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The How & Why of Estate Planning



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The How & Why of Estate Planning



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Today's Presenter



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What is Estate Planning?

The act of preparing for:

1. The transfer of wealth and assets after death.
2. The management of assets upon disability.

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www.ssa.gov/myaccount

- Estimates of retirement and disability benefits you and your dependents may receive.
- Estimates of benefits your family may get when you die.

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Typical Estate Planning Documents

- **Wills**
- **Trusts** - revocable living trusts, special needs trusts, etc.
- **Deeds** - deed to living trust, transfer-on-death deed, etc.
- **Durable Power of Attorney**
- **Medical Power of Attorney**
- HIPAA Authorization
- Directive to Physicians ("Living Will")
- Declaration of Guardian (for self or child)



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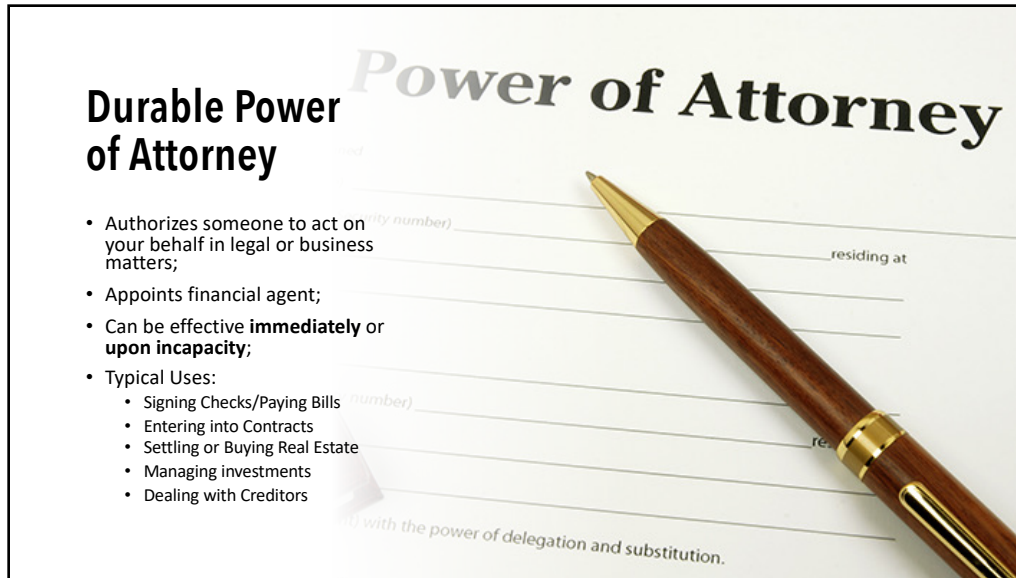
Medical Power of Attorney

- Authorizes someone to make medical decisions **upon your incapacity**;
- Includes treatment decisions as well as placement decisions such as nursing home or assisted living facility;
- No authority to spend money or sell property.



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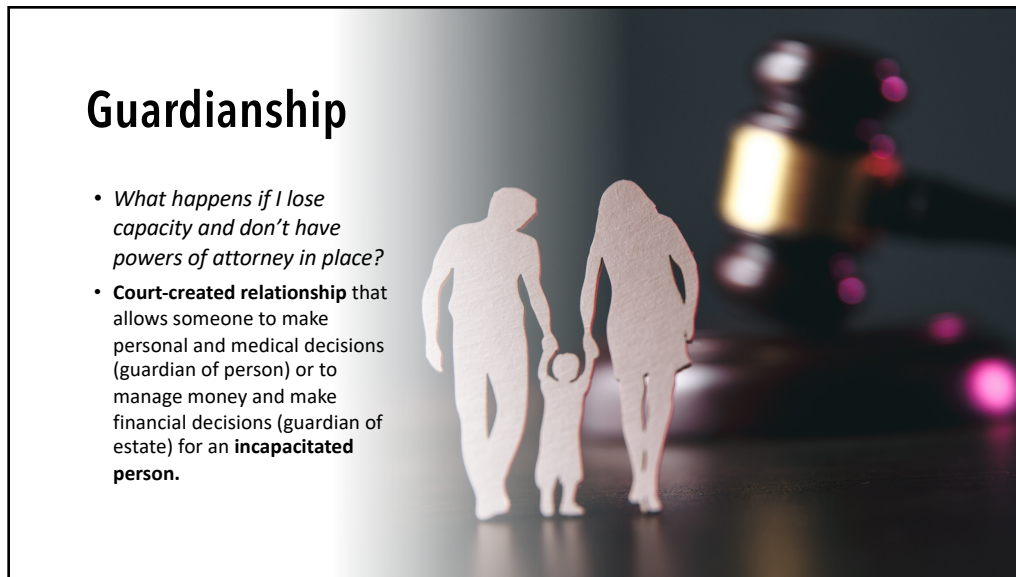
Durable Power of Attorney



