

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

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## Secure Planning Strategies

[www.spsfinancial.com](http://www.spsfinancial.com)  
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## Secure Planning Strategies

- 30 years experience in Special Needs Planning
- First wealth management firm in Michigan with Special Needs specialization
- Assisted over 1,800 families nationwide in Special Needs Planning
- Focuses on families' total planning with emphasis on Special Needs Planning in coordination with advocacy services and government benefits

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## Beyond A Parent's Love



Beyond a Parent's Love is a collection of human interest stories of several families describing their challenges, struggles and triumphs of raising a child or children with disability. While it describes planning strategies for the future of a person with special needs, it also focuses on the family dynamics, parent's acceptance of their child's disability and concerns about caring for the child after the parents are gone. These are true stories and each one of them provides insights and lessons that can be learned.

To Purchase this book on Amazon please visit the link below.

<https://amzn.to/2wApVp6>

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## Please Look at Seminar Outline You Printed Off

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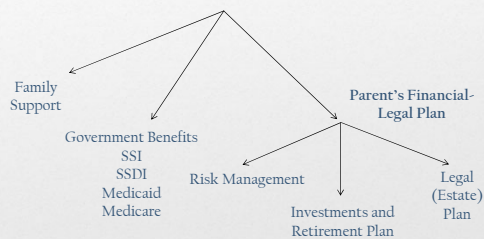
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## Components of Planning for a Person with Disabilities



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Important Definitions

Special Needs Trust

Representative Payee

Letter of Intent

Guardian

Durable Powers of Attorney

Conservator

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Special Needs Trust

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

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Important Definitions



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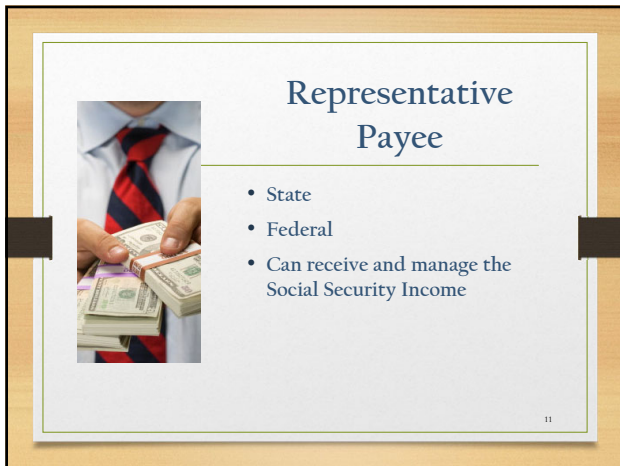
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## Conservator



FINANCIAL



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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 Matters

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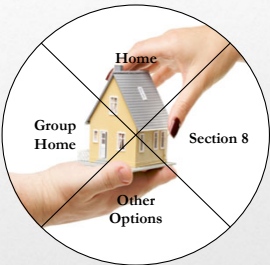
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### Housing

Housing is the single greatest concern that disabled persons and their families face



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### Why Worry About Housing Now?

- Impact on loved ones with disabilities
- Impact on caregivers
- Eliminating transfer trauma

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## Caregiving

- Caregiving Resources
  - Community Mental Health
  - Home Help
  - Waiver Services
  - Often combination of public & private means

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## Advocacy

- Through affiliations
- Professional Advocacy
  - Group
  - Individual
- Family Member

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## Medical Insurance & Health Benefits

- Dependent coverage through employer: not available at Parent's death
- Private insurance › Cost prohibitive
- Medicaid › Budget deficit › Cut in benefits
- Children with disability may have near normal life expectancy
- Aging process › Difficult & requires more medical care



Source: [www.asa.gov](http://www.asa.gov) 2022

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## Understanding Public Benefits

