

Proxy Parent Foundation newsletter

SUMMER 2015 ISSUE 13

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PROXY PARENT FOUNDATION

Proxy Parent Foundation offers two services.

We are Trustee of the PLAN of California Master Pooled Trust, which is open as a trust vehicle for any disabled person in California.

We provide Personal Support Services for beneficiaries of our Special Needs Trusts who have a mental illness or brain disorder.

Just like a loving family, we coordinate public and private social services and medical care while providing family-like attention to help the person improve his or her quality of life.

Proxy Parent Foundation is a dba of Planned Lifetime Assistance Network (PLAN) of California, a 501(c)(3) nonprofit corporation.

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Welcome to Our Newest Board Member

The Proxy Parent Board of Directors is pleased to announce that Steve Pitman of Orange County has joined our Board of Directors. Steve brings to the organization, valued experience as a business owner and former school principal. He is most of all a family member and also an eloquent and outspoken advocate for the mentally ill, a NAMI (National Alliance on Mental Illness) state trainer for their Family to Family course and has served as past-president of NAMI-Orange County. Steve is a deeply compassionate volunteer and community leader for people who are disabled and their families. We are delighted to have Steve join our Proxy Parent organization.

Funding a Special Needs Trust with a Retirement Account

By Baron L. Miller*



Personal retirement accounts — IRA's, 401k's, and the like — have become popular devices for savings and investment. The chief benefit of most is that no income tax is paid on the earnings contributed to the account until they are

withdrawn and distributed to the contributor or to a designated beneficiary. The expectation is that distributions will occur after retirement when the contributor has a greater need for the money and is in a lower tax bracket. In the meantime the account will have the opportunity to benefit from having the entire contribution, including the amount of deferred taxes, to invest. This means the amount of taxes not paid can earn additional income for the account.

The contributor/owner of a retirement account has the ability to designate an after-death beneficiary of the account, one who will receive ownership of the account and the right to take distributions from it. A retirement account is frequently the major asset owned by one who wants to establish a fund for a disabled person unable to work, but if a disabled person who is receiving SSI and/or Medi-Cal were designated a beneficiary of a retirement account she would almost certainly lose her right to receive these public assistance benefits. A special needs trust established for her benefit could, however, receive ownership of the account without any effect on her public assistance rights.

What must be taken into consideration when designating a special needs trust as an after-death beneficiary of a retirement account is that there will be income taxes to pay on all money received from the account. This means that the trust will effectively receive from the account only net after-tax distributions. Also important to know is that if the gift to the trust is not structured correctly there could be a requirement to take taxable distributions from the account



before the distributions are needed, depriving the account of the opportunity to earn income on the amount of the deferred taxes.

Typically, a designated beneficiary of a retirement account can “roll over” the account i.e. change ownership into the beneficiary’s name and operate it as her own retirement account. This works particularly well where the beneficiary doesn’t have an immediate need for all of the (after-tax) money in the account. This roll-over right is available for a special needs trust to take advantage of, but the rules are specific and must be followed.

The basic rules which will allow a special needs trust to roll over a retirement account so that it can take distribution of the money in the account over a period of years instead of immediately, are as follows: the trust is validly established under state law, it is an irrevocable trust, all of its beneficiaries are identifiable, none of its beneficiaries are organizations such as charities, and certain documentation is provided to the retirement account administrator. These rules must be precisely followed.

The I.R.S. requires that retirement account owners begin to take distributions and pay taxes on them at age 70½. Where a trust is the owner, the distributions must begin when the eldest beneficiary of the trust turns 70½. So if an account is owned by a special needs trust, and after the death of the main beneficiary the balance would be distributed to one who is older than the trust’s main beneficiary, then

distributions would be required before the trust’s main beneficiary turns 70½.

There are potential pitfalls to funding a special needs trust with a retirement account, but if the rules are followed it can be a good source of money, and with tax advantages. Because the deferred tax can be invested with all other funds in the account, the amount of that tax is in essence an interest-free loan from the I.R.S. Using a retirement account to fund a special needs trust can work well, so long as adequate care is provided in both its establishment and its administration.

Baron L. Miller is an attorney in private practice in San Francisco who specializes in estate planning for California families of the mentally ill. He is a long-time NAMI family member, an advocate for the rights and interests of families of the mentally ill, and a board member of Proxy Parent Foundation. He does not charge for telephone consultations on the propriety of making payments for the benefit of an SSI recipient. He can be reached at 415.522.0500.

Achieving a Better Life Experience (ABLE) Act

By Gary M. Chang*

By now, you have probably heard of the ABLE Act that was signed into law on December 19, 2014 by President Obama. Although each state needs to take action to make the accounts available to its residents, or to reach agreements with

another state to operate one for the opt-out state’s residents (California’s remains to be established), as envisioned ABLE Act accounts, under new IRS Code Section 529A, resemble tax free qualified tuition savings programs, commonly called “529 accounts”. However despite some basic similarities there are several differences.

