Special Needs Lawyers, PA

901 Chestnut Street, Suite C
Clearwater, Florida 33756

Phone: (727) 443-7898
Fax: (727) 631-0970

SpecialNeedsLawyers.com

Travis D. Finchum, Esq.
Board Certified in Elder Law

Linda R. Chamberlain, Esq.
Board Certified in Elder Law

Charles F. Robinson, Esq.
Board Certified in Elder Law

Kole J. Long, Esq.
Elder Law Attorney

Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate | Wills & Trusts
Incapacity Planning | Guardianship | Developmental Disabilities | Veteran's Benefits

Protecting Assets for Family Members with a Disability

Planning an estate is never an easy task. When a family member has a disability, most parents are lost as to where to begin. Many disabled individuals are entitled to public benefits that provide income for living and medical expenses. Many times the medical expenses are substantial. Programs such as Supplemental Security Income (SSI) and Medicaid are designed for individuals with minimal financial resources. A simple Will leaving the family savings to the children can cause a disabled child (adult or minor) to lose much needed public benefits. Yet, in many families the disabled child is the primary concern of the parents. **Don't just disinherit your child.**

The public perception of children with disabilities has changed dramatically over the past twenty-five years. With changed attitudes and advances in medical technology, the life expectancies of persons with disabilities have come more in line with those individuals without disabilities. Many disabled adults are outliving their parents which can cause serious concerns regarding who will provide much needed care for the child with a disability. Another major concern is how to preserve assets for the child with a disability without jeopardizing public benefits.

Many parents are not aware that special planning tools are available to protect assets and governmental benefits. A **Special Needs Trust** (SNT) is a trust designed specifically to provide funds for a disabled individual's needs without putting their public benefits at risk. Parents can establish these trusts during life or through testamentary plans.

SNT's are used to shelter funds for the benefit of the person with a disability. These funds are typically the result of an inheritance or personal injury award but can come from any source. Funds are available for anything **not** provided by public benefits. Within a properly drafted trust the funds are not considered in determining eligibility for public benefits.

On the reverse are several examples of how SNT's can be used to protect a vulnerable individual.

EXAMPLE 1 – 3rd Party SNT

Maria is living in a group home (or in her own apartment) and receiving Supplemental Security Income (SSI) and Medicaid. Maria's parents have always provided for Maria's needs that were not met by her public benefits. Maria's parents want to ensure that Maria will have money for her lifetime for any needs that may arise. Maria's parents incorporate a SNT for Maria in their existing estate plan. Maria's parents appoint Maria's brother as the Trustee to use the money for anything not covered by SSI or Medicaid. Maria maintains her eligibility for public benefits and a reserve fund is thus made available to provide for enhanced care and to add to Maria's quality of life. Any funds remaining in the SNT at Maria's death will go to her siblings or nieces and nephews.

EXAMPLE 2 – Under Age 65 SNT

Several years ago Mark was injured in an accident and is now permanently disabled. The personal injury lawsuit that has been pending since the accident is about to be settled for several hundred thousand dollars. Mark has been on public benefits since the accident. If Mark receives the settlement in a lump sum he will lose his public benefits. Instead, Mark will establish a SNT to receive the settlement. The funds will be held in the Trust to provide additional benefits for Mark until he dies. With this type of SNT, upon his death, the State of Florida will be repaid from the SNT for the benefits paid on Mark's behalf during his lifetime. Any funds remaining in the trust after reimbursing the State will pass to Mark's heirs.

These are just two possible examples of how specialized estate planning can maintain much needed public benefits for individuals with disabilities. Otherwise an inheritance or personal injury settlement will be quickly depleted and no funds will be available to provide for extra care.

Many parents believe they can address these problems by leaving their entire estate to other children, or family members who are not disabled, with mere instructions to use the money for the child with a disability. There are many problems with this plan. For instance, the non-disabled child could: (1) predecease the disabled child, (2) get divorced and lose funds to their ex-spouse, (3) get sued, or (4) have creditor problems. Any of these examples could cause the funds to not be there for the disabled child.

