

Estate, Financial & Life Planning for Families of Members with Special Needs

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Secure Planning Strategies

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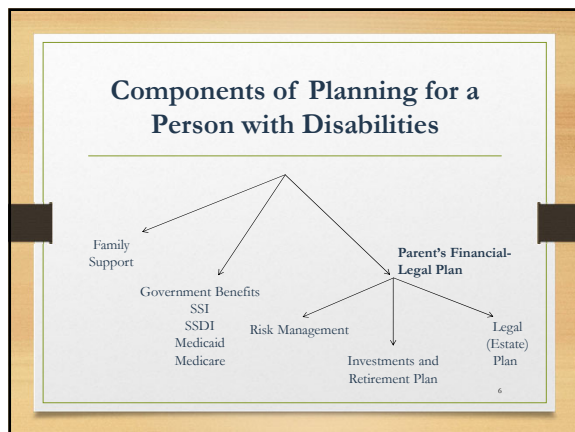
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### Special Needs Trust

- Legal Plan
- Grantor – Beneficiary – Trustee
- Assets - \$\$\$ - Real Estate
- Securities – Life Insurance

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### Representative Payee

- State
- Federal
- Can receive and manage the Social Security Income

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### Guardian

- Court Appointed
- Full
- Limited
- Temporary



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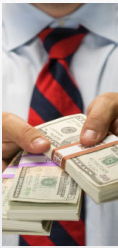
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### Conservator



FINANCIAL



COURT  
APPROVED

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### Durable Powers of Attorney

- Financial
- Health



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### Letter of Intent

- Child's Medical History
- Daily Care Needs
- Family Wishes, etc.

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### Other Planning Areas

- Residence Advocacy
- Medical Insurance
- Health Benefits

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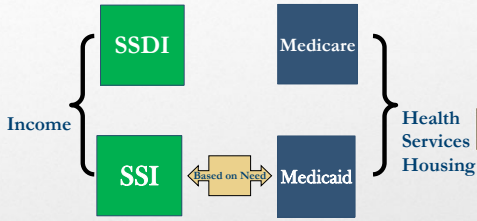
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### Social Security



**Income**

**SSDI**

**SSI**

**Medicare**

**Medicaid**

**Health Services Housing**

**Eligibility**

\$2,000. ASSETS - Burial Plot Fund,  
Automobile, Residence, Household Good

Source: [www.ssa.gov](http://www.ssa.gov) 2016

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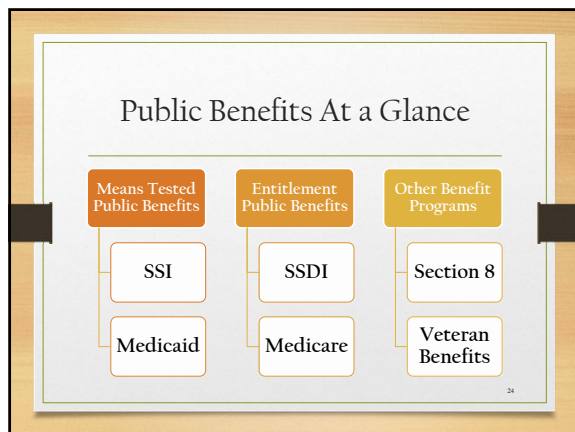
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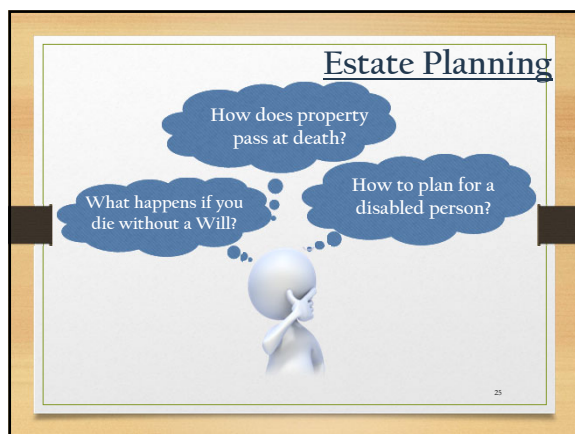
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- ### Estate Planning
- How does property pass at death?
    - Joint Property
    - Contract, life insurance, IRA, pension, etc.
    - Probate
    - Trust
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## Estate Planning

What happens if you die without a Will?

