

Chances are you have a client who has a family member with some kind of special need. An advisor who lacks a basic understanding of these issues could jeopardize that family member's financial well-being

BY FIONA COLLIE

Planning



MARY ANNE EHLERT'S OFFICE IN Lincolnshire, Ill., is well stocked with boxes of Kleenex. The supply of tissues is not to help clients handle bad news about the markets. It is there for the often deeply personal conversations Ehlert and her team have with clients who are looking after family members with special needs.

"Once we open the door and they start talking about a [special needs] child," Ehlert says, "it becomes very emotional."

Ehlert is the founder and CEO of **Protected Tomorrows**, a company that provides training for financial advisors in serving clients who have family members with special needs. Ehlert's company also provides support to special-needs individuals, helping them to find appropriate housing, for example, and to apply for disability benefits. As well, Ehlert is the founder and CEO of **Ehlert Financial Group Inc.**, a financial advisory firm.

The financial concerns of individuals with special needs are an important but often underestimated issue. Many advisors, Ehlert says, don't believe this type of planning is something that comes up often. But there is a good chance someone on your client roster has a family member with special needs who may some day become dependent on your client. If one person in a large family has a special need, Ehlert adds, every person in that family is affected.

Broaching the subject of people with special needs or disabilities can be difficult, says Cameron Sievert, a wealth advisor with **ScotiaMcLeod Inc.** in Toronto. But being able to help families in these situations can be rewarding and can lead to stronger client/advisor relationships.

"It's not just somebody coming in and talking about their portfolio and the numbers," Sievert says. "This is about family. It's about talking about something that's really important to them on a personal level. It's not just about money."

FRAMING THE CONVERSATION

While most parents of a special-needs child will readily volunteer that information to their financial advisor, other family members may not be as forthcoming. But you should know if your client has, for example, a sibling, a niece, a nephew or an in-law with special needs.

Often, the sibling of a person with special needs will become the primary caregiver after their parents' deaths. Alternatively, the able sibling may simply decide to leave money to the brother or sister with special needs. But giving a lump sum of money to a disabled person can have drastic financial and legal implications, according to Brendon Pooran, founding lawyer with **Pooran Law Professional Corp.** in Toronto.

Ehlert always asks the following question during the initial client interview to make sure she is made aware of any special planning needs in a client's family: "Is there anyone in your family who will be de-

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SPECIAL NEEDS

pendent upon you emotionally or financially — if I look up, down and around?”

The phrase “up, down and around” is key, Ehlert says, because it forces clients to think not only about parents, children and grandchildren, but also about members of their own generation.

Once your client has identified a family member with special needs, Ehlert says, you should set up a followup meeting.

Disability planning requires extensive information-gathering, Sievert says, which often takes several meetings. Early on in the process, find out about any planning that your clients already have done, he says, and whether your clients know about the government programs for people with disabilities.

● GOVERNMENT PROGRAMS

A number of basic financial programs are in place to help individuals with special needs, says Graeme Treeby, an advisor with the **Special Needs Planning Group** in Stouffville, Ont. Any clients who have a family member with special needs should be aware of these benefits:

■ **Disability tax credit (DTC).** The DTC is a non-refundable tax credit. To qualify, the individual must be certified by a qualified practitioner as having a “severe and prolonged impairment.”

■ **Provincial savings programs.** Most provinces offer an income supplement for people with disabilities.

The Ontario provincial savings program (ODSP), for example, is an income supplement for an individual who has a disability that is expected to last for a year or more and significantly limits the person's ability to work, look after himself or herself, or get out in the community. Applicants must have their disability verified by a health professional. The ODSP also is subject to an asset and income test.

Similar programs are available across Canada, with criteria varying from province to province.

■ **Registered disability savings plan (RDSP).** This program is one of the newer federal government programs available to people with disabilities. The RDSP allows family members (usually parents) to deposit money into an account for the beneficiary, who has a disability. Up to \$200,000 in total can be deposited until Dec. 31 of the year the beneficiary turns 59. The federal government supplements RDSP accounts with Canada disability savings grants totalling up to \$70,000, and up to \$20,000 in Canada disability savings bonds, depending on the family's income. This money normally cannot be withdrawn until the beneficiary turns 49. To be eligible for an RDSP, the beneficiary must qualify for the DTC.

Determining which programs or savings tools are appropriate will involve weighing a number of factors, including your client family's asset level and income, the age of the special-needs family

member and the nature of the disability.

“It's not cookie-cutter,” says Treeby, who provides planning exclusively for people with special needs. “I don't go into one family and assume that every family is going to have the same needs.”

Treeby recommends that you ask about your client's family member's specific disability, how it manifests itself and what the future holds for that individual.

● BUILDING A NETWORK

Planning for a family member with special needs usually requires the help of additional professionals, Treeby says, such as a lawyer and a tax expert who are familiar with special-needs planning issues.

“You need a good lawyer who is competent in disability issues,” Treeby says, “and a good accountant who also is involved with the tax issues [related to] trusts and disabilities.”

Lawyers play an important role in the estate planning process, which is crucially important — and made more complicated — when a special-needs family member is involved.