- Authorizes someone to act on your behalf in legal or business matters;
- Appoints financial agent;
- Can be effective **immediately or upon incapacity**;
- Typical Uses:
 - Signing Checks/Paying Bills
 - Entering into Contracts
 - Settling or Buying Real Estate
 - Managing investments
 - Dealing with Creditors

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Guardianship



- *What happens if I lose capacity and don't have powers of attorney in place?*
- **Court-created relationship** that allows someone to make personal and medical decisions (guardian of person) or to manage money and make financial decisions (guardian of estate) for an **incapacitated person**.

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Declaration of Guardian

- Allows you to pre-select a person to act as your guardian if ever needed.
- You can also disqualify certain individuals.
- **Declaration of Appointment of Guardian for Child** allows you to pre-select or disqualify individuals to act as guardians for your children.



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Do I really need a **WILL**?

Probably, *YES*.

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Who gets My Property when I Die?

1. Non-probate assets distributed pursuant to beneficiary designations.
2. Will is probated and executor (personal representative) is appointed to distribute assets according to instructions in Will.
3. If no Will, more expensive probate proceedings are often needed to determine heirs of estate and to appoint administrator.

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What is PROBATE?

- Probate is the process through which a court:
 1. Validates a Will or otherwise determines how to distribute the decedent's assets.
 2. Appoints an executor/administrator to manage the estate if necessary.



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TESTATE = Will

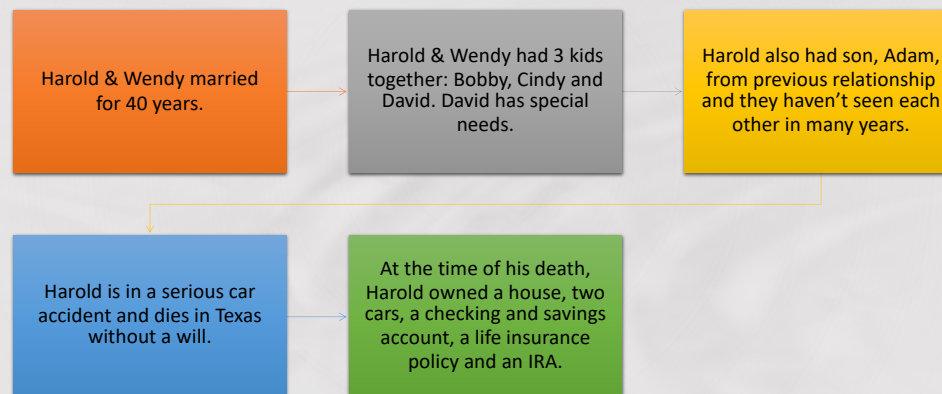
- Testator determines who gets property.

**INTESTATE = No Will**

- State law determines who gets probate assets.



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Case Study

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Determination of Heirship



Attorney ad litem appointed to investigate heirs.



Witnesses attend hearing, judge applies Texas law to determine who gets estate assets and signs Judgment Declaring *Heirship*.



Non-probate assets pass according to POD beneficiaries or joint account ownership.

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Harold's Estate

- **Community Property:** Wendy keeps her half and Harold's half passes to his 4 children.
- **Separate Personal Property:** 1/3 to Wendy and 2/3 to Harold's children.
- **Separate Real Property:** Life estate to Wendy and 100% of remainder interest to Harold's children.



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Appointment of Administrator

- 01
Will usually appoints an independent executor.
- 02
Independent administrator can be appointed if all heirs agree.
- 03
Minor children and disabled adult children are usually unable to consent to independent administration.