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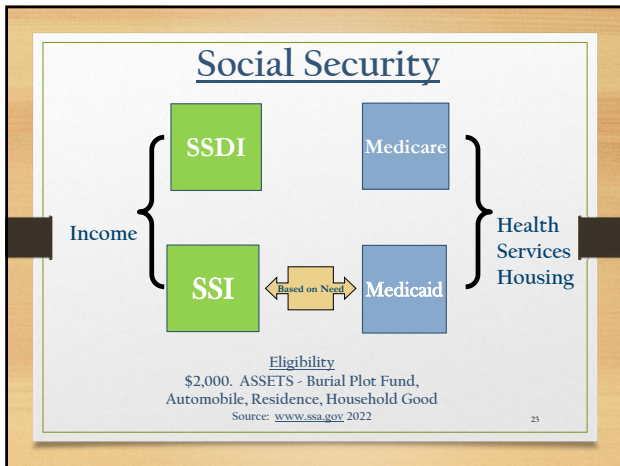
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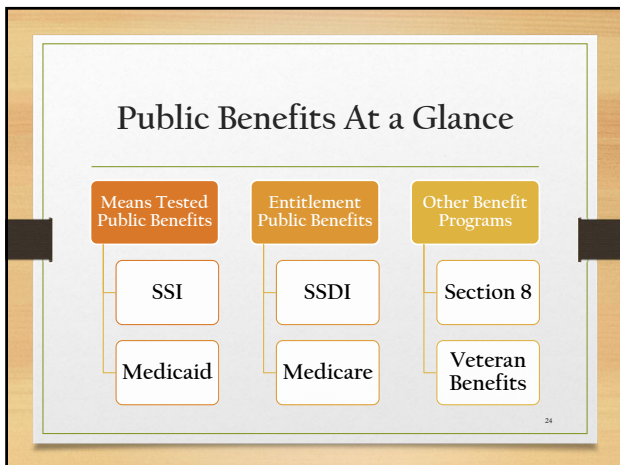
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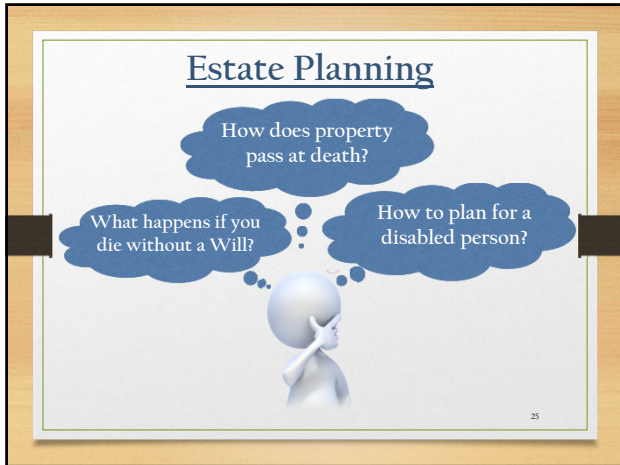
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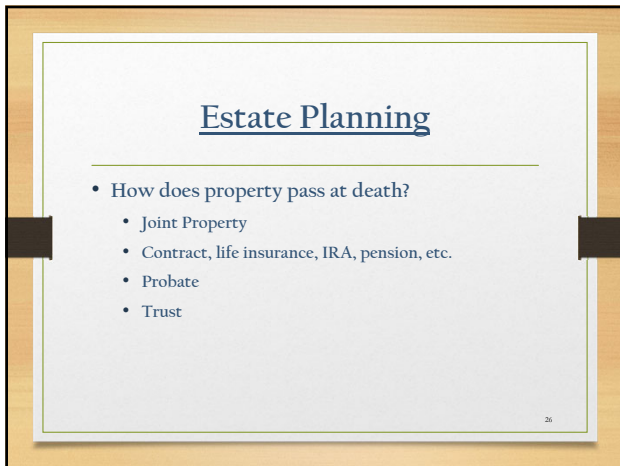
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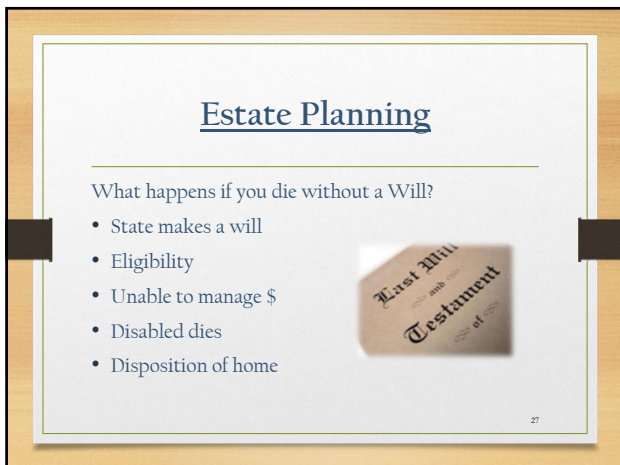
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## Estate Planning