Pooran prefers to meet with the financial advisor and the clients together to make sure all the items on the plan — both legal and financial — can be checked off. This type of meeting gives everyone involved the opportunity to ask questions and to establish what the person with the disability is going to need and who is going to provide it.

“After that,” Pooran says, “we take care of the legal [side] and the financial advisor takes care of the financial part of it.”

● TRUSTS

One of the most important roles a lawyer can perform in disability planning involves the creation of a trust as part of an estate plan. Such a trust enables the family to set money aside for — or bequeath money to — the disabled person without affecting that person's qualification for disability benefits.

Most government benefits are available only to those whose incomes fall below certain thresholds. A windfall from a well-meaning relative or benefactor could result in the disabled person losing his or her disability benefits. A trust, on the other hand, is treated as a separate entity from the beneficiary (the disabled person) and, therefore, will not affect his or her financial status.

So-called “Henson” trusts — a.k.a. “absolute discretionary” trusts — are specifically designed for special-needs planning. These trusts, which can be either “living” trusts or “testamentary” trusts, give full discretionary control of the trust's funds to a trustee and keep the funds out of the hands of the disabled beneficiary.

Henson-type trusts may be set up in British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island. To qualify for a Henson trust, the beneficiary must be eligible for the DTC.

Selecting the trustee is a crucial step in setting up a trust. The trustee will be responsible for managing the money on behalf of the disabled beneficiary and must act in that person's best interests. The trustee could be an individual, such as a sibling or other trusted family member, or a corporate entity, such as a trust company, that would perform the service for a fee.

Your client must give considerable thought to the selection of the trustee and should understand that the best choice is not always obvious. Not only does the candidate have to understand fully the responsibilities involved in managing a trust on behalf of the disabled person, Ehlert says, but the family also must consider the trustee's future.

In many cases, Ehlert recommends naming more than one trustee, in case the first named trustee becomes unable to fulfil his or her responsibilities. But your clients must be cautious. A client who considers naming the disabled person's brother and sister-in-law as joint trustees should think about what would happen if that couple were to get divorced.

Whether your client chooses a family member, friend or a professional trust service as the trustee, you must respect that decision.

“It really depends on the family's situation,” Sievert says. “Each family dynamic is different. So, you just have to guide the conversation a little bit and be respectful of people in those situations.”

Because the trustee will be handling the finances of the person with special needs, you, as the advisor, should get to know that person or people.

“Clients have a vested interest in our knowing about the trustees,” Sievert says. “So, they're usually fairly open to advisors being involved.”

● COMPETENCY

In extreme cases, it may be necessary for your client's family to have the person with the disability deemed legally incompetent, which involves naming a guardian when the disabled person reaches the age of majority. This step should be regarded a last resort because it strips the disabled individual of his or her legal rights. As well, the process of having someone declared legally incompetent can be a difficult one.

“If that person is not capable,” says Sébastien Desmarais, an associate with **Tierney Stauffer LLP** in Ottawa, “we have to apply to the court [for guardianship]. It's a long, expensive process.”

A preferable option, according to Desmarais, is to have the person with disabilities assign power of attorney (POA) to a trusted family member or professional. That is a less onerous process, one which allows the disabled person to maintain his or her rights until it becomes necessary to activate the POA.

Still, the selection of the person to hold the POA should not be taken lightly, as that

person could be given the responsibility of making important financial and personal-care decisions on behalf of the disabled person.

“[The trustees] essentially have control of the assets,” Desmarais says, “[and] control of decisions to be made on behalf of the incapable person, which is a tremendous power and authority.”

● BACK TO THE CLIENT

Once you have the foundation in place for the disabled family member, it is time to turn your client's attention to his or her own planning needs. Sometimes, clients will want to focus only on the needs of the person with special needs, Ehlert says, thus neglecting their own financial goals. But in order to care properly for the disabled family member, your client must look after him- or herself, too.

Ehlert uses the example of the flight attendant's instructions on the use of an oxygen mask in an emergency: if you have a child in your care, you are advised to secure your own mask before seeing to your child because you are not much use to that child if you can't breathe.

Similarly, your client will be of less help to a special-needs family member if the client does not have his or her finances in order. Says Ehlert: “It's about taking care of yourself.”

That means making sure your clients define their own retirement goals and set up a proper investment plan. You probably will find that your client's approach to financial planning is affected by the special-needs family member.

For example, Sievert says, having a family member with special needs can lower a client's tolerance to investment risk. To such clients, preservation of capital is often more important than growth.

Clients with a special-needs family member often will have two retirement plans. In cases in which a disabled child will need financial support for the rest of his or her life, you will have to create both a retirement plan for the parents and one for the child.

“It's a different slant on the planning that we do,” Ehlert says. “But we keep it focused on: ‘What's the cash flow today? What's the cash flow for yourself? What's the cash flow for your retirement?’ And then we build a separate cash flow for the person with the disability.”

● FACE THE ISSUE

Disability planning can be a daunting exercise for many advisors, says Ehlert. “It's very emotional,” she says. “And most financial advisors want to stay out of the emotional arena.”

Even if you don't want to make this type of planning the main focus of your practice, Ehlert says, you should contact another professional who does: “Do what you do well, and partner with somebody who does the stuff that you don't want to do.”

“But don't not do anything.”