Finally, proper estate planning includes not only planning for others after your death, but planning for yourself during your lifetime. You must plan for the possibility that you, as the caregiver of a family member with a disability, could yourself become disabled. You must be certain that your estate will be preserved for your family, particularly your loved one with a disability. This includes working with a skilled attorney to discuss taxes, creditors, probate and nursing home coverage. I would be honored to help you design an estate plan to address these many concerns. We have attorneys skilled in tax law, long term care issues and public benefits. We look forward to working for you.

SSI-Related Programs - Financial Eligibility Standards: April 1, 2019

PROGRAMS & TYPES OF COVERAGE	INCOME		ASSETS	
	Individual	Couple	Individual	Couple
PROGRAMS MANAGED BY SOCIAL SECURITY (eff 01/01/2019)				
***Supplemental Security Income (SSI)** Federal Benefit Rate (FBR) Cash payment of SSI from SSA; includes Full Medicaid	$771 (FBR)	$1,157 (FBR)	$2,000	$3,000
***Low Income Subsidy (LIS) or Extra Help** (150% FPL) Helps with costs associated with Medicare Prescription Drug Plans Automatic with full Medicaid or Medicare Savings Programs (QMB, SLMB, QI1). Income asset limits change annually	$1,562	$2,115	$14,390	$28,720
PROGRAMS FOR PEOPLE 65+ OR DISABLED (Community Medicaid Programs) (eff 04/01/19)				
***MEDS-AD (MM S)** (88% FPL) Full Community Medicaid	$916	$1,241	$5,000	$6,000
***Medically Needy** (No Income Limit) Medically Needy Income Level (MNIL) Full Community Medicaid when Share of Cost is met	Subtract $180 from gross Income	Subtract $241 from gross Income		
PROGRAMS FOR PEOPLE WITH MEDICARE (Medicare Savings Programs/Buy-In) (eff 04/01/2019)				
***QMB** (100% FPL) Pays Medicare A & B premiums, coinsurance & deductibles only	$1,041	$1,410	$7,730	$11,600
***SLMB** (120% FPL) Pays for Medicare Part B premium only (PBMO)	$1,249	$1,691		
***QI1** (135% FPL) PBMO	$1,406	$1,903		
***Working Disabled** (200% FPL) Qualified Disabled Working Individuals (QDWI) Program Pays for Medicare Part A only. Must have lost SSDI due to employment	$2,082	$2,820	$5,000	$6,000
PROGRAMS BASED ON INSTITUTIONAL POLICY – Patient Responsibility & Income Trusts may apply (eff 01/01/19)				
Institutional Care Program (ICP) Pays Nursing Home (NH) room, board & care Pays Medicare A & B premiums, coinsurance & deductibles	$2,313 (MEDS-AD Institutional Income Limit $916)	$4,626 (MEDS-AD Institutional Income Limit ($1241)	$2,000 ($5,000 if MEDS-AD eligible)	$3,000 ($6,000 if MEDS-AD eligible)
Hospice Pays Hospice services related to terminal illness Pays Medicare A & B premiums, coinsurance & deductibles				
Home and Community Based Services (HCBS) or Waivers Pays Medicare A & B premiums, coinsurance & deductibles				
STATE FUNDED PROGRAMS (eff 01/01/19)				
OPTIONAL STATE SUPPLEMENT (OSS) REDESIGN Maximum Payment = $78.40 single / $156.80 Couple Assists with paying room & board at alternate living facilities	$849.40	$1,698.80	$2,000	$3,000
PROTECTED OSS Maximum Payment = $239 single / $478 Couple Assists with paying room & board at alternate living facilities	$956	$1,912		
HOME CARE FOR DISABLED ADULTS (HCDA) Pays small stipend to caregivers of disabled	$2,313	$4,626		

MAINTENANCE NEEDS STANDARDS / OTHER

Disregards:
*Standard Disregard = $20
*Earned Income Disregard = $65 + 1/2
Student Earned Income Disregard = $1,870 monthly, maximum $7,550 for calendar year