### 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



Funded With  
Real Estate  
Investments  
Life Insurance

→

- Remainder Person
- Children of the Special Needs Person
- Siblings
- Charities

- Creator/Grantor
- Trustee – Successor Trustee (Personal/Disinterested)
- Trust Protector/Director
- Beneficiary
- Remainder Person

Proper Funding, Income to pay expenses for the special needs person.

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## Special Needs Trust

- Roles
  - Guardian
  - Trustee
  - Advocate



- Advocacy
  - Advise
  - Monitor
  - Protect

- Creator/Grantor
- Trustee – Successor Trustee (Personal/Disinterested)
- Trust Protector/Director
- Beneficiary
- Remainder Person

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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/Director
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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## Choosing The Trustee and Trustee Roles

- Family vs. institution vs. counsel
  - Complexity-SSI rules, tax reporting, investments,
  - Amount under management
  - Court oversight - bond?
  - Family relationship
  - Fees
  - Conflict of interest
  - Knowledge and experience
  - Ability vs. willingness

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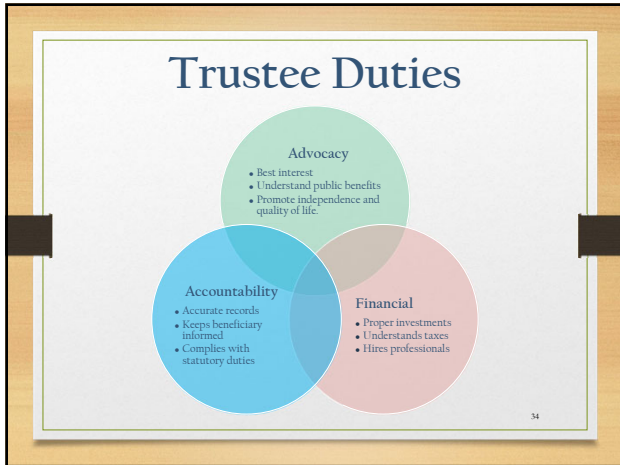
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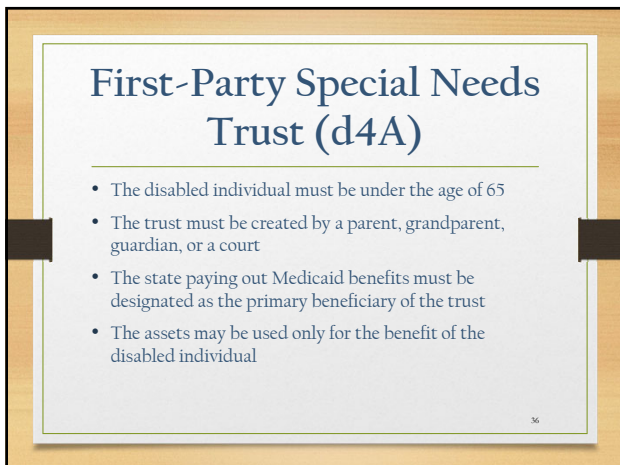
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## Pooled-Income Trust (d4C)

- 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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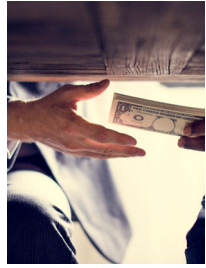
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## What Can a SNT Pay For?

- 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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## What Can't a SNT Pay For?

- A SNT *should not* give cash directly to Beneficiary (this includes gift cards)
- If SNT pays for food, shelter or medical care already being provided by SSI or Medicaid it will reduce (or eliminate) public benefits.
  - Shelter is defined as food, gas, electricity, water, sewer, heating fuel, garbage removal, real estate taxes, rent or mortgage
  - However, it may be in the beneficiary's best interest to accept the reduction in benefits and live in a better housing arrangement.
  - Review your trust language carefully. Some trusts do not allow a disbursement if it would reduce benefits.

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## Proper Planning is a MUST!

