INTRODUCTION

Families, parents & spouses of a person with a disability have indicated that the following are their major concerns. They want assurances that their family member with a disability will have a quality of life even when they become disabled or are no longer here.

1. Who will look after your family member with a disability when you are old, acquire a disability, or die?

2. Who will provide the necessary funds to ensure a comfortable quality of life? Most people with disabilities will receive some form of government benefits-SSI (Supplemental Security Income) and/or Medicaid. The amounts of these benefits are one-third less than a poverty level income. Parents traditionally provide the difference in cash and resources to bring up their child's comfort level and improve the quality of life for them. Where will this extra money come from if the parents are not there to provide it?

3. Who will manage the funds or resources you do leave, so they will last your child's lifetime? A lifetime with good medical care could be extended many years after you are gone.

4. Where will your child live?

5. How will funeral expenses be paid? Funerals can be expensive, and will cost more in the future.

6. Will your family and friends support the decisions you make and fund? Will they be shocked with the unexpected responsibility, or welcoming and supportive of your decisions?

During this session we will first review the main components of an estate plan and than we will examine the problem of how to be thoroughly prepared using the four different components of the Life Planning approach. We will also offer specific guidelines to help you answer each of the above questions.

1. The Life Plan: How do you develop a Life Plan for the future that meets your family's unique needs?

2. Funding Plan: How do you determine the costs of this Life Plan and then find the resources to fund it for your child's lifetime?

3. Legal Plan: How do you make it "legally sound?"

4. Plan Management: How do you implement and manage the Life Plan, so it will carry out your wishes when you are unable to care for the person with a disability? How can you assure that it will be current?

Advantages of a Will

Avoids Distribution Under the Law of Intestacy

The state intestacy law will pass property to certain relatives of the decedent. These laws have been drafted to be fair in the average situation, but most persons would like to choose who will receive their estate when they die.

Permits the Nomination of a Guardian for Minor Children

Without a nomination in a will, the court will appoint a guardian of the person for minor children. Relatives are not always the best choice for a guardian and consideration must be given to the financial situation of the potential guardian, as well as his or her health, age, willingness and ability to care for your children.

Waiver of the Probate Bond

In the absence of a will, the court will require a fiduciary bond to be posted by the administrator (executor) of the estate to guarantee the replacement of any funds embezzled or diverted by him. Since this additional cost must be borne by the estate, the estate owner may want to waive the bond requirement in the will. Great care should be used in selecting an executor.

Choosing the Executor

The duties of the executor of an estate can be very time consuming and frustrating, especially to a spouse who has just lost his or her mate. In the will, a qualified individual and/or a corporate trust company can be chosen to handle these responsibilities.

Making Specific Bequests to Individuals

An individual may bequeath specific items of jewelry, heirlooms and furniture, or make cash bequests, and be certain that they will pass to the proper persons. Without a will, written or oral instructions may not be followed.

Sale of Assets During the Administration of Probate

Additional expense to the estate can generally be avoided by permitting the sale of assets without the executor having to publish a notice of sale in the newspaper. A sale of assets may be necessary in order to pay death taxes and expenses of probate.

Advantages of a Will

Authorizing the Continuation of a Business

Unless the will authorizes the continuation of a business, the executor must operate it at his or her own risk. Many executors may elect not to administer the estate unless this risk is borne by the estate.

Deferring Distributions to Minors

When parents die leaving minor children, each child's share of the estate must be held in a guardianship account until he or she attains the age of 18 (or 21), at which time the entire remaining share is distributed outright. Trust provisions can be placed in the will to defer these distributions until a more mature age.