- State makes a will
- Eligibility
- Unable to manage \$
- Disabled dies
- Disposition of home



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## Estate Planning

How to plan for a disabled person?

- × Disinherit
- × Morally obligated gift
- ✓ Proper planning

Will - Trust

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Guardian  
Trustee  
Advocacy

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## Special Needs Trust

Special Provisions

- Supplement Language
- Income No Principal
- Spendthrift Clause
- Trustee - Sole Discretion
- Self Destruct Clause
- Can Own Real Estate
- Provide Services
- Vacations



1. Creator/Grantor
2. Trustee - Successor Trustee (Personal/Disinterested)
3. Trust Protector
4. Beneficiary
5. Remainder Person

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## Trust Participants

1. Creator/Grantor
2. Trustee – Successor Trustee (Personal/Disabled)
3. Trust Protector
4. Beneficiary
5. Remainder Person



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## Special Needs Trusts

- First-Party Trust – D4(A) Trust
- Pooled Income Trust – D4(C) Trust
- Third-Party Trust

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## First-Party Special Needs Trust (d4A)

- The disabled individual must be under the age of 65
- The trust must be created by a parent, grandparent, guardian, or a court
- The state paying out Medicaid benefits must be designated as the primary beneficiary of the trust
- The assets may be used only for the benefit of the disabled individual

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## Pooled-Income Trust (d4C)

- The trust is operated by a nonprofit organization
- Pools together funds of several Medicaid beneficiaries under a Master Trust
  - Beneficiaries have sub-trusts
- The trust must be created by a parent, grandparent, guardian, or court
- No age limit to join trust
- Any assets remaining at the death of the beneficiary are retained by the non-profit, and those funds must be used for the benefit of other disabled individuals (Admins may choose other options)

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## Third-Party Special Needs Trust

- Third-party SN trust main requirements:
  - Beneficiary (or spouse) did not create the trust.
  - The trust does not hold any of the Beneficiary's (or spouse's) own money.
  - The Beneficiary is not trustee and Trustee has sufficient discretion to withhold distributions.

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## What Can A SNT Pay For?

- Is the expenditure for the sole / primary benefit of the beneficiary?
- Is the expenditure consistent with a person's government benefits?
- Is the expenditure appropriate for the beneficiary and consistent with trust policies?
- Is the expenditure at fair market value and otherwise reasonable?

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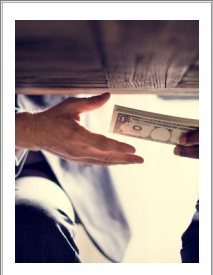
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### What Can a SNT Pay For?

- Special Needs Trusts can pay for expenses NOT covered by governmental benefit programs:
  - Clothing
  - Telephone, Internet, Cable
  - Furniture, Audio/Video/Computer Equipment
  - Periodic outings and vacations
  - Pre-need funeral and burial expenses
  - Taxes

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### Basic Legal Documents for the Family

- Joint or Separate Trusts for the Family
- Pour-over Wills
- Durable Powers of Attorney for Health Care & Finance
- Living Wills
- ❖ Special Needs Trust

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### Trusts

• Testamentary	—————>	• Upon Death
• Living	—————>	• Living
• Revocable	—————>	• Can be changed
• Irrevocable	.....>	• <b>Permanent!</b>