- Need to discuss with family
- Consult a planner
- Seek attorney
- Options for funding strategies and products

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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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## Which Comes First? Legal Planning or Financial Planning?

Financial & Legal Planning go hand in hand. Legal Planning will not work without proper financial planning

Parent's/Financial Planning



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## Special Needs Trust & Estate Planning

- Coordination with Parent's Planning
- Coordination with Extended Family Members

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## Comprehensive Estate Planning

- Unfunded trusts may lead to Probate
- Funding depends upon types of assets
- Real Estate uses 'Quit Claim' Deeds
- Investments need to be re-registered
- Contracts have Beneficiary Designations
- Inheritance / Gifts
- Create New Assets

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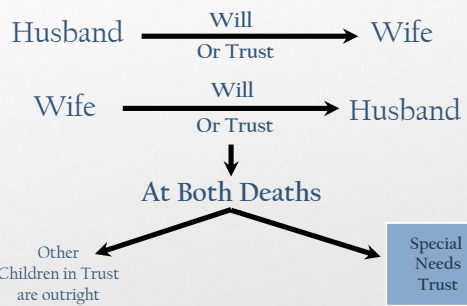
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## Commonly Seen Legal Plan



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## Concerns

- Assets may be depleted by the time both parents pass away – due to long term illness, taxes, etc.
- Contributions by other family members, such as grandparents, Uncles, Aunts, etc. may be difficult.

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### Parent's Revocable Living Trust (May be 2 Separate Trusts)

Parent's Joint Revocable Trust

Home  
Life Insurance  
Investments

At Both  
Deaths

Other  
Children

Siblings or  
other family  
members

Revocable or  
Irrevocable Special  
Needs Trust

Special language to protect  
Government benefits, can be  
coordinated with Grandparents'  
Wills and Trusts.

An asset can be allocated for security /  
guarantee

SN Person's  
Death

Charities

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## Unique Planning Situations

- Divorce
- Re-Marriage
- Non-US Citizens

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## All Planning Matters

- Ongoing Process
- Both for Short & Long-Term
- Periodic Reviews

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## ABLE ACT

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## ABLE ACT

### “Achieving a Better Life Experience”

- An account that is owned by the person with disability without compromising eligibility for Supplemental Security Income (SSI), Medicaid and other public benefits, within guidelines
- Allows for accumulation in excess of \$2,000
- Tax-advantaged account:
  - Tax-deferred accumulation
  - Possibly income tax free withdrawals for *qualified* expenses



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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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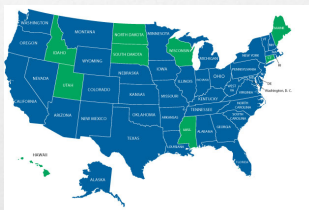
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## Plan Availability

- State sponsored plans. As of today, 42 states & the District of Columbia have programs open:
  - Alabama, Alaska, **Arizona**, Arkansas, California, Colorado, Delaware, District of Columbia, **Florida**, **Georgia**, Illinois, Indiana, Iowa, Kansas, **Kentucky**, **Louisiana**, Maryland, Massachusetts, Michigan, Minnesota, **Missouri**, Montana, Nebraska, Nevada, **New Hampshire**, New Jersey, New Mexico, New York, North Carolina, Ohio, **Oklahoma**, Oregon, Pennsylvania, Rhode Island, **South Carolina**, Tennessee, Texas, Vermont, Virginia, **Washington**, West Virginia, **Wyoming**
  - **State residency may be an issue**

(as of January 14, 2021)



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## Contribution Limits & Changes

- Anyone can contribute to the plan, including the beneficiary (account owner)
- Total annual contributions are limited to **\$16,000** (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 \$500,000.
- 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
- ABL 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 \$16,000 total cap contribution total
- ABL to Work Act: Beneficiaries who are employed may be eligible to contribute above the \$16,000 limit based upon their own income, up to the Federal Poverty Level (\$13,590) – awaiting further guidance from the U.S. Department of Treasury
  - The beneficiary may not be participating in their employer-based retirement fund

Source: ssa.gov 2022

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## ABLE, SSI, & Medicaid

- For eligible individuals that are currently receiving SSI & Medicaid benefits, certain restrictions apply:
  - If ABL account values exceed \$100,000, the beneficiary's SSI benefits will be suspended – this has NO effect on the beneficiary's Medicaid eligibility.
  - SSI benefits resume once the ABL account values are below \$100,000



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## What about Medicaid Payback?

