



GUARDIANSHIP, WILLS, AND SPECIAL NEEDS TRUSTS

Jones & Ibrahim, PLLC

Serving people with disabilities and their families since 1992

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WHY MIGHT A GUARDIANSHIP OR CONSERVATORSHIP BE NECESSARY?

When people turn 18, they can legally make all of their own decisions unless a guardianship is in place. They can:

- Decide about medical and dental procedures
- Make housing arrangements and sign leases
- Sign contracts, including credit card contracts
- Get married
- Make social decisions
- Make education decisions
- Manage funds
- Interact with benefits agencies like SSA and DDA

A court can appoint a guardian to make some or all of these decisions.

ALTERNATIVES TO GUARDIANSHIP

Because a guardianship takes away someone's rights, **we always consider less restrictive alternatives first:**

- A power of attorney
- A limited guardianship
- A special needs trust
- A protective arrangement or supported decision-making agreement

We will help you sort through these options to see what is right for your family.



POWER OF ATTORNEY

Less restrictive than a guardianship.



Requires no court process.

The person must have capacity to sign the document.

Revocable, so it can be undone at any time.

Doesn't allow contracts to be voided or decisions to be overridden.

COMPARING GUARDIANSHIP AND POA



Guardianships require court proceedings; POAs do not



Guardianships do not require that the person understand the process; POAs do



Guardianships must be dismissed by a court; POAs are revocable



Guardianships are more expensive



Guardianships allow “bad” decisions to be replaced; POAs don’t

SPECIAL NEEDS TRUSTS AND ABLE ACCOUNTS

If a person only needs help managing money, a special needs trust or an ABLE account may work instead of a guardianship over the finances.

A trust can't replace a guardianship for other matters such as health, housing, or education.

More on trusts later in the presentation . . .



Guardianship = housing, medical,
educational, etc

Conservatorship = money, contracts

Each part can be “full” or “limited.”

The court order is tailored to the
person’s needs, and is designed to
have as few restrictions as possible.

**LIMITED
GUARDIANSHIPS/
CONSERVATORSHIPS**



ONGOING RESPONSIBILITIES OF THE GUARDIAN/ CONSERVATOR

**Ongoing reports to the court
with careful tracking of
finances.**

**Making decisions on behalf of
the person with the disability.**

***We represent many
guardians for their court
reports. Please contact us!**

TIMELINE

We prefer to start planning for a guardianship/ conservatorship a couple of months before the person turns 18, but we can start after that. We have done guardianships for people who are much older.

The standard timeline, provided that there are no contested issues, is **2-3** months from start to finish.





OTHER FAQs

Should I have a co-guardian? Often 2 parents, even if divorced, serve as co-guardians.

What is a successor guardian? A backup guardian that makes decisions if you are unable to.

What if I have no one to serve as successor guardian? You can select a professional.

We can help you sort through these decisions.

Wills, Special Needs Trusts, and ABLE Accounts

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Why have a will?

- Allows you to select your executor
- Allows you to establish testamentary trusts
- Allows you to control what happens to your probate assets after you pass away
- Allows you to have a plan to share with your family



What is a trust? What is a special needs trust?

A trust is like a bubble around assets to protect them. The trustee is the person who manages the trust. The beneficiary is the one who gets the benefit of the assets.

A special needs trust allows someone to stay on benefits like SSI, DDA, and Medicaid. These programs have asset limits, so if someone inherits funds without a trust, they can lose their benefits. A special needs trust prevents that from happening.

What types of special needs trusts are there?



First Party

Third Party

First party special needs trusts

When a person on SSI/Medicaid has more than \$2000 from:

Earning wages

Inheriting money that wasn't put in a special needs trust

Receiving a backpayment from the Social Security Administration

Receiving gifts from relatives

Receiving a settlement

Requires a Medicaid lien at person's death. Requires court supervision.

Third party special needs trusts

Anyone except the person with the disability can put in money

Can be set up to exist while you are alive (an inter vivos trust) or can be set up in your will to be established after you die (testamentary)

We can help you decide which option makes sense for your family



Why it is good to plan in advance

- You can set up a third-party special needs trust . When you pass away, the assets will go into that trust. The benefits will be protected, and Medicaid will not have to be paid back.
- If you have not done planning, when your family member inherits money from you, they may lose SSI, Medicaid, and/or DDA. While a first-party trust can be created after you pass away, Medicaid may have to be paid back, and court supervision will usually be required.

Planning ahead can prevent those consequences. First party trusts are great, but not for money that could have been third-party trust funds.

The DD Endowment Fund Trust

- Also known as the DD Life Opportunities Trust or DDLOT
- Must be a client of DDA (Developmental Disabilities Administration)
- Provides options for first party and third party special needs trusts
- Arc of Washington is the trust manager

Consider – would this be a good option for your situation?



ABLE accounts

- Each state has an ABLE program
www.washingtonstateable.com
- Allows for up to \$16k/year to be put in without impacting benefits, also allows wages up to certain limits
- \$100,000 cap to retain SSI
- Has a Medicaid payback requirement
- Requires a bond and perhaps other court fees if there's a guardianship
- Can allow a debit card

Can I do my trust and estate plan myself?

Having the wrong type of trust, a will that doesn't meet legal requirements, or having no will can cause problems for the person with the disability's benefits.

We can consult with you about what estate planning you need. This will give you peace of mind and prevent issues down the road for your family.



Putting it all together



**ESTABLISH A
WILL**



**ESTABLISH A
THIRD-PARTY
SPECIAL NEEDS
TRUST IN YOUR
WILL OR THAT
WORKS IN
COMBINATION
WITH YOUR WILL**



**MAKE SURE
BENEFICIARY
DESIGNATIONS (SUCH
AS LIFE INSURANCE)
NAME THE TRUST
RATHER THAN THE
INDIVIDUAL IF YOU
WANT NON-PROBATE
ASSETS LEFT TO THE
TRUST.**



**REVIEW YOUR
ESTATE PLAN
EVERY 5-7 YEARS**



**HAVE A POWER
OF ATTORNEY
FOR YOURSELF,
AND A
HEALTHCARE
DIRECTIVE IF
YOU WANT ONE**

Why seek our help?

- At Jones & Ibrahim, we have helped hundreds of clients make decisions about their estate plans, trusts, and guardianships.
- We charge affordable flat fees, and keep the process straightforward and efficient.
- Our attorneys and support staff have immediate family members with disabilities, so we understand families' concern about planning for the future.

Disclaimer: this power point is for general purposes only, and does not constitute legal advice. No attorney-client relationship exists until you contact our firm and consult with us about your particular situation. This power point was written in 2020 and is intended to be an overview of information at that time. We encourage clients to seek legal advice from a knowledgeable professional before making decisions about any type of trust, since the consequences can be difficult when things are not done exactly in accordance with federal and state rules and regulations.