Ineligible Spouse Deeming:
½ FBR = $386
Child Allocation = $386/child (Difference between the couple and single FBR)

Parent to Disabled Child Deeming:
Parent Allocation = $771

Disability Substantial Gainful Activity (SGA) = $1,220 non-blind $2,040 blind

Medicare Part B Premium = $136, Part A free for most or $437

** A $20 General Income Disregard applies to these programs. $20 will be subtracted from the total of all Income not based on need before comparing the income to the income limit. In addition, $65 is subtracted from the total of all earned income, and ½ the remainder is subtracted before comparing the income to the income limit.*

PERSONAL NEEDS ALLOWANCE	
Individual	Couple
$130	$260
Community $1,041 NH $130	Community $1,410 NH $260
PACE / SMMC-LTC in ALF: R&B+ $208 / $416 PACE / SMMC-LTC at home: $2,313 / $4,626 PACE in NH: $130 / $260 IBudget: $2,313 / $4,626	
$54 Provider rate $795.40	$108 Provider rate $1,590.80
$54 Provider rate $956	$108 Provider rate $1,912

SSI Individual $30 only in NH = $100 (SPS)

Transfer of Asset Divisor = $9,171 (eff 7/1/2018)

Community Hospice Allocations:
Spouse only = FBR ($771)
Spouse + Dependents or Dependents Only = CNS Standard

Spousal Impoverishment: (eff 7/1/2018)
MMMNA = $2,058
Excess shelter = $617
Standard Utility Allowance = $359
Maximum Income Allowance = $3,161
Community Spouse Resource Allowance = $126,420
Family Members Allowance with Spouse = (MMMNA-Income) divided by 3
Dependents with no Spouse = CNS Standard
Home Equity Interest Limit = $585,000

SSI, SSDI, Medicare and Medicaid - 2019

www.SpecialNeedsLawyers.com

Incomes from Social Security:

SSI – Supplemental Security Income – Maximum monthly payment is $771/month in 2019. You must be disabled, or over age 64, and you must meet financial criteria similar to Medicaid. This program is generally for disabled individuals who have not worked enough to qualify for Disability. If a disabled individual gets an SSI check each month then they are eligible for full *Medicaid* medical coverage in Florida.
https://www.ssa.gov/benefits/ssi/

SSDI – Social Security Disability Insurance – This is a benefit of working and paying into the system. There are no financial requirements for this, only that you paid into the system enough credits based on the age you became disabled. Some disabled persons can draw on a parent's credits if their disability occurred at a young age. This program pays a monthly income if you become disabled that is based on what you paid in. This program is tied to *Medicare*.
https://www.socialsecurity.gov/disabilityssi/