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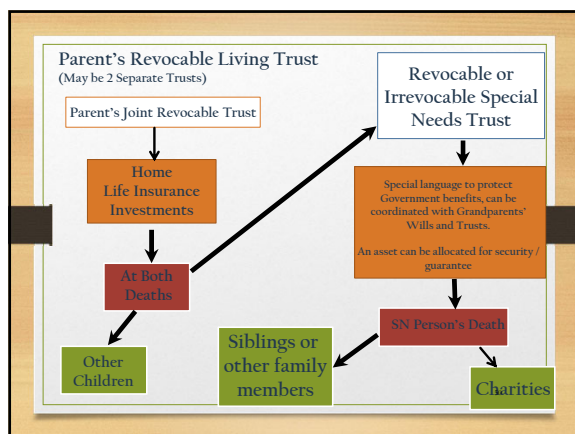
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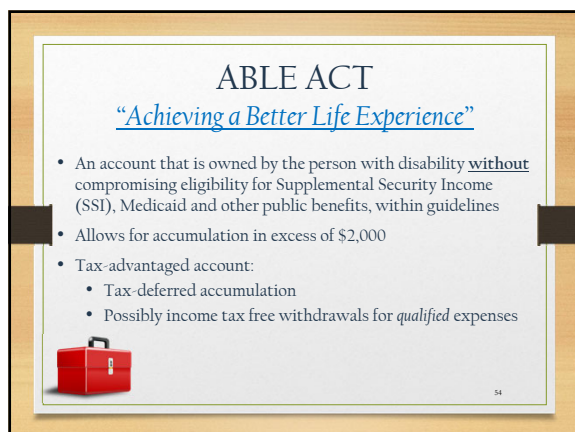
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### Who is eligible to open an ABL Account?

- Eligibility is limited to individuals with onset of disability prior to age 26
  - The eligible individual
  - His/her parents
  - Legal guardian or Conservator
- Beneficiary does not have to be under the age of 26 to open an ABL Account
- Only one ABL Account may be opened per beneficiary
- NOTE: Legislation has been introduced (March 2019) to increase the upper age from 26 to 46 – not yet accepted

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### What are “*Qualified*” expenses?

“Qualified Disability Expenses” may include (QDE)

- Education
- Housing
- Transportation
- Employment training & support
- Assistive technology
- Personal support services
- Health care expenses, prevention & wellness
- Funeral & burial expenses
- Other expenses which may help improve Health, Independence, and/or Quality of life

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### Contribution Limits & Changes

- Anyone can contribute to the plan, including the beneficiary (account owner)
- Total annual contributions are limited to \$15,000 (adjusted annually for inflation per TCJA 2017)
- States limit the total amount of aggregate contributions (this amount varies by state). The state of Michigan limits total plan contributions at \$900,000.
- States may offer income tax incentives. Michigan allows for a **\$5,000** income tax deduction for single filers and up to \$10,000 for joint filers
- Cash only investments
- ABLE Financial Planning Act: 529 educational savings accounts are now eligible to transfer into ABL Accounts – within certain limitations
  - Same beneficiary on each
  - Subject to same \$15,000 total cap contribution total
- ABLE to Work Act: Beneficiaries who are employed may be eligible to contribute above the \$15,000 limit based upon their own income, up to the Federal Poverty Level (\$12,140) – awaiting further guidance from the U.S. Department of Treasury
  - The beneficiary may not be participating in their employer-based retirement fund

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### What about Medicaid Payback?

- In the event the beneficiary dies with assets remaining in an ABLÉ Account:
  - The remaining assets are first paid back to any state Medicaid programs that provided assistance to the beneficiary
  - The payback is based upon the amount of benefit provided by Medicaid after the ABLÉ Account was created



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### Financial Planning



Cash Flow /Income – Expenses

Risk Management

Investments & Retirement Planning

Estate Planning

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### Cash Flow /Income - Expenses