- In the event the beneficiary dies with assets remaining in an ABL 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 ABL Account was created



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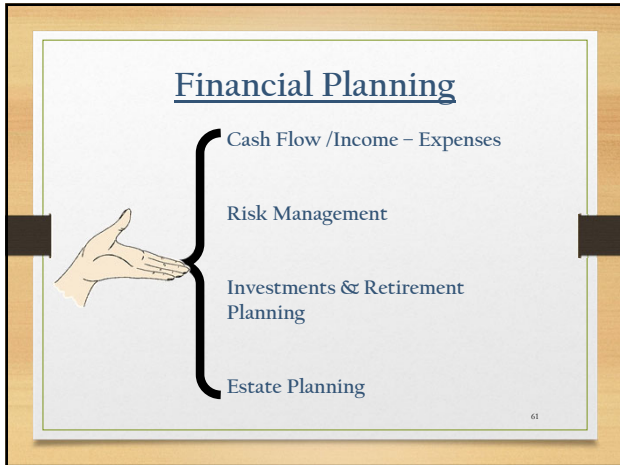
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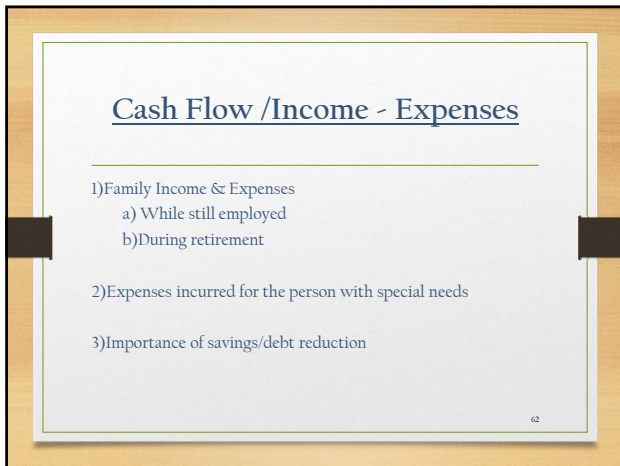
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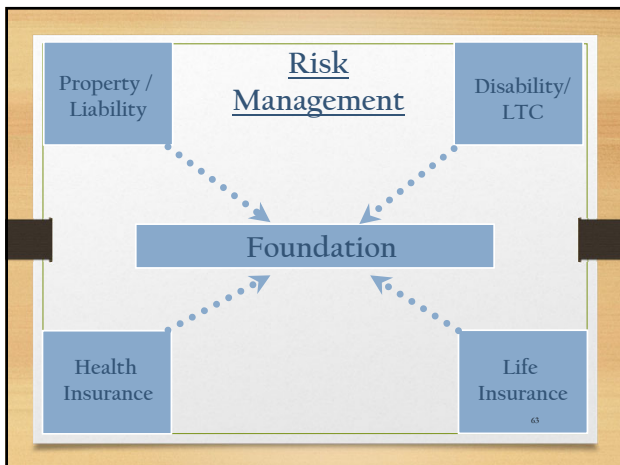
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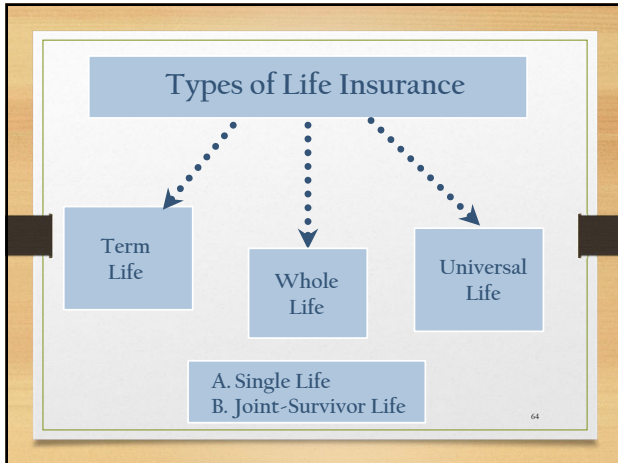
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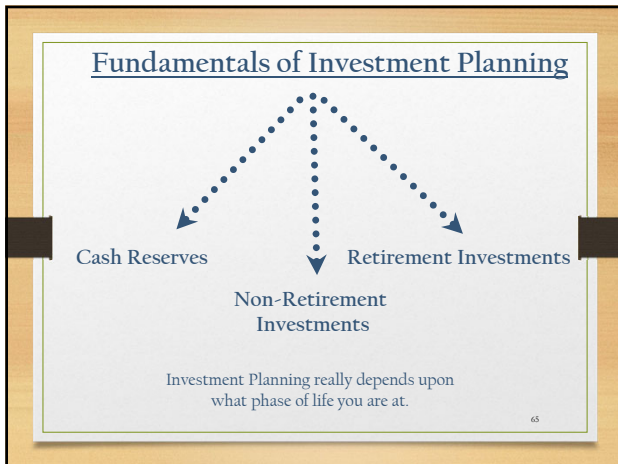
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### Investment Planning Special Needs Trust

