

Riley's Warriors
Planning for a Special Needs Child
July 17, 2008

Presented By
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Overview

- Guardian of the Person
 - Guardian of the Estate
 - Trust as Alternative
 - Basic Property Distribution
 - Special Needs Trust
 - Planning
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Guardian

Guardian

➤ When? To Solve a Problem

- ◆ Incapacitated Person turns 18 years old (Parents are allowed to give medical consent w/o Guardianship)
- ◆ Death of the Parents/Guardian of a Minor or Incapacitated Person
- ◆ Triggers – Property passing outright to Minor or Incapacitated Person or Need a Decision Maker

Guardian

- **Appointed by the Court**
 - ◆ Necessary to Protect Person
 - ◆ Evaluation (unless minor) and Hearing are Necessary
 - ◆ If no Parent nor Spouse, then the most closest person related by blood or marriage receives notice
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Guardian

➤ Qualifications

- ◆ Person at least 18 years old & not a Felon
- ◆ Arkansas Resident or out-of-state person who appoints a resident agent
- ◆ Court finds suitable

Guardian

➤ Preferences

- ◆ Parents of the minor (Guardian of the Person)
 - ◆ Court Considers the following:
 - ◆ Request in Written Document from Parent/Guardian of a minor child
 - ◆ Request of a minor who is at least 14 years old or Incapacitated Person
 - ◆ Request by spouse of an Incapacitated Person
 - ◆ Blood or Marriage relationship
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Guardian of the Person

Guardian of the Person

- ◆ Care & Custody of the Person
- ◆ Incapacitated Person is a person who cannot make decisions to meet essential requirements of health or safety
- ◆ Makes all Decisions relating to the Person
- ◆ Prepare Letter of Instructions for Guardian of the Person

Guardian of the Person

➤ Decisions for Terminally Ill

- ◆ The following order if available:
 - ◆ Legal Guardian
 - ◆ If Unmarried Minor – Parents
 - ◆ Spouse
 - ◆ Majority of Adult Children Participating
 - ◆ If Adult – Parents
 - ◆ Majority of Adult Siblings Participating
 - ◆ Loco Parentis
 - ◆ Majority of Adult Heirs Participating
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Guardian of the Estate

Guardian of the Estate

- ◆ Care & Custody of the Estate of the Person
 - ◆ Incapacitated Person is a person who cannot manage such person's Estate
 - ◆ Bond and Annual Court Accountings are required unless Bond is waived
 - ◆ Limited Investments (High degree of Court Involvement)
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Trust

Trust

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- ◆ Alternative to Guardian of the Estate and Minor's Account that terminates at age 21 and are included in estate and subject to creditors
 - ◆ Bond and Annual Court Accountings can be waived
 - ◆ Broad Investments (Court Review is not required)
 - ◆ Less Costly and Easier Administration (you control not the Court)
 - ◆ Trust can receive gifts during life and contributions on death
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Trust

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- ◆ Trustee is the Owner and works with Guardian of the Person to determine what is best for Child (you control who is the Trustee, not the Court)
 - ◆ Child is the Beneficiary
 - ◆ Distribution Provisions, such as, for health, education and support in accustomed standard of living (you control, not the Court)
 - ◆ Trust Provisions provide for distribution on death of Child (not part of probate, creditors nor court supervision)
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Property Distribution

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Property Distribution

- **Title** (not subject to Will or Probate)
- ◆ Joint Property with survivorship passes to Survivor
- ◆ Name on Account, then can withdraw everything & subject to creditors (best not to add names to accounts)

Property Distribution

- **Designation** (not subject to Will or Probate)
 - ◆ Life Insurance
 - ◆ Retirement Accounts
 - ◆ Payable or Transfer on Death Accounts
 - ◆ Beneficiary Deed for real estate
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Property Distribution

- **Trust** (not subject to Will, Probate, Power of Attorney or Guardian)
 - ◆ **Must Transfer Assets to Trust during life or upon death**
 - ◆ **Should Name Trust as Beneficiary of Life Insurance and Retirement Accounts**
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Property Distribution

➤ Will

- ◆ Does Not apply to Joint Property, Property with Beneficiary Designation or Property held by Trust (a Will may be unnecessary)
- ◆ Will can create a Trust

Property Distribution

- **No Will, Trust, Joint Ownership or Designation**
 - ◆ Home and 1/3 of all other property to Spouse (real property for life only)
 - ◆ Rest (or all if no spouse) to:
 - ◆ Descendants, or, if none,
 - ◆ All to Spouse, or, if none,
 - ◆ All to Parents, or, if none,
 - ◆ All to Descendants of Parents
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Property Distribution

- **Reasons to Have a Will or Trust**
 - ◆ Name your Executor, Trustee and Guardian
 - ◆ Alter the disposition on previous slide
 - ◆ Provide for trusts instead of outright transfers
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Property Distribution

- **Reasons to leave Assets in Trust for Beneficiary**
 - ◆ Subject to your Terms (not others)
 - ◆ You Pick the Trustee and Distribution Provisions
 - ◆ Creditors (including the State) cannot reach assets
 - ◆ Avoids Guardian of the Estate & Future Probate
 - ◆ Easier Administration (no Bond and Accounting and No Court Involvement)
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Special Needs Trust

Special Needs Trust

➤ Purpose

- ◆ Supplement Government Benefits (SSI and Medicaid that are subject to income & asset tests)
- ◆ Avoid Cost-of-Care Liability for Services provided
- ◆ Trust is not “available” for the use of the Special Needs Child (“SNC”)

Special Needs Trust

- **Discretionary Distributions**
 - ◆ Trustee is not required to provided for the health, support and maintenance of the SNC
 - ◆ Sole and Absolute Discretion of the Trustee

Special Needs Trust

➤ Spendthrift Provision

- ◆ Prevents creditors from reaching assets of the trust

➤ Limitation of Expenditures

- ◆ Cannot spend for basic support and medical care

Special Needs Trust

➤ Special Needs

- ◆ Can distribute for items not covered by government benefits, such as, clothes, electronics, vacations, tickets, movies, etc.

Special Needs Trust

- **Allow for Other Beneficiaries**
 - ◆ Other children and grandchildren
 - **Distributions to Guardian**
 - ◆ Expenses for living arrangements
 - ◆ Lost Earnings
 - ◆ Vacations
 - ◆ Annuity
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Special Needs Trust

➤ Early Termination

- ◆ In the event the trust disqualifies the SNC

➤ Distribution on Termination or Death of SNC

Planning

Planning

- **Who will be Trustee & Guardian?**
 - ◆ Same Person or Different Persons?
 - ◆ Provide Instructions for Guardian
 - ◆ Name Successors
 - ◆ Corporate Trustee?

➤ What is Fair?

- ◆ Disinherit?
- ◆ Informal Trust (gift issues)
- ◆ Must use Trust for SNC (avoid outright distribution)

Planning

- **Keep SNC's eligibility?**
 - ◆ Limit Distributions from Trust by using Special Needs Trust
 - ◆ To avoid limitations on distributions, Trust may produce enough income to not need government benefits
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Conclusion

- ◆ Guardian – Who and is it Needed - Letter of Instructions
 - ◆ Trust is Better than Guardian of the Estate
 - ◆ Review title & beneficiary designations
 - ◆ Have a Will/Trust that identifies Guardian, Executor & Trustee and provides for a Trust for SNC
 - ◆ Is a Special Needs Trust desired?
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