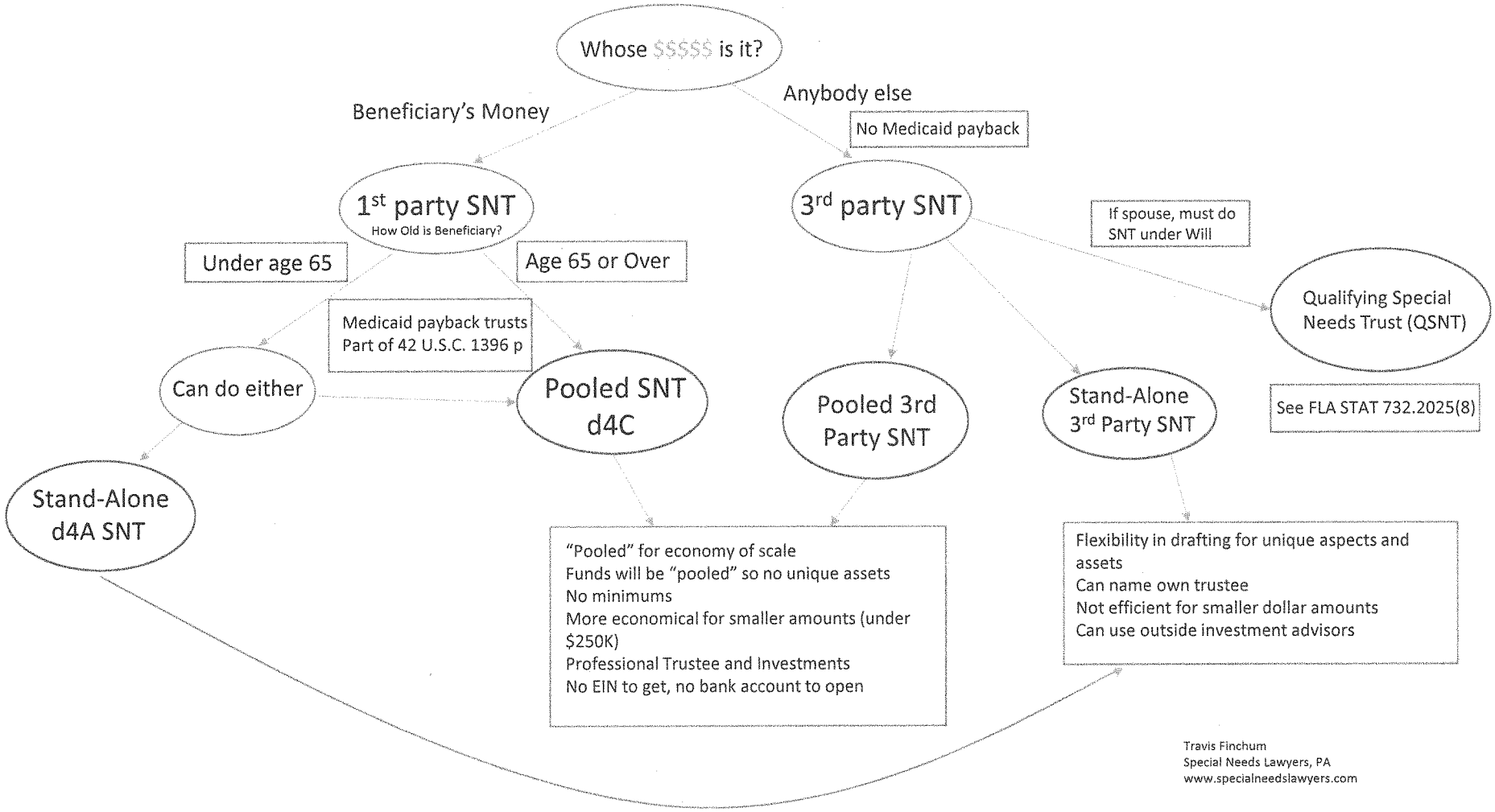
DAC – CDB – Disabled Adult Child – Childhood Disability Benefits – This program allows for a son or daughter to draw on a parent's work history if: the child is disabled, the disability occurred prior to age 22, is unmarried, hasn't worked at a significant level and the parent is either drawing a Social Security check or is deceased. There are a few other requirements but if the son or daughter qualifies for this program, after 24 months he or she will be eligible for *Medicare*.
https://www.socialsecurity.gov/pubs/EN-05-10026.pdf

Medical Coverage:

Medicare – Once you qualify for SSDI or CDB benefits you can get Medicare after 24 months. This covers a portion of certain hospital, doctor and prescription expenses. Also, if you are age 65 and have enough credits with Social Security you are eligible for Medicare. There are no financial limitations for this program, though if your income is high you may pay more of a premium for Medicare Part B. Generally, Part A is free, Part B is $135.50. Prescription coverage, Part D, can vary.
https://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-glance.html

Medicaid – This program has financial limitations. You must be disabled (but don't necessarily need a formal determination by Social Security). You can get this program by either: 1) qualifying for and receiving SSI or 2) by applying directly through the Department of Children and Families. There are several types of Medicaid programs that assist with medical expenses and there are long-term-care programs and associated "waiver" programs. This program can be more comprehensive because there is often no co-pay or deductibles to meet, though service networks can be very limited.
http://www.fdhc.state.fl.us/medicaid/

