

SPECIAL NEEDS PLANNING

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Purpose Of Estate Planning

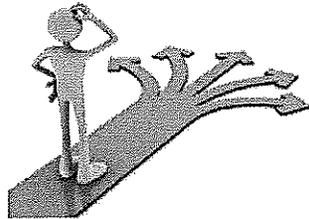
- Avoid Probate
- Reduce Estate Tax
- Protect Beneficiaries
- Protecting Assets From Unforeseen Creditors



Questions Your Estate Plan Should Answer

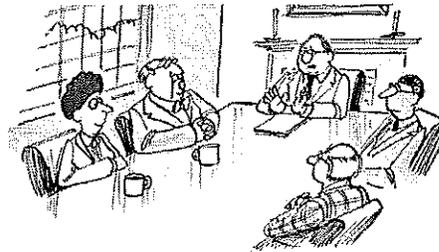
HOW WILL ASSETS TRANSFER?

- WHAT WILL I TRANSFER?
- TO WHOM?
- HOW?
- WHEN?



WHO MAKES DECISIONS WHEN I CANNOT?

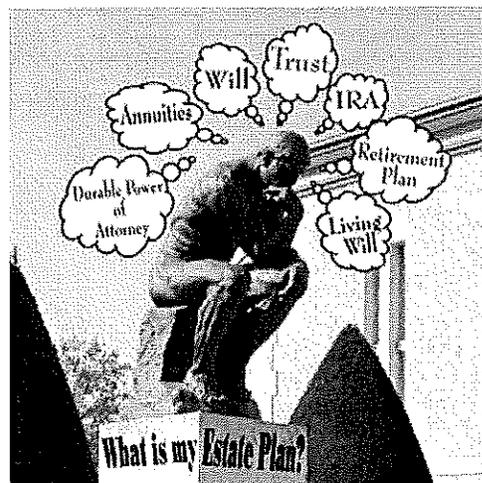
- FOR ME?
- FOR MY CHILDREN?



*"We have an agreement in principle.
The question is, do we all have the same principles?"*

Estate Plan Components

- Wills
- Trusts
 - Special Needs Trusts
- Marital Property Agreements
- HIPAA Authorization
- Powers Of Attorney
 - Finances
 - Healthcare
- Guardianship
 - Of The Estate
 - Of The Person



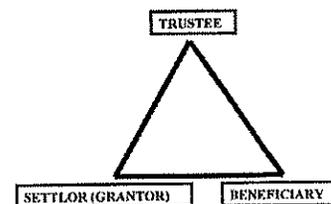
What are Special Needs Trusts (SNTs)?

- An SNT is a legal arrangement and fiduciary relationship
- SNTs allows a mentally or physical disabled person to maintain eligibility for public assistance disability benefits provided by Social Security, Supplemental Security Income, Medicare or Medicaid
- Assets held in the SNT do not count for the purposes of qualifying for public assistance, as long as they are not used for certain food or shelter expenditures
- No limits to the amount of assets allowed in the SNT



Basics of Special Needs Trusts

- Established by one or more **Settlors**
- Administered by a **Trustee**
 - individual or corporate
- For the benefit of a person with disabilities (**Beneficiary**)
- Intended to provide “supplemental care” and is not a basic support trust



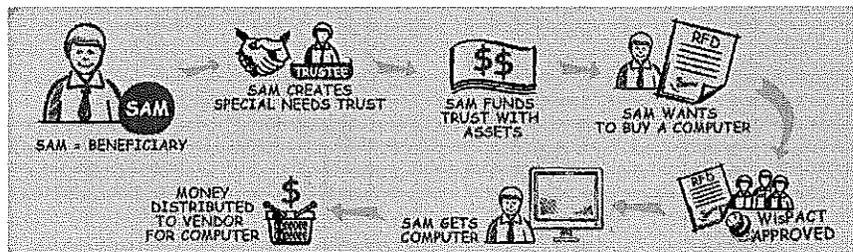
First Party Special Needs Trusts

- Funded with the **Beneficiary's** assets
- Common sources:
 - Personal injury settlement
 - Inheritance
 - Life insurance
- Assets are **subject to payback** at the beneficiary's death
- Assets can be distributed to an ABLÉ account
- Also known as "Self-Settled" Special Needs Trusts



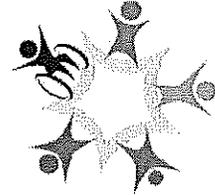
First Party Special Needs Trusts (cont'd)

- Beneficiary **must be under age 65** when the trust is established and funded (no additions are permitted after age 65)
- Special Needs Trust Fairness Act allows capable individuals to create a trust (previously without parent, grandparent, or guardian, would require a court order)



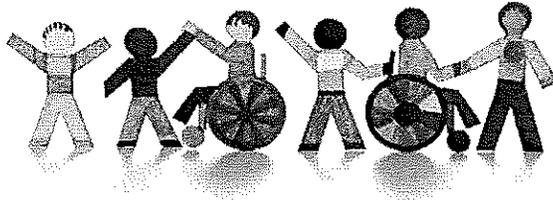
Third Party Special Needs Trusts

- Funded with **assets of a person other than the Beneficiary**
- Common sources:
 - Inheritance as part of an estate plan
 - Life Insurance with the SNT as the beneficiary
- The assets used to fund the trust are not, and have never been, owned by the beneficiary
- The third party (parent, grandparent, friend, etc.) creates the trust for the benefit of the disabled individual



