

PLANNING FOR THE FUTURE

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WHO'S GOING TO LOOK AFTER MY ADULT CHILD WITH A DISABILITY WHEN I AM GONE?



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Purposes of Planning

- Legal, financial and medical
- Inheritance
- Future living arrangements
- Social security; Medicaid; SSI
- Housing with person directed support services
- Alternatives to Guardianship
- Community advocate(s)
- Periodic review
- Support services without an "ability to pay"

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Sources of Financial Support

- Parents
- Governmental benefits
- Person with a disability's earnings
- Other



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Government Programs

- Supplemental Security Income (SSI)
- Medicaid
- Social Security Disability Insurance (SSDI)
- Medicare
- Community Mental Health Services from local agencies or authorities
- Department of Health & Human Services



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Supplemental Security Income (SSI)

- Needs based (assets & income)
- "Disabled"
- Medicaid eligible

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Supplemental Security Income (SSI) Asset Test

- \$2,000 countable resources
- Resources not counted - examples
 - Home - owner occupied
 - Household goods and personal effects
 - Automobile
 - Special Needs Trusts

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Supplemental Security Income (SSI) – Income Test

- Cash
- In-kind (food & shelter)
- Earned
- Unearned

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Social Security Disability Income (SSDI)

- Insurance
- Disabled
 - Before age 22
 - Must be age 18 to qualify
- Medicare eligible after 2 years
- No asset test
- Earned income restriction
- No unearned income limit

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A Complete Estate Plan...

should include:

- Power of Attorney(s)
- Patient Advocate Designation(s)
- Trust (?)
- Will(s)
- Can also include
Letter(s) of Intent



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2 Main Goals of EP

- 1.) Planning for incapacity (e.g., DPOA, PAD, Trusts)
- 2.) Providing for loved ones after you have passed (e.g., Trusts, Wills)

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True or False?

- My estate avoids probate if it is subject to my Will.



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True or False?

- A will controls the distribution of all my property.



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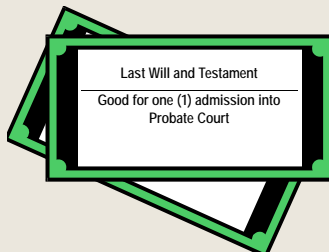
True or False?

- Estates can be arranged during lifetime so that no court is involved at the time of death.



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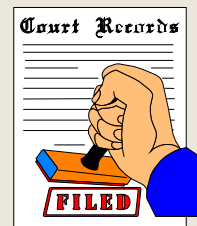
A Will Is a Ticket to Probate Court



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Purpose of Probate

- To change legal title to assets.



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Probate Is...

...the legal process by which title to property is transferred to heirs by a court.



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Methods of Avoiding Probate Court

- Joint tenancy
- Payable on death (P.O.D.) Accounts
- Beneficiary designations
- Gifting
- Living trusts

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Why Not...

...use “tenancy by the entirety” between spouses?

- Children must probate on death of surviving spouse;
- No time for planning if joint accident; and
- Avoid planning during time of grief for surviving spouse

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Why Not...

...use joint tenancy between parent and child?

- Parent may lose control;
- Property may be exposed to creditors of children; and
- Litigation may be necessary to protect property from debts of children

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PLANNING FOR PERSONS WITH DISABILITIES

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ABLE Accounts

- 529A Accounts; similar to 529 College Education Savings Accounts
- Tax-deferred/tax-free savings
- Administered by the states
- Michigan ABLE Account: www.miable.org

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ABLE Accounts Federal Requirements

- Payback requirement to the State for Medicaid benefits
- Must be “disabled” before the age of 26 if over the age of 18
- Only 1 account per person
- Can establish in any state; portable
- Can be established by individual

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ABLE Account Federal Requirements (cont)

- Total contributions cannot exceed more than annual gift exclusion amount
- Loss SSI eligibility if > \$100,000
- Not counted for Medicaid eligibility
- State maximums for 529 plans
- Funded with cash only

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ABLE Accounts “Qualified Expenses”

- Education
- Housing
- Transportation
- Employment Training & Support
- Assistive Technology & Personal Support Services
- Health & Wellness
- Financial Management Services
- Legal

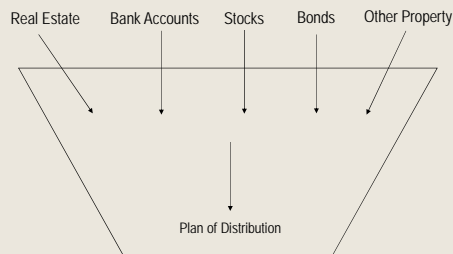
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Trusts