Tax Savings

Certain, substantial tax savings are possible through the use of trusts. The will can be used to create trusts after death. Such trusts are known as testamentary credit shelter trusts. Similar tax savings, as well as probate savings, can be achieved through the use of trusts established during life, known as living credit shelter trusts.[1]

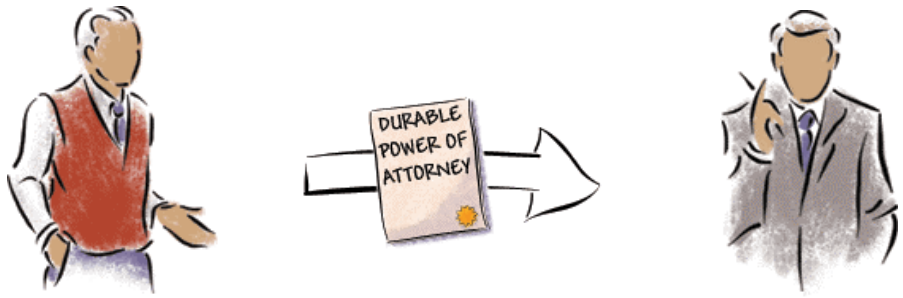
Peace of Mind

Although this advantage cannot be measured in dollars and cents, when the estate is in order an emotional load is lifted from the person who is concerned for his or her family's well being.

[1] Under the Tax Act of 2001, the federal estate tax is gradually phased out until its final repeal in the year 2010. If Congress does not act at that time to repeal it for the years following, it will automatically revert back to the rates in effect during the year 2001, with an exemption for the first $1,000,000 of assets.

Durable Power of Attorney

A power of attorney is a written document which one person (the principal) uses to empower another person (the attorney-in-fact or holder of the power) to act on his or her behalf.



Principal (competent adult)

Holder of Power (attorney-in-fact)

Powers Which May Be Included

Non-Tax Powers	Tax-Related Powers
• To buy, sell or lease assets • To sue on the principal's behalf • To collect from creditors • To change provisions in a living trust • To operate the principal's business	• The power to make gifts to the spouse (to equalize the estates) and to children, grandchildren, etc. (to utilize the annual gift tax exclusions) • The power to make disclaimers • The power to create living trusts to benefit the principal, spouse and heirs • The power to complete transfers to a living trust if the principal becomes incompetent • The power to join the competent spouse in signing income and gift tax returns • The power to exercise special powers of appointment

Additional Considerations

Some powers, such as the power to execute and revoke a will, can not be given to another individual. In addition, powers of attorney are usually notarized and those affecting real property may need to be recorded.

A power can be a general power of attorney, which gives the holder all of the powers possessed by the principal. On the other hand, a special power of attorney limits the powers only to those specifically set forth in the document.

Document can be drafted so as to empower the holder currently or to become effective only in the event the principal becomes incompetent (sometimes called a springing power). A durable power of attorney may save the often-considerable costs of a conservatorship. A conservatorship, however, has the benefit of court supervision.

Note: Significant powers may be granted under a power of attorney. Before using a preprinted form, legal advice should be obtained.

Revocable Living Trust

(Inter-vivos Trusts)

A trust is created when one person (the trustor or grantor) transfers to another person or a corporation (the trustee) a property interest to be held for the benefit of himself or others (the beneficiaries).

If the trust is created during the trustor's lifetime, rather than in his will, it is an inter-vivos or living trust. When the trustor retains the right to dissolve the trust arrangement, it is a revocable living trust.

What Are Some of the Advantages?

- Assets in the trust are not subject to probate administration. This usually saves executor's and attorney's fees. It also grants more privacy as to who gets the trust assets, when they receive them and how much they get.
- Professional management is available if the trustor becomes incompetent, disabled or wants to be free of the worries of management.
- Should the trustor (also usually the original trustee) die, a successor trustee can step in and manage the trust assets without delay or red tape.
- Annual court accountings, with accompanying legal fees, are not required, although some states do not require annual accountings for testamentary trusts (will trusts), either.
- The trustee can collect life insurance proceeds immediately after the trustor dies and can (if permitted under the trust document) use the proceeds to care for family members without any need for court approval.
- A successor trustee can be in another state without problems.

What Are Some of the Disadvantages?