For instance, similarly to 529 accounts, with Able Act accounts although there is no income tax benefit at contribution, there is no tax on earnings and no tax on withdrawals. On the other hand, rather than a means for a family to save for higher education, 529A ABLE Act accounts will allow disabled persons to take withdrawals from an ABLE Act account for qualified expenses similar to what is allowed for a special needs trust and also, unlike a special needs trust, these people will be able to make some limited investment decisions, while still protecting their eligibility for such means tested government benefits as SSI and Medi-Cal. Still, it is important for the disabled community to be aware that this is an IRS statute, thus the Social Security Administration is still determining how these 529A accounts may impact the regulation and administration of their own domain, leading to what is and will be for a time a version of the Clash of the Titans fought with red tape.

Another of several other differences between 529 and 529A accounts are that while a beneficiary can have multiple 529 qualified tuition savings accounts and there is no federal residency requirement, a beneficiary of a 529A ABLE account is only



allowed one and it must be in his or her state of residence. This will be a problem if the disabled beneficiary moves from state to state or his or her state of residence does not establish an ABLE account or reach an arrangement with a sister state to administer one for them. As of now, California has not yet established their own ABL Act account, although I find it highly unlikely they won't.

Although like a 529 account, total contributions in a year are limited to the gift tax exclusion amount (currently \$14,000), there are several other rules specific to 529A accounts such as a beneficiary must have become disabled before the age of 26, and perhaps most importantly from a family estate planning perspective, should a beneficiary die with money remaining in an ABL Act account, it may be subject to a claim filed by their state's Medicaid plan, including 3rd party contributions.

Obviously implementation of the ABL Act is in a state of flux and there is much to unfold. Will ABL accounts replace the need for special needs trusts? Not likely due in part to the limited yearly funding amount. But could they turn out to be a useful tool to preserve key government benefits while still protecting and sheltering certain financial resources of disabled persons? That is possible and provides great hope. At the least, it will be worth keeping the ABL Act on your radar and asking your estate planning professional to keep you apprised as things develop.

**Gary M. Chang, Esq. is Director of Legal Affairs for Proxy Parent Foundation.*

Book Review

By Joseph DeCarlo*

[Anatomy of an Epidemic: Magic Bullets, Psychiatric Drugs, and the Astonishing Rise of Mental Illness in America](#) by Robert Whitaker.



I have chosen a controversial book by Robert Whitaker entitled

[Anatomy of an Epidemic](#), which would be better entitled "Anatomy of a Fraud". I did an exhaustive internet search, including Mr. Whitaker's own website and could not find that he had a medical degree or even a B.A. degree in journalism. He was a reporter for the Albany Times Union. He even says in his book foreword that "he has no personal attachment to mental illness". He also has no foundation or credentials for writing this book. Yellow journalism is defined as presenting little or no legitimate well-researched data and instead uses eye-catching headlines to sell more books. Whitaker uses terms like "magic bullets", "epidemic" and "encouraging more people to seek disability benefits". In conclusion, Mr. Whitaker, in my opinion is basically a fraud as he has no academic training, no clinical training and no experience in mental health fields. The

only reason I am doing this review is that many people have heard of the book and you might be questioned on its content. This book is divided into two parts. The first part describes the history of psychiatric treatment. The second part deals with use of antipsychotic drugs (which he has nothing good to say about these drugs or treatments). He claims virtues of love, food and understanding, is the answer, not drugs. D.J. Jaffe, founder of Mental Illness Policy Organization, wrote a good rebuttal report that can be found on Google. The best rebuttal is by Dr. Daniel Carlat who says correlation does not imply causation. More people take psych drugs and more people are psychiatrically disabled as Mr. Whitaker points out, but drugs have not caused the big jump in disability rates; rather, more treatment available and changes in Federal SSI Laws allow more people to receive benefits. Mr. Whitaker only cites statistics that benefit his pre-determined assumptions and omits statistics and studies that do not support his cause. This is not a book to buy or read for someone who has a family member who has mental illness.

**Joseph DeCarlo is the father of a 40-year old autistic son "Joey" who also has epilepsy. Joey lives at home with his parents and goes to Project Independence, a Regional Center of Orange County funded program. Mr. DeCarlo is President of the Proxy Parent Foundation and can be reached at joe@jdproperty.com.*

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I wish to help support Proxy Parent Foundation

a dba of Planned Lifetime Assistance Network of California

Enclosed is my Tax-deductible donation of

\$ _____

- Please use this donation to provide Proxy Parent Foundation's help to those who need it in the "here and now".
- Please use this donation as our Proxy Parent Foundation enrollment donation. (Enrollment donations must be \$1000 or more and can be made in payments.)

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