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Dependent Administration

- Court permission needed to sell property, pay creditors, distribute assets, settle lawsuits, etc.
- Court accountings usually required.



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Can I avoid probate by creating a **LIVING TRUST?**

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What is a TRUST?

- A trust is a relationship in which **one person holds title** to property ("**Trustee**"), subject to an obligation to use the property **for the benefit of another** ("**Beneficiary**").
- Divides legal ownership from beneficial ownership.



TRUST

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Types of Trusts

- **REVOCABLE LIVING TRUST**
- Marital Trust
- Educational Trust
- Credit Shelter Trust
- Asset Protection Trust
- Spendthrift Trust
- QTIP Trust
- IRA Trust
- Grantor Retained Annuity Trust
- Generation Skipping Trust
- Charitable Trust
- Irrevocable Life Insurance Trust
- Qualified Income Trust
- Pooled Trust
- **SPECIAL NEEDS TRUST**

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When is a Revocable Living Trust recommended?

- Desire to avoid court proceedings after death and assets are stable.
- Probate will be necessary in a state with slow and expensive probate procedures. (Real estate owned in another state must be probated in that state.)
- Heightened privacy concerns - want to avoid filing Will in public records.
- Planning for impending disability and incapacity to manage property.
- Desire for single trustee to manage trust estate - avoid family disputes and possible will contest.
- Tax planning strategies or beneficiary trusts are necessary.

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Revocable Living Trust Concerns

- Some people pay more for Revocable Living Trust than it would cost to probate a Will.
- All property must be titled in name of trust or probate will not be avoided.
- Home in Revocable Living Trust may be considered available resource for Medicaid Estate Recovery purposes.
- “Pour-over will” is still necessary to get missed assets to trust and simplify appointment of executor if necessary.



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Special Needs Estate Planning Tools

to provide assistance managing assets and preserve needs-based government benefits.

Special Needs Trust is a trust for the benefit of an individual with disabilities

ABLE Account is a tax-advantaged savings account for an individual who was disabled before age 26 (age 46 after 2026)

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Needs-based Government Benefits

- Supplemental Security Income (SSI)
- SSI-linked Medicaid
- Medicaid Waiver Programs (long-term home and community-based services for people with disabilities)
- Childhood Disability Benefits (disabled adult child)
- Medicare Beneficiary Savings Programs
- Supplemental Nutrition Assistance Program (SNAP)
- Housing Assistance



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(Title II): Social Security Disability

MEDICALLY
determined to be
disabled.

TECHNICALLY
eligible (work
credits).

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Disability - Child

- Medically determinable **physical or mental impairment**;
- Impairment results in **marked and severe functional limitations**;
- Impairment has **lasted** or is **expected to last** at least **one year** or result in **death**.



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Disability - Adult

Unable to engage in any **substantial gainful activity**

by reason of medically determinable physical or mental impairment that is expected to result in death or last at least 12 months

\$1,470/month (2023) - non-blind individual
\$2,460/month - statutorily blind individual



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5-Step Evaluation

Is claimant working (SGA level)?


Is medical condition severe?

Does medical condition meet or medically equal a listing?

Can claimant do previous work?

Can claimant (younger than 50) do other work?

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Blue Book: AUTISM SPECTRUM DISORDER
(Listings 12.10 & 112.10)

- Medical documentation of both of the following:
 - Qualitative deficits in verbal communication, nonverbal communication, and social interaction; and
 - Significantly restricted, repetitive patterns of behavior, interests, or activities.
- Extreme limitation of one, or marked limitation of two, of following areas of mental functioning:
 - Understand, remember, or apply information
 - Interact with others
 - Concentrate, persist, or maintain pace
 - Adapt or manage oneself

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SSDI

1. **MEDICALLY** determined to be disabled
2. **TECHNICALLY eligible**
 - a. total work credits
 - b. recent credits (usually 5 of 10 years prior to disability)

Age Became Disabled	Total Credits Needed	Years of Work Needed
21-24	6	1.5
24-31	6-18	1.5 to 4.5
31-42	20	5
44	22	5.5
46	24	6
48	26	6.5
50	28	7
52	30	7.5
54	32	8
56	34	8.5
58	36	9
60	38	9.5
62+	40	10