- Funded trusts are often Irrevocable.
  - Irrev. Trusts have compressed tax brackets.<sup>1</sup>
- Investment strategies should be designed for growth & income.
  - It is important to have some guarantee of income.
- Life insurance offers a practical and tax-efficient funding vehicle – as well as a financial guarantee for the trust.
  - Guarantees are backed by the claims paying abilities of the insurance company

<sup>1</sup> [www.irs.gov](http://www.irs.gov) – Estate & Trust Income Tax Brackets

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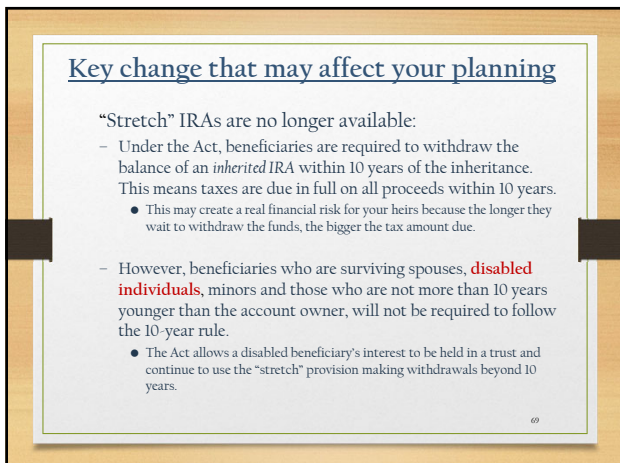
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### Key change that may affect your planning

- 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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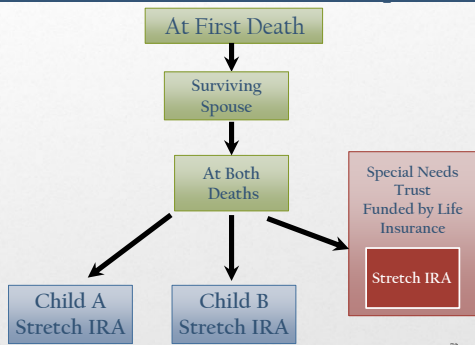
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### Distribution of Retirement Assets pre-2020



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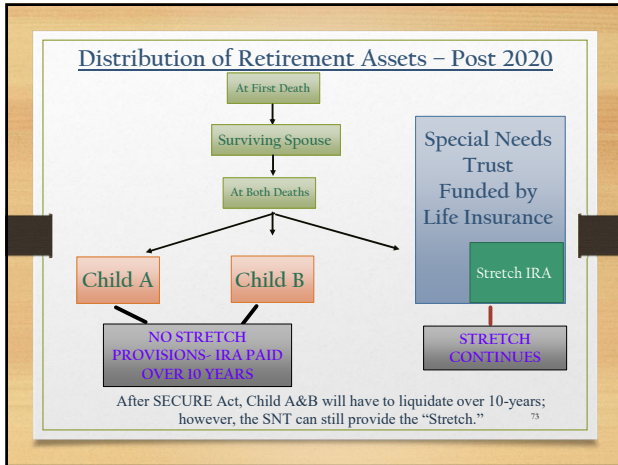
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