

**FREEMAN**

L A W O F F I C E S , L L C

**PROTECTIVE ARRANGEMENTS/  
SPECIAL NEEDS TRUSTS**

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**AGENDA**

*A list of stuff that will  
blow your mind....*

## SUCH AS THE FOLLOWING...



- **Accepting that your child is becoming an adult;**
- **Ensuring your (adult) child is protected;**
- **Maximizing access to proper supports; and**
- **How to maintain those supports after you pass (e.g. Special Needs Trust).**

SITUATIONS WHERE A  
PROTECTIVE  
ARRANGEMENT MAY  
BE NECESSARY



**Medical**



**Financial**



**Living arrangements**



**Relationships**



**Education**

## TYPES OF PROTECTIVE ARRANGEMENT (ADULTS WITH SPECIAL NEEDS)

- **Power of Attorney**
- **Conservatorship**
- **Guardianship**





## POWER OF ATTORNEY

- Least restrictive;
- No legal proceeding required
- Individual must have capacity to understand what he or she is signing.
- Orally revocable
- No legal proceeding required

# GUARDIANSHIP/ CONSERVATORSHIP

## CONSERVATORSHIP:

- Voluntary
- Court appointed
- Covers property; not personal affairs.

## GUARDIANSHIP

- a person or agency that is legally authorized to act on behalf of an incapacitated adult to assure that the person's health, safety, and welfare needs are met and that his or her rights are protected.
- The duties of a guardian also include making decisions on behalf of the individual and giving informed consent in certain matters.,
- The guardian is required to involve the person in decision-making to the extent that his or her abilities permit.
- Limited or Plenary
- Court appointed
- Permanent unless someone petitions the court to remove.





OTHER  
GUARDIANSHIP  
RIGHTS



# QUESTIONS TO ASK....

ACADEMIC  
ABILITY

VULNERABILITY

SELF  
ADVOCACY  
SKILLS

MEDICAL  
NEEDS

COMMUNICATION  
SKILLS

MONEY



SAFETY  
VARENE

ENE

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# GUARDIANSHIP PROCESS

- Start a few months before your child turns 18.
- File:
  - Complaint For Guardianship
  - 2 Doctors Certifications (or 1 doctor if DDD eligible)
  - IEP
  - If someone other than the parent is applying, may be subject to background check.
  - \$200 Filing Fee
- Court appointed attorney
- Short Certificates



ADULT  
SERVICES

- Job coaching
- Health care
- Residential options (group home; supervised apartment; in home supports)
- Behavioral supports
- Speech/Language Therapy
- Day supports

# CONSIDERATIONS IN APPOINTING SUCCESSOR GUARDIANS IN YOUR LAST WILL & TESTAMENT

- Pick someone you trust
- Prepare a Letter of Intent
- Fund a Special Needs Trust (with life insurance or other resources) to ensure money is available for your adult child with special needs.
- Your child does not have to live with the successor guardian, but hopefully they live nearby.
- Recommend the successor guardian is 25 or older (although not required).



**WHY IS ESTATE  
PLANNING ESPECIALLY  
IMPORTANT WHEN YOU  
HAVE A CHILD WITH  
AUTISM?**

*PROTECT GOVERNMENT  
BENEFITS!*

- SSI – monthly checks for food, shelter and clothing.
- Medicaid – Health Insurance and primary funding source for adult services (e.g. DDD);

estate  
planning

# ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME AND MEDICAID

## SSI Eligibility

- Must be either (1) 65 years or older; (2) blind; or (3) disabled
- Income: Less than \$825.25 in gross monthly income or \$1216.35 for a couple
- Resources: Less than \$2000 if single or less than \$3000 if married couples living together).

## Medicaid Eligibility

- If eligible for SSI → automatically eligible for Medicaid.
- Otherwise, consider other Medicaid Programs (NJ Workability; Medicaid Only; etc);
  - Income limits are higher but resource limits depend on supports needed.
  - If in need of long term supports, keep resources under \$2000.



LAST WILL &  
TESTAMENT



SPECIAL NEEDS  
TRUST

**PROTECTING GOVERNMENT BENEFITS**



## ABLE ACCOUNTS/ SPECIAL NEEDS TRUSTS

### **3<sup>rd</sup> PARTY SPECIAL/SUPPLEMENTAL NEEDS TRUST**

- Preserves eligibility for needs-based resources (e.g. SSI/Medicaid)
- Holds money from 3<sup>rd</sup> parties;
- No Medicaid payback

### **SELF SETTLED SPECIAL NEEDS TRUST**

- Preserves eligibility for needs-based resources (e.g. SSI/Medicaid)
- Proceeds from inheritance;
- Person's own money
- Need Medicaid approval before certain expenditures
- Medicaid Payback (lien)

### **ABLE ACCOUNT**

- Preserves eligibility for needs-based resources (e.g. SSI/Medicaid)
- Invest up to \$18K/year or \$100K total – tax free;
- Limited investment options
- Medicaid Payback
- No attorney needed to set up





Questions?

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