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Other Insured Beneficiaries



Spouse
(Sometimes Ex Spouse)



Minor Child



Disabled Adult Child

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Childhood Disability Benefits (CDB)

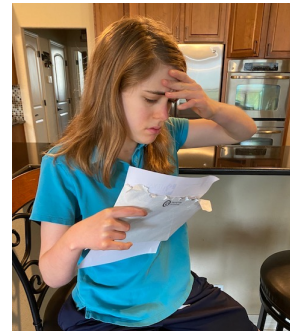
- **Eligibility Requirements**
 - Over age 18 and not married
 - Disability began before age 22 (& continuous)
 - Parent has died, retired or become disabled
- **Benefit**
 - Up to 50% of living parent's benefit
 - Up to 75% of deceased parent's benefit



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Uninsured *(not enough work credits)* = TECHNICAL DENIAL

You do not qualify for disability benefits because you have not worked long enough under Social Security.



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SUPPLEMENTAL SECURITY INCOME (SSI)


Monthly payment + Medicaid

2023 FBR: **\$914**/mo. individual;
\$1,371/mo. eligible couple.

Needs-based program to provide
basic food and shelter.

Limited Income and Assets to
Qualify

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Limited Income & Resources (Assets)

- **Income** = earned income, unearned income, deemed income, in-kind support and maintenance.
- **Resource** = anything that can be converted to cash, unless excluded by law.
- **Under \$2,000** (\$3,000/couple)
 - Measured 1st day of month.
 - Spouse's resources count.
 - Parents' resources count for minor child (not adult child).

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Resources Exclusions

- First \$2,000 (\$3,000 if married couple)
- Home of any value
- Car of any value
- Household goods and personal effects
- Life insurance with face value less than \$1,500
- Pre-paid Funeral or Burial Plot
- Burial fund worth up to \$1,500
- Retroactive SSI or SSDI payments for 9 months
- **Special Needs Trust**
- **ABLE Account**

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2 Types of Special Needs Trusts

First-Party SNT:

Funded with assets that belong to beneficiary.

(Medicaid payback)

Third-Party SNT:

Funded with assets belonging to anyone other than the beneficiary.

(No Medicaid payback)

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How is a Special Needs Trust different from another trust?

- Beneficiary is **disabled** (physically or mentally).
- **Beneficiary control is restricted.**
- **Stated purpose to “supplement and not supplant” government benefits – NOT a support trust.**
- Trust is not a countable resource for SSI, Medicaid, etc.

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FIRST-PARTY SPECIAL NEEDS TRUST

(self-settled/D4A SNT)
42 U.S.C. § 1396p(d)(4)(A)

A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court **if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan** under this subchapter.

Medicaid Payback!

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First-Party SNT Income & Assets

SNT can be funded with property owned by beneficiary (unlimited amount), including:

- Bank account funds
- Real property
- Personal injury award
- Inheritance
- Divorce settlement
- Child support for disabled adult child
- Military SBP annuity payments

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Military Survivor Benefits

Disabled Military Child Protection Act

(December 2014)

- *SBP can now be assigned to a first-party special needs trust*



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Child Support

Lifetime child support (allowed in some states) can be **irrevocably assigned** to first-party SNT.

- SSA: This must be done by court order. An agreement to this effect will not work.
- **Do NOT assign child support payments to an ABL account.**



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Inheritance from Grandma

- If received outright (not left to SNT), beneficiary can transfer funds to first-party special needs trust (*or third-party SNT if Will reformation is available*).
- Advanced estate planning can often avoid first-party SNT with Medicaid payback.



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Income Not Assignable to Special Needs Trust

SSA POMS SI 01120.200.G.1.c – Payments not assignable by law:

- **Social Security Title II and SSI payments;**
- Temporary Assistance to Needy Families (TANF)/Aid to Families with Dependent Children (AFDC);
- Railroad Retirement Board-administered pensions;
- Veterans' pensions and assistance;
- Federal employee retirement payments (CSRS, FERS) administered by the Office of Personnel Management;
- Private pensions under the Employee Retirement Income Security Act (ERISA) 29 U.S.C.A., Section 1056(d).

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2 Types of Special Needs Trusts

First-Party SNT:

Funded with assets
that belong to
beneficiary.