SNT (Special Needs Trust) Analysis



Travis Finchum
Special Needs Lawyers, PA
www.specialneedslawyers.com

Special Needs Lawyers, PA

901 Chestnut Street, Suite C
Clearwater, Florida 33756

Phone: (727) 443-7898
Fax: (727) 631-0970

SpecialNeedsLawyers.com

Travis D. Finchum, Esq.
Board Certified in Elder Law

Linda R. Chamberlain, Esq.
Board Certified in Elder Law

Charles F. Robinson, Esq.
Board Certified in Elder Law

Kole J. Long, Esq.
Elder Law Attorney

Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate | Wills & Trusts
Incapacity Planning | Guardianship | Developmental Disabilities | Veteran's Benefits

ABLE Accounts - What You Need to Know

ABLE United is Florida's ABLE program and opened for business on July 1, 2016. www.ableunited.com Florida's ABLE program is administered under the Prepaid College Board. The ABLE law is in §529A of the Internal Revenue Code.

The Achieving a Better Life Experience (ABLE) Act allows individuals with disabilities and their family and friends to deposit funds into and thus maintain funds in an ABLE account while maintaining government benefits.

ABLE accounts (not "Trusts") can be very helpful and a powerful tool for certain individuals with disabilities. To use an ABLE account the disability has to have occurred prior to age 26, so the eligible candidates will be limited. If a person can qualify, ABLE United allows for the account to be opened online in about 15 minutes at their website. Contributions will initially be limited to a total of $15,000 per year (in 2019) and adjusts with the annual gift tax exclusion.

An individual can have up to $100,000 in their ABLE account before the account starts counting for SSI (Supplemental Security Income). For Medicaid they can have up to $418,000 (Florida's limit for 529 Educational Savings Plans). The ABLE account grows tax free provided the funds are used for qualified disability expenses. Florida Medicaid has a lien on Florida ABLE accounts upon the death of an ABLE beneficiary, similar to a Special Needs Trust.

Qualified Disability Expenses include:
Education, housing, transportation, employment training and support, assistive technology and related services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial, and basic living expenses, and anything added by Secretary of the Treasury

Recent changes to ABLE law include the ability to rolls 529 plans into ABLE accounts, contribute earnings into ABLE accounts up to $12,060 per year on top of $15,000 and eliminating (for one year) direct claims on ABLE accounts for Medicaid recovery, but rather rolling the remaining funds to the estate of the beneficiary.

Trait	ABLE	d4A	d4C	Third Party SNT
Can be Established by Beneficiary Directly				
No Limited annual Contributions				
No Medicaid Payback on Death				
Can pay for food and shelter for SSI recipient without impacting benefits				
Grows Tax free				
No Lifetime Limits on account size				
Exempt from Creditors Claims		maybe not	maybe not	
Allows for some disbursements after death				
Low fees				
Distribution standard broader than just sole benefit of beneficiary				
Can be controlled by the beneficiary directly				

yes
no
maybe

Travis Finchum
Special Needs Lawyers, PA

Special Needs Lawyers, PA

901 Chestnut Street, Suite C
Clearwater, Florida 33756

Phone: (727) 443-7898
Fax: (727) 631-0970

SpecialNeedsLawyers.com
Info@specialneedslawyers.com

Travis D. Finchum, Esq.
Board Certified in Elder Law

Linda R. Chamberlain, Esq.
Board Certified in Elder Law

Charles F. Robinson, Esq.
Board Certified in Elder Law

Kole J. Long, Esq.
Elder Law Attorney

GUARDIANSHIP

There are many circumstances where a person may not be able to manage his or her own affairs, whether it be a medical decision, a financial decision or even deciding where to live. A person may have had a stroke and is incapacitated, may have gradually declined due to Alzheimer's disease, or may even be an individual who is subject to a Developmental Disability, and has never been able to manage his or her affairs.