Third Party Special Needs Trusts (cont'd)

- There is **no age limitation** on the Beneficiary
- Third party trusts are **not subject to payback**
- Allows for remainder beneficiaries to receive distributions after death of Beneficiary
- Often established as part of an estate plan





LIFE NAVIGATORS
Your Disability Partner
EST. 1949

Pooled Trusts

- A **pooled trust** is a trust established and administered by a non-profit organization, such as **WisPACT** and **Life Navigators**
- A separate account is established for each beneficiary of the trust, but for the purposes of investment and management of funds, the trust pools these accounts
- Can have First or Third Party Trusts
- Reasons to have pooled trust vs. independent:
 - Don't have an appropriate option for trustee
 - Small amount of assets to be administered



Distributions



- May pay for things that the beneficiary needs/wants
- May reimburse others for funds paid on behalf of beneficiary
- Limitations on distributions for food or shelter
- Cannot distribute cash directly to the beneficiary
- First party trusts have strict "sole benefit" rule
- Results of violating cash or SSI limitations, or sole benefit rule:
 - Distributions treated as income that reduces SSI benefit
 - Violation of sole benefit rule can make entire trust a countable asset

Special Needs Trusts and ABLE Accounts

- ABLE accounts are useful tools for individuals who are working and would like accumulate assets and control them
 - Beneficiary may possess direct access to funds when appropriate
 - Pay for food and shelter without SSI reduction
- Should be able to transfer funds from SNT to ABLE account without penalty.
 - In order to pay rent or food expenses
 - In order to give control over small amount of funds
 - In order to minimize trust tax rates



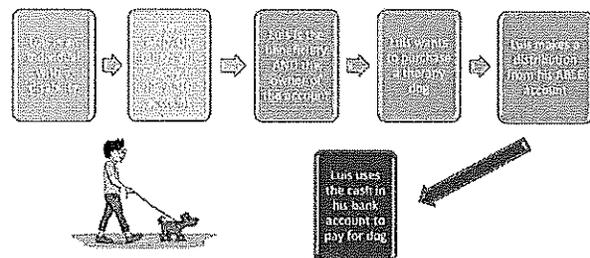
Special Needs Trusts and ABLE Accounts

Special Needs Trusts

- Receive more than \$14,000/year
- Exceed \$100,000 and still be exempt for purposes of SSI
- Provide oversight, planning strategies, financial management
- Pay for items that may not be "qualified disability expenses"
- Receive in-kind distributions vs. cash only
- Third party SNTs do not have a payback provision
- Beneficiary has **no control over assets**

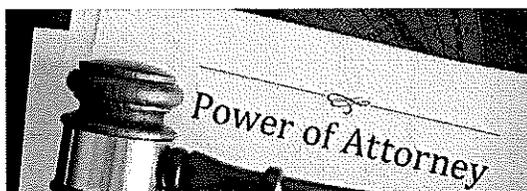
ABLE Accounts:

- Can distribute cash directly to the beneficiary's bank account, so long as used for qualified disability expenses OR not retained more than a month
- Can be used to pay for things that the beneficiary needs/wants that are "qualified disability expenses"
- Individual has **control over assets** and owns the account



Powers Of Attorney

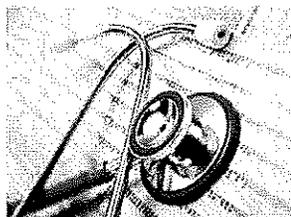
- Legal document where a person authorizes an **agent** who can act on a their behalf if/when they become incapacitated
- Person must have capacity to understand what they are signing
- Doctor can determine whether there is testamentary capacity if there is doubt
- Can be broad in scope or limited to specific purposes (**general vs. limited**)
- Benefits: Low cost, private, and can select your agents



Powers Of Attorney

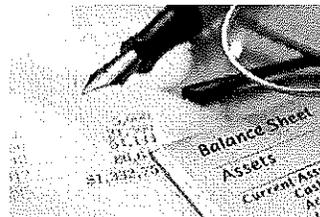
HEALTHCARE POWER OF ATTORNEY

- Allows agent to make decisions regarding healthcare needs
- Activated when a person lacks the ability to make and understand medical decisions



FINANCIAL POWER OF ATTORNEY

- Allows agent to made decisions regarding property
- Can be in effect immediately (**durable**) or upon incapacity (**springing**)



Guardianship

- Legal relationship where the Court gives a person (**Guardian**) the power to make decisions for a another (**Ward**) who, because of incapacity, is not able to take care of their own affairs (can also have corporate guardians)
- Appointing a guardian requires a Court proceeding (**hearing**)
- Court may also appoint:
 - Co-guardians (parents)
 - Standby guardian(s)
 - Successor guardian(s)
- Some counties require a hearing to appoint standby and/or successor



Guardianship

- Requires a medical evaluation
- Can be limited or broad
- Some actions require Court approval (ex. selling real estate, establishing a trust)
- Can be necessary even if the Ward has Powers of Attorney
- **Guardianship of the Person**
 - Allows Guardian to make healthcare decisions as well as others (ex. licenses, marriage, education and travel)
- **Guardianship of the Estate**
 - Allows Guardian to make financial decisions
 - Requires Inventory and Account to the Court



QUESTIONS?

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THANK YOU

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