(Medicaid payback)

Third-Party SNT:

Funded with assets
belonging to
anyone other than
the beneficiary.

(No Medicaid
payback)

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Third-party SNTs

Created & funded
by any third party

Eligibility:

- Disabled beneficiary


Trust Assets:

- Cash, stock, real estate, etc. (anything that does not belong to the beneficiary)
- No funding limits


SNT Grantor decides where assets go upon beneficiary's death

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Third-Party SNT Options



Stand-alone trust



Within another living trust



Testamentary Trust

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POOLED SPECIAL NEEDS TRUST

42 U.S.C. §
1396p(d)(4)(C)

- First-party or third-party SNT that is managed by not-for-profit organization
- Sub-Account: Separate accounts for each beneficiary but the funds may be pooled for investment purposes
- Minimal funding allowed
- **Only cash assets accepted for most pooled trusts**

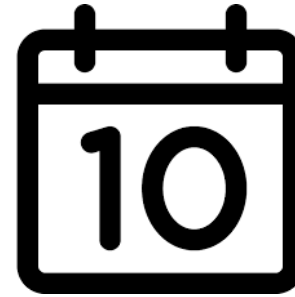
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- Harold & Wendy both killed in car accident.
- If no payable-on-death beneficiary is named on accounts or POD is "children," then David's share may disqualify him for needs-based government benefits.
- Solution: Transfer funds received to first-party special needs trust & report trust to appropriate agencies for review.
- (Too late to create third-party SNT)

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Reporting Trust to SSA

- **Report changes to SSA** by 10th day of month following change.
- Trust will be reviewed by Special Needs Trust Review Team.
- Use SSA appeal process as needed.



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Choosing a Trustee

- Parents
- Sibling
- Close Friend
- Corporate Trustee (Bank)
- Pooled Trust

NOT SNT BENEFICIARY!



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Corporate Trustee vs. Family Member

- Corporate trustee fees typically range from 1.2% - 1.6%
- Family member arguably knows beneficiary best, but...
 - Family member may have conflict of interest.
 - Family member may not have time or want to serve as trustee.
 - Family member must be willing to learn about government benefits and deal with agencies.
 - Siblings are worst offenders for messing up SNT administration
- Consider trust protector/advisor to keep family members involved.

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TRUSTEE of Special Needs Trust is NOT a GUARDIAN

- Trustee manages property in the trust.
- Trustee does not have authority to make medical decisions or decide where beneficiary lives.


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Getting Trust Account Established

- Specialized attorney should draft trust agreement.
- Simple testamentary special needs trusts may be available through military.
- Trustee uses trust documents to set up trust account when ready to fund trust (could be immediately or when both parents have died).
- Trustee administers trust according to needs of beneficiary.

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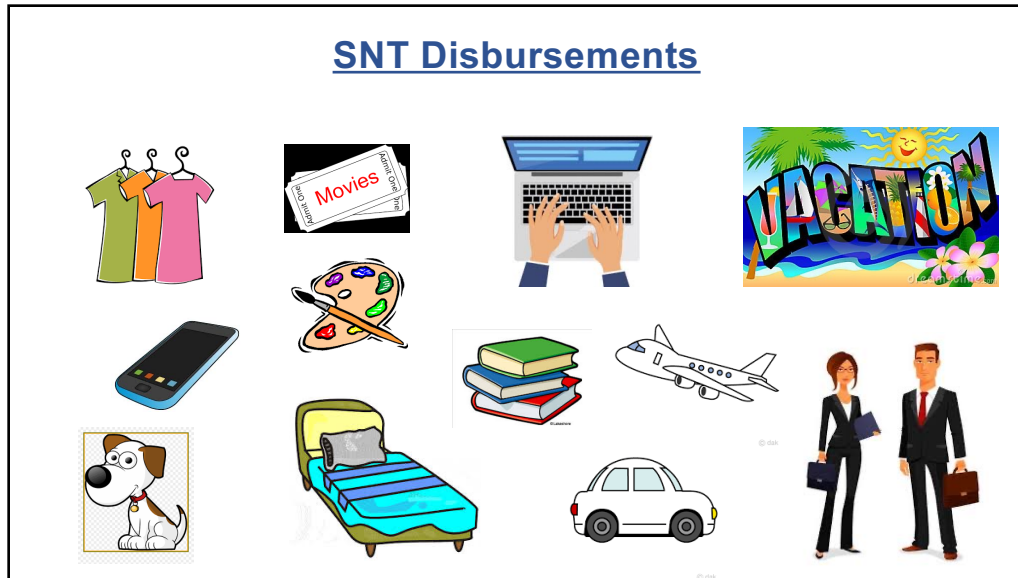
Arrangements NOT Recommended