If there are no alternatives, such as Advance Directives, it may become necessary to create a Guardianship for the individual. Advance Directive include: A Durable Power of Attorney, a Healthcare Surrogate or Medical Power of Attorney. A Guardianship is the process by which the Court empowers someone to make decisions for an individual who cannot do so for themselves.

There are several types of Court created Guardianships: Guardian of the Person, Guardian of the Property of an Individual, and Guardian Advocate for a person with a Developmental Disability. All types may be limited in scope or they may be "Plenary" (complete or full empowerment).

The Court determines what civil rights the individual can properly exercise (retained rights), and those that will be delegated to a Guardian or Guardian Advocate.

The Guardian is then empowered to the extent of the authority granted by the Court to manage the affairs of the Incapacitated Individual (the Ward).

The Attorneys at Special Needs Lawyers P.A. are experienced in assisting people in navigating the problems of creating and administering Guardianships of all types.

GUARDIAN ADVOCACY

"GUARDIANSHIP" FOR A PERSON WITH A DEVELOPMENTAL DISABILITY

What is a Guardian Advocate?
A Guardian Advocate is a person appointed by the Court to exercise certain civil rights of a person with a Developmental Disability. It would only be necessary for a person18 years old or older. For minors, under age 18, parents or legal guardians can generally handle most of the civil rights addressed in a Guardian Advocacy.

What is a Developmental Disability?
A Developmental Disability, according to this area of law, is having a diagnosis of one of the following conditions: intellectual disability (and IQ score of 70 or below), cerebral palsy, autism (not autism spectrum disorder), spina bifida, Down syndrome, Phelan-McDermid or Prader-Willi syndrome; that manifests before the age of 18.

Who is in need of a Guardian Advocate?
Some individuals with a Developmental Disability may be able to manage most of their affairs. Still others may need assistance with some or all of the major decisions in life. These individuals may be vulnerable to abuse or exploitation. They may be unable to handle finances, medical decisions, residency decisions, governmental benefit navigation and other important life decisions. For these individuals, a Guardian Advocate may be appropriate.

Who can be a Guardian Advocate?
An adult over the age of 18 who has not been convicted of a felony can be appointed as a Guardian Advocate. If the proposed Guardian Advocate lives outside of Florida they must be related to the individual needing the Guardian Advocate.

What if the individual with a Developmental Disability has Advance Directives?
If the person with a Developmental Disability has executed an advance directive or durable power of attorney, the court must consider whether the documents will sufficiently address the needs of the person. A Guardian Advocate may not be appointed if the court finds that the advance directive or durable power of attorney provides an adequate alternative to the appointment of a Guardian Advocate. These documents are considered less restrictive alternatives and are preferred to a Guardianship. There may be reasons these documents are not working correctly, so a Guardian may still be appointed even if these documents are in place.

What rights are typically addressed in a Guardian Advocacy?
The Court will address whether the individual should retain the following rights or whether they should be delegated to the Guardian Advocate: Enter into and perform contracts, make medical decisions, apply for governmental benefits, determine residency, determine social environment, handle finances or sue and defend lawsuits. Other rights may also be addressed as needed like the right to travel or certain major medical decisions.

Special Needs Lawyers, PA

901 Chestnut Street, Suite C
Clearwater, Florida 33756

Phone: (727) 443-7898
Fax: (727) 631-0970

SpecialNeedsLawyers.com
Info@specialneedslawyers.com

Travis D. Finchum, Esq.
Board Certified in Elder Law

Linda R. Chamberlain, Esq.
Board Certified in Elder Law

Charles F. Robinson, Esq.
Board Certified in Elder Law

Kole J. Long, Esq.
Elder Law Attorney

Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate | Wills & Trusts
Incapacity Planning | Guardianship | Developmental Disabilities | Veteran's Benefits

ADVANCE DIRECTIVES and POWER OF ATTORNEY

Advance Directives are legal documents that include a Health Care Surrogate and a Living Will. These documents are generally coupled with a Durable Power of Attorney. These documents provide that your Agent can act on your behalf when making **medical** or **financial decisions**. Your documents should comply with federal HIPAA laws.