#### 1)Family Income & Expenses

- a) While still employed
- b) During retirement

#### 2)Expenses incurred for the person with special needs

#### 3)Importance of savings/debt reduction

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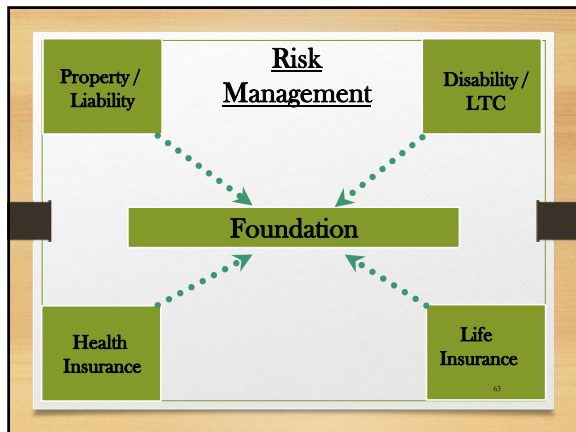
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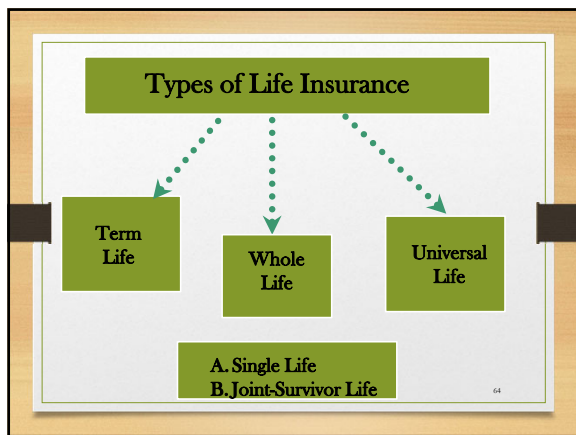
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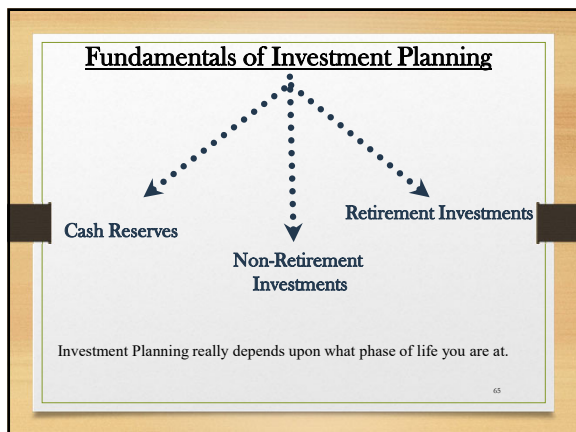
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SECURE Act

*“Setting Every Community Up for Retirement Enhancement”*

became law in December 20, 2019

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Key change that may affect your planning

- “Stretch” IRAs are no longer available:
  - Under the Act, beneficiaries are required to withdraw the balance of an inherited IRA within 10 years of the inheritance. This means taxes are due in full on all proceeds within 10 years.
    - This may create a real financial risk for your heirs because the longer they wait to withdraw the funds, the bigger the tax amount due.
  - However, beneficiaries who are surviving spouses, disabled individuals, minors and those who are not more than 10 years younger than the account owner, will not be required to follow the 10-year rule.
    - The Act allows a disabled beneficiary’s interest to be held in a trust and continue to use the “stretch” provision making withdrawals beyond 10 years.

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Key change that may affect your planning

- What this means:
  - If a properly drafted Special Needs trust is named as a beneficiary of an IRA, the annual Required Minimum Distributions (RMDs) are paid out to the Trust, but the successor trustee has the discretion over whether to distribute those funds to the Trust beneficiary or to keep them in the Trust.
  - Any funds that remain in the Trust would be taxed at high trust tax rates, which may be a prohibitive cost

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### What to Consider when Funding the SNT

- Total needs for the Special Needs individual(s)
- What assets are available for funding of the Special Needs Trust (SNT)?
  - Life Insurance, Retirement & Non-Retirement Investments, Real Estate
  - Focus on the "simple" assets if possible
- Tax implications leaving life insurance versus retirement investments to a *properly* drafted SNT given the passing of the SECURE Act
- Reviewing Trust documents created prior to the SECURE Act

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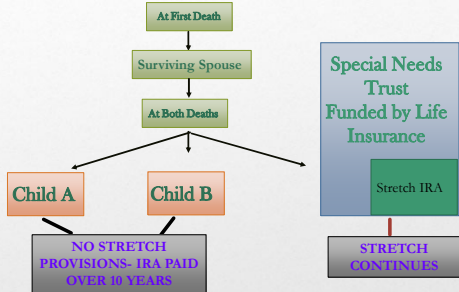
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### Distribution of Retirement Assets - Post 2020



After SECURE Act, Child A&B will have to liquidate over 10-years; however, the SNT can still provide the "Stretch".  
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