- Disinheritance – no money available for loved one with special needs
- Leaving assets to brothers or sisters with request to take care of sibling
 - Money is subject to creditors
 - Funds become part of estate upon death
 - Assets could be lost in divorce
 - May not want to take care of sibling if have own family

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SNT Disbursements



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Trust Distribution Methods

- Pay vendor directly for goods or services.
- Reimburse third parties for purchases made for beneficiary if all other guidelines are followed.
- Use True Link card in accordance with the terms and conditions of SSA POMS SI 01120.201.1.e Administrator-managed prepaid cards.
- Pay beneficiary's credit card bills if Trustee exercises appropriate discretion and can verify appropriate charges on statement.
- DO NOT distribute cash directly to beneficiary or reimburse him or her directly for purchases made.

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Can a special needs trust pay for **FOOD** and **SHELTER**?



Usually YES,
but may affect certain government benefits.

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ABLE ACT

- The Stephen J. Beck, Jr., Achieving a Better Life Experience, Act signed in 2014.
- Provides for tax-advantaged **ONLINE** savings accounts for individuals disabled before age 26.



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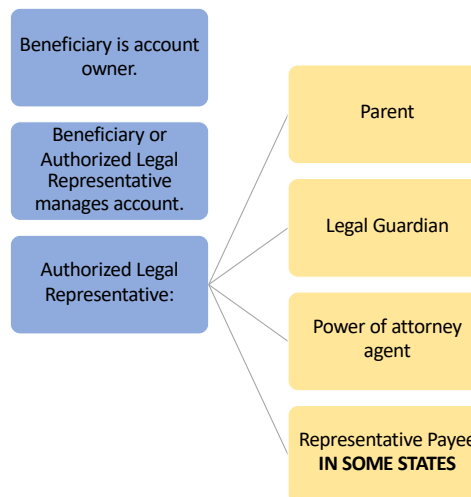
Eligibility for ABLE Account

- Blind or disabled prior to the age of 26.
 - (Can be over age 26 when opening account, as long as the disability occurred prior to turning 26.)
- After January 1, 2026:
 - If age criteria is met AND individual is already receiving SSI and/or SSDI benefits = automatically eligible
 - If individual is NOT receiving SSI or SSDI benefits:
 - Meet SSA's definition of disability; and
 - Receive physician's disability certification

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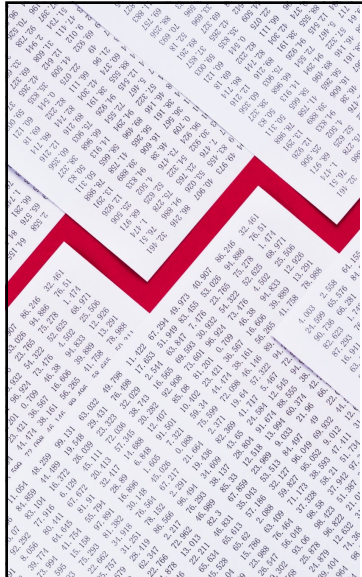
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ABLE Account Owner & Manager