HEALTH CARE SURROGATE

The Designation of Health Care Surrogate allows you to name a surrogate and substitute surrogate to make **medical decisions** for you if you become incapacitated or, now since October, 2015, you can allow your surrogate certain authority earlier. Of course while you are able, you will continue to make your own health care decisions. However, there may be times when you are not able to make those decisions. When the surrogate is called upon, he or she is empowered to consult with health care providers on your behalf. The surrogate can give consent for certain treatment, review your medical records, question your doctor or apply for benefits such as Medicare and Medicaid.

The document is important but even more important is the need to discuss your wishes about future medical decisions, life support systems, and artificial nutrition and hydration with your surrogate and alternate surrogate. If they are called upon to make decisions for you, they are obligated to follow *your* wishes and not their independent wishes. It is imperative that they know your values and communication is the best means. You should also speak with your doctor and other health care providers about your wishes. Upon entering the hospital or other health care facility, provide copies of your Health Care Surrogate to the admissions staff and do not sign new documents at the time of admission.

LIVING WILL

The first thought to keep in mind about the living will is that it is effective only if you are in a **terminal, end-stage or persistent** condition. Your physician must verify that you are in a persistent state caused by an injury, disease or illness from which there is no reasonable probability that you will recover.

The Living Will gives your appointed surrogate or alternate the power to specifically limit the scope of treatment, including the withholding of tubes for food and water if your physician states that your recovery is very unlikely, and life would only be artificially prolonged with such tubes. Your surrogate

or alternate will be able to limit the scope of medical treatment if you become comatose or suffer from a chronic terminal illness, in the same manner that you could refuse such treatment if you were able to speak for yourself. It is very important for you to speak with your surrogate, alternate, and doctor concerning your wishes regarding life prolonging procedures.

If you are living in an assisted living facility or nursing home, you need to ask them their policy regarding Living Wills and Do Not Resuscitate Orders and plan accordingly. A living will is not a Do Not Resuscitate Order (DNR).

These are legal documents and should be kept in a safe place; however, make sure the original document is readily available. We recommend that copies be given to your physicians, family members and friends. In the event you are admitted to a health care facility, a copy should be given to the health care provider to become part of your medical chart.

Once you have completed your Advance Directives, you should not sign another form provided by the hospital or any other medical provider. By doing so you may negate what planning you have done. The Florida Legislature changed Florida's Living Will Statute in 1999 and you should be certain that your document is up to date.

DURABLE POWER OF ATTORNEY

A durable power of attorney gives the person you choose (your agent) the legal authority to handle your **financial matters**. This authority may be limited by you to specific acts. The durable power of attorney must be effective when signed under the current law and remain in effect until you choose to revoke it, you are declared incompetent by a court, you die or another event occurs that suspends or revokes the document. This means that the agent may act for you **at any time**, even if you are competent. The agent is still bound by fiduciary requirements under Florida Law which includes taking only "prudent actions" and exercising caution with a duty of impartiality and good faith.

It will likely be necessary to record the durable power of attorney at the Clerk's office in your county courthouse if your agent has to act on your behalf. This would only need to be done at the time your agent needed to act. If you become ill, your agent will be able to manage your financial affairs. There should be no need for you to be declared incompetent or to have a Guardian appointed.

The power granted to your agent may be extremely broad. The person selected should be trustworthy. We recommend that you name an additional agent in case your first choice is unable or unwilling to act.

Additionally, major changes were made in the Power of Attorney Statute in Florida in October, 2011 which requires a review of all Powers of Attorney and may require updating. Now, certain powers must be specifically listed in the document and particularly authorized or your agent will not be able to take those acts on your behalf.

DECLARATION OF PRE-NEED GUARDIAN

You may designate your preference for a personal guardian, should the need arise, rather than the court appointing a stranger from a list of qualified Guardians.