- A Trust is like a contract
- Settlor/Grantor - Creates and funds the Trust
- Trustee - Manages the Trust assets
- Beneficiary - Receives the beneficial use of the trust assets

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Funding the Trust



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Advantages of Trusts

- Allows you to provide for yourself (if you become incapacitated) and for your loved ones (after your death)
- Gives you maximum control of your assets and your decisions
- Keeps your wishes regarding assets private
- Minimizes taxes relating to transfers
- Avoids probate after death

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Types of Trusts for Persons with Disabilities

- Support Trust
- Third Party Trusts (also referred to as “amenities trust”)
- Pay-back Trusts (also referred to as “self settled”)
- Pooled Accounts Trust

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Support Trust

- Provides for support, care and maintenance of the beneficiary
- Created and funded by anyone including beneficiary
- Does NOT preserve eligibility for government benefits (e.g., Medicaid, SSI)
- Typically established by family members for individuals with special needs who do not need government benefits

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Special Needs Trust

Adult Child with a Disability

- Preserves Medicaid and SSI eligibility
- Provides for quality of life and care
- Maximize independence
- Provides for trustee to act as advocate

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Pay Back (Self-Settled) Trusts

- Established by a individual, guardian, parents, grandparents, or court
- Funded with the Beneficiary's own funds (e.g., lawsuit) only if under age 65
- Must be irrevocable
- Provides for amenities or extra items to promote quality of life and independence SOLEY for the benefit of the individual
- Primarily used to preserve government benefits
- Requires language in the trust that upon the death of the individual, the State is paid back **first** for any government benefits paid during his/her lifetime before distributing rest of trust assets to anyone else

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Pooled Accounts Trust



- Established and managed by non-profit charity.
- Created and funded by individual with a disability or parent / family members.
- Remainder goes to charity upon person's death.
- Benefit to people with small / midsize estates and/or small families.
- Money is used for "special needs" during lifetime.
- Protects Medicaid and SSI eligibility; No ability to pay beyond benefits.

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Third-Party (Amenities) Trust

- Established and funded with assets of a third party (e.g. family member), not beneficiary
- Provides for amenities or extra items or services
- If properly written, preserves beneficiary's eligibility for government benefits
- Balance to whomever Settlor/Grantor desires (unlike payback & pooled account trusts)
- Best for inheritance planning

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Why Create the Special Needs Trust Now?

- Available to receive gifts from others.
- To take advantage of planning that is beneficial to the entire family.
- Peace of mind!

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Selecting Trustees

- Can be more than one Trustee
- Name alternate Trustees
- Corporate vs Individual Trustees
- Trustee Duties (e.g., no self-dealing, preparing accounts)
- Watch for potential conflicts of interest (e.g., siblings)

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How to Fund a Special Needs Trust

- Will
- Living trust
- Gifts from grandparents and other family members
- Life insurance proceeds & other assets with SNT as beneficiary



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SNT Trust Administration

- Make distributions that will not affect government benefits (e.g., SSI, Medicaid)
- For sole benefit of individual only
- Trustee has “full discretion” as to how trust \$ is used
- Must manage funds prudently
- Other fiduciary duties (e.g., accountings)

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SNT can be used for:

- Medical treatment beyond Medicaid
- Dental Care
- Educational or Vocational services
- Other therapies
- Recreation expenses or outings
- Entertainment
- Travel for beneficiary
- Books, magazines, cable television
- Monitoring expenses

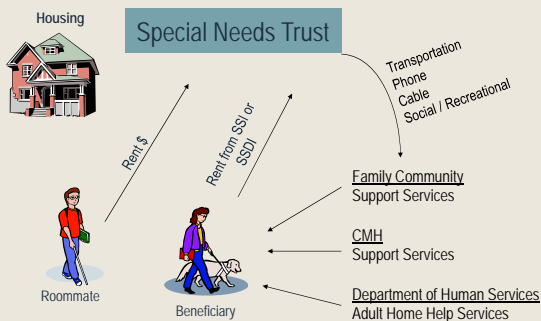
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SNT can be used for (cont):

- Non-standard or non-covered personal services
- Can purchase home & rent to beneficiary with or without roommates (payments must cover total cost of home)
- Housing expenses (if not on SSI)
- Can make the difference between success & failure of a placement
- Favors consumer choice & inclusion

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How It Works



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So, Why Doesn't Everyone Have a Special Needs Trust?

- Lack of awareness
- Fear of losing management and control
- Assets must be transferred to make the plan work
- Affordability
- Procrastination

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Letter Of Intent

Be Specific!



Housing with Person
Directed Supports



Medical Care
and Equipment



Education



Quality of Life
Social, travel, recreation, etc.



Transportation



Real/ Employment

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