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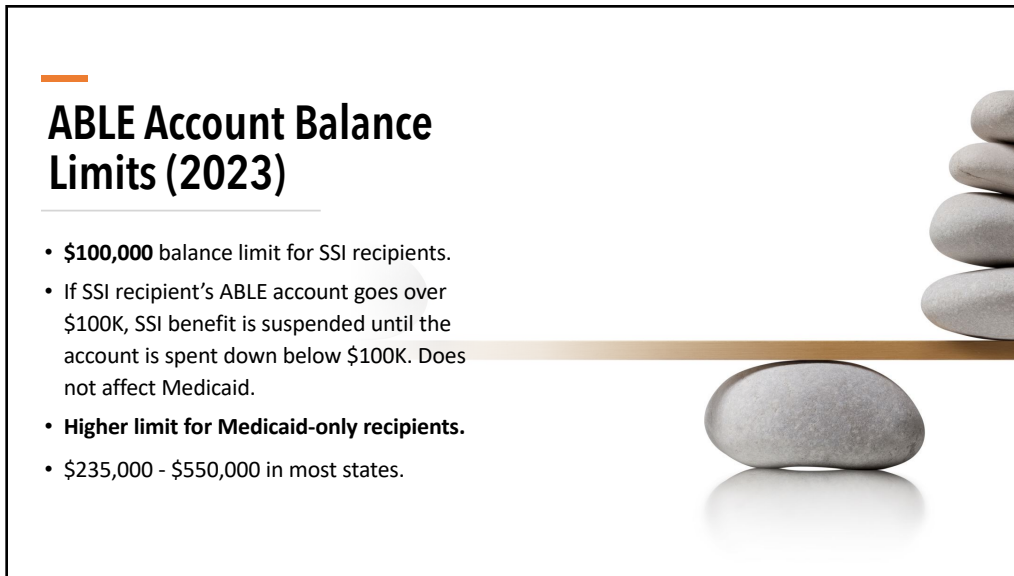
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ABLE Account Contribution Limits (2023)

- \$17,000 annual contribution limit (tied to IRS annual gift tax exclusion amount)
- + additional \$13,500 in wages earned by the individual with disabilities
- **ONLY ONE ABLE ACCOUNT PER BENEFICIARY**
- Contributions can be made by anyone (beneficiary, family members, friends, trustee of special needs trust, etc.) and **must be made in cash.**

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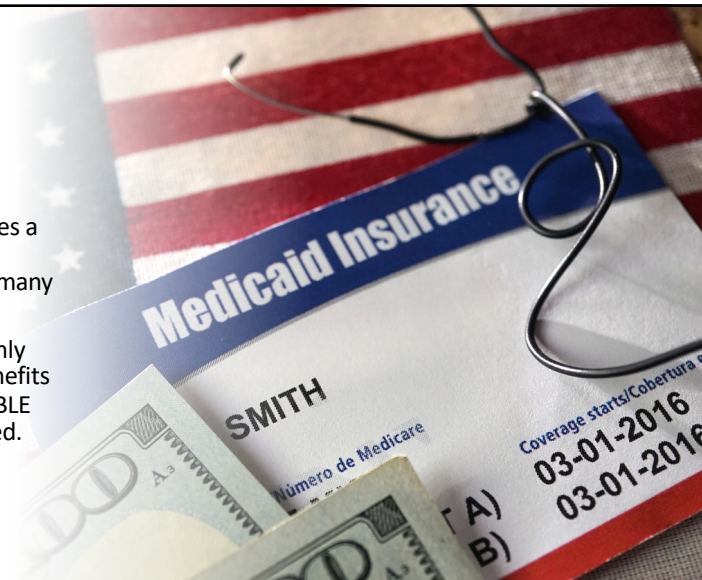
ABLE Account Balance Limits (2023)

- **\$100,000** balance limit for SSI recipients.
- If SSI recipient's ABLE account goes over \$100K, SSI benefit is suspended until the account is spent down below \$100K. Does not affect Medicaid.
- **Higher limit for Medicaid-only recipients.**
- \$235,000 - \$550,000 in most states.

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Medicaid Payback

- ABLÉ account requires a Medicaid payback (reimbursement) in many states.
- Medicaid payback only affects Medicaid benefits received after the ABLÉ account is established.



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Rollovers from 529 College Savings Accounts into ABLÉ Accounts

- Families that have a 529 College Savings Plan (529C) can transfer the monies to an ABLÉ Account (529A) without incurring a penalty.
- The rollover can be in amounts up to the annual ABLÉ contribution limit.
- Both accounts must have the same beneficiary or be a qualified member of the beneficiary's family.



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ABLE Account funds used for Qualified Disability Expenses (QDE's)

“that relate to the individual’s disability and are for the benefit of maintaining or improving health, independence or quality of life.”



This includes food and shelter.

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Withdrawals from ABLE Account

Withdrawals are not counted as income to the Designated Beneficiary but could be considered as an asset if not spent for Qualified Disability Expenses.



