about special needs trusts, and through doing some research on my own is that it's very important to have someone who is knowledgeable about the specifics of setting that up, so that they don't accidentally disqualify the individual for their benefits. So, that's great advice.

So Andy, there's a lot of talk about money going on. Money, money, money. What are the financial considerations families should be aware of before preparing a special needs trust?



Andy Cohen:

So, there are a number of considerations to remember. And first is that this is a journey and not a once-and-done check-the-box plan. Circumstances can and will change over time. And financial and estate planning documents may need to be updated and changed as well.

One of the key, if not key objective here is how do we ensure our family members needs not just financial, but in legal terms of the child's financial potential medical decisions and care are provided for when we're no longer capable of doing so ourselves? This takes on, as Graham indicated, additional significance when you do have someone with special needs.

Karen Terry:

I absolutely agree.

Andy Cohen:

So, consider the long-term planning will potentially include monetarily planning to provide not only for your special needs family member beyond your lifetime, but as well as balancing your retirement needs and the needs to care for your loved ones. It does no good to necessarily take care of your special needs individual if you are not in a position to take care of yourself and provide that care for a shorter period of time than you're capable for. So, you have to take care of the caregiver, as they say.

Other things to consider, and again Graham addressed a number of these things in his key points, is the relationship to the trust being able to access other benefits. For adults with disabilities who receive Social Security income it's important to know the regulations, which establish income limits for when Social Security income can be received and these limits change yearly in most cases. And being the beneficiary of an insurance policy or survivor benefit plan, otherwise known as SBP could affect the eligibility for benefits. Therefore, I can't stress enough Graham's point in talking to legal experts and understanding how the ownership of assets and the role of special needs trusts, along with other financial considerations come into play if we're working to maximize the benefits of a special needs family member.

Graham noted an individual may wish to fund a special needs trust with insurance proceeds. There are other assets you may want to consider placing into a special needs trust upon your death as well. These may include designating the trust as a beneficiary of your retirement accounts, like your Thrift Savings Plan, or if you have IRAs, or other savings accounts. Or for military retirees, a special needs trust can be named as a beneficiary of your survivor's benefit plan.

Karen Terry:

So, what about the ABLE account I've read about, how does that work?

Andy Cohen:

So, that's an excellent question because another type of account to provide support is the ABLE account, which is a recent development, a couple of years old. And it gives Americans with disabilities, an



opportunity to save in a tax-deferred account to supplement their government benefits. These accounts are established at the state level. So, regulations around ABLE accounts will vary.

In general, however, the beneficiary is eligible for an ABLE account if he or she is already receiving benefits under programs such as Supplemental Security Income or Social Security Disability Insurance. Of note, the disabling condition must have been evident prior to the beneficiary reaching the age of 26. Typically, individuals with disabilities can only have \$2,000 in assets at any given time to remain eligible for many government benefit programs to include Supplemental Security Income. But savings in an ABLE account up to \$100,000 will not affect eligibility for a Supplemental Security Income or other benefits. And even if the account exceeds \$100,000, the beneficiary will remain eligible to receive Medicaid.

The annual contribution for the ABLE account is \$15,000 per individual beneficiary. Total contribution limits over times vary by state. And some states allow tax deductions for contributions. Contributions to earnings in an ABLE account grow tax-deferred and withdrawals are tax free when used for qualified disability related expenses. Anyone may contribute to an ABLE account be it the account beneficiary, a parent, other family members or even friends. Current information on ABLE accounts are found on the IRS and Social Security websites.

Karen Terry:

Ooh, that's a lot of information. We will make a link available to the information for the ABLE account in the episode description. But you can also find it in the financial planning checklist on EFMP & Me.

Guys, we are going to break here. As I stated at the beginning, we'll make this a two-part episode. So, let's go to part two for the remainder of our conversation, which is going to be guardianship, conservatorship, and long-term financial planning. So, I will see you in part two.

Lt. Col. Graham Bernstein:

Great. Thank you. I'm excited.

Andy Cohen:

Thank you, Karen. Thank you, Graham. I look forward to coming back and continuing our conversation.

Karen Terry:

You've been listening to a podcast for EFMP families brought to you by the Office of Special Needs and by Military OneSource. Come back to catch our episode on guardianship or conservatorship. I'm Karen Terry. Thanks for listening.