Online withdrawal process

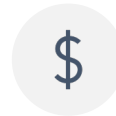


Request paper check (7-10 days)

Electronic withdrawals (3-5 days)




Transfer to personal checking or savings accounts and use debit card



Pay bills directly from online account

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Non-Qualified Fund Withdrawal

- Non-qualified funds withdrawn are considered an asset when determining eligibility for means-tested government benefits.
- Withdrawals for housing expenses must be spent in the month the withdrawal is received or it will be considered an asset.
- Tax Consequences

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Prepaid Debit Card

- In most states, prepaid debit cards can be requested at time of enrollment or later.
- Funds can be transferred to the card via online account and can typically be used everywhere Visa debit cards are accepted.

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Closing an ABL Account

When an account owner passes away, the funds in the account can be used for qualified disability expenses such as funeral and burial (before Medicaid payback).

Remaining funds (after the Medicaid payback if applicable) can go to a named successor beneficiary.

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ABLE Accounts Used to Eliminate ISM Penalty for SSI Beneficiaries

- **In-kind Support and Maintenance (“ISM”)** is food or shelter that somebody else provides for you.
- **General Rule:** If you live in another person’s household for free, your SSI benefits will be reduced by **one-third** of the SSI maximum benefit.

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Fair Share Exception:

SSA will not apply ISM penalty when SSI recipient pays **fair share** of household expenses.



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10 SSA "POMS" ISM Expense Items

Food	Mortgage	Real property taxes	Rent
Heating fuel	Gas	Electricity	Water
	Sewer	Garbage removal	

"Fair Share" = total cost of these 10 items divided by the number of people living in the home.

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What if SSI recipient doesn't get enough money to pay "fair share?"

- Lease Agreement or **ABLE Account**
- Funds contributed to ABLE account (from any source) belong to the beneficiary.
- Designated Beneficiary=Owner
- ABLE account funds used to pay for QDEs including food & shelter

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ABLE Account & ISM Example

- David lives with parents. "Fair share" = \$900 per month.
 - \$500 SSI payment to parents each month
 - \$400 paid to parents from ABLE account
- Result: David avoids ISM charge and receives maximum SSI.
- Administration tip: Trustee can transfer funds from special needs trust to ABLE account to avoid ISM penalty.

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Benefits of SNT & ABL Account

- Eligibility for needs-based government programs
- Allows for supplemental funds to enhance quality of life
- Assistance with money management
- Protection against financial abuse
- **Estate planning is critical for special needs families.**



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Summary

Eligibility

- SNT - disabled beneficiary of any age
- ABL - disabled before 26

Cost

- SNT - costs \$\$\$ to set up and maintain (attorney needed)
- ABL – minimal costs

Taxes

- Tax-free growth with ABL

Assets

- SNT - no limits on type & amount of asset (as long as trustee agrees)
- ABL - yearly and total limits (can only use cash)

Medicaid Payback

- No payback with third-party SNT

Use both together!

- Third-party SNT
- ABL Account

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Continuing Education




This webinar has been approved for
 1.5 continuing education (CE) credits:

- Social Work, LPC, LMFT
- Case Manager Certification
- Board Certified Patient Advocates (BCPA)
- Certified Family Life Educator (CFLE)
- Certified in Family and Consumer Sciences (CFCS)
- Accredited Financial Counselors (AFC)
- Certified Personal Financial Counselors (CPFC)

Evaluation Link
 Go to the event page for the evaluation and post-test link.

[Continuing Education](#)

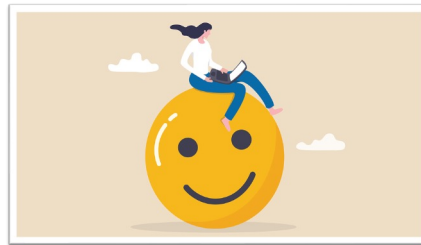
Questions?
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Upcoming Webinar



Boost Positivity & Productivity in the Workplace with “Happy Hacks” August 9, 2023, 11 AM – 12:30 PM ET

Since 2020 our lives have been bombarded with negativity, stress, and countless threats to our emotional well-being, work, and closest relationships. Perhaps there are lessons we can learn as we look back and then move forward in positive ways.



For archived and upcoming webinars visit:
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