- Creditors may not be cut off as quickly as they are in probated estates; e.g., four months in some states.
- A little more effort is required to transfer assets into the trust and records should be kept of transactions by the trustee.
- The attorney usually charges a higher fee to establish a living trust, as opposed to a testamentary or will trust. There may also be ongoing administrative charges.

Note: Assets in a revocable living trust are included in one's gross estate for federal estate tax purposes.

Funding Your Revocable Living Trust

Many people have established living trusts in an effort to avoid probate administration, reduce death taxes, or provide management of assets for minor children.

A great number of these trusts are completely unfunded. In other words, title to the person's assets has never been transferred into the name of the trust. In order to avoid probate, the assets must be in the trust (the trust must be the legal owner of the assets) at the time the estate owner dies. Individuals who have established living trusts should periodically check the title of their assets to verify that they are held in the trust name.

- Savings and loan and bank accounts can be easily changed into the trust name by the institution.
- Real estate is generally transferred into the trust name by having an attorney prepare a new deed.
- Promissory notes and deeds of trust can be assigned to the trust.
- Personal effects, furniture, furnishings, clothing, jewelry and items that have no certificate of ownership can be transferred with a deed of gift or assignment of personal property.
- A stockbroker can assist you in transferring your securities.
- Certificates of limited partnership should be examined for instructions and requirements for making the transfer.
- Closely held corporation stock must be changed into the trustee's name. If there is a buy-sell agreement, it must be reviewed for any prohibition against this type of transfer. Also, if the corporation is either an S corporation or a professional corporation, special rules must be followed.
- General partnership interests can be put into the trust if the partnership agreement permits such transfers.
- Sole proprietorships require a bill of sale or an assignment of interest, which includes the goodwill of the business.
- Life insurance proceeds made payable to the living trust will be managed for the benefit of your heirs along with the other assets in the trust until such time as they are to be distributed.
- Qualified plan benefits and IRAs should be paid to the surviving spouse, if living; otherwise they may be paid to the living trust. Retirement benefits paid to a living trust will be subject to faster payout requirements unless the trust is also qualified as a designated beneficiary trust.

Note: Check with an attorney concerning all transfers to your trust. The transfer of various assets after death with an affidavit may be permitted.

Transfer on Death

Many states have adopted the Uniform TOD Security Registration Act. TOD is an acronym that stands for "transfer on death". The provisions of the Act permit securities and securities accounts to be registered so that ownership automatically passes to named beneficiaries upon the death of the owner or the last-to-die of multiple owners. In general, the result is a simplified, nonprobate transfer similar to pay-on-death (POD) transfers of bank accounts or Totten trusts. Assets transferred via TOD registration generally receive a full step-up in cost basis.

In the case of multiple owners, the property must be titled so that ownership will vest in the survivor of them before the asset passes to the named beneficiary. Thus, the owners may hold the property as joint tenants, as tenants by the entireties, or as "owners of community property held in survivorship form." A disadvantage of multiple ownership is that all parties must sign for any future account changes.

Beneficiary Designations

Beneficiary designations determine who receives the assets at death. The Act allows naming a substitute beneficiary to receive the assets if the beneficiary fails to survive. It also provides that "lineal descendants per stirpes[1]" may be substitute beneficiaries.

Acronyms Approved in Statute	Example of Use
TOD = transfer on death	John S. Doe TOD John S. Doe, Jr.
POD = pay on death	John S. Doe POD John S. Doe, Jr.
JT TEN = joint tenants	John S. Doe Mary B. Doe JT TEN TOD John S. Doe, Jr.
SUB BENE = substitute beneficiary	John S. Doe TOD John S. Doe, Jr. SUB BENE Peter Doe
LDPS = lineal descendants per stirpes	John S. Doe Mary B. Doe TOD John S. Doe, Jr. LDPS

Creditor and Third-Party Claims

Generally, the Act does not provide any protection against the claims of third parties such as creditors, or individuals with other interests, such as a spouse's community property interest. A creditor or other party asserting a conflicting interest can do so simply by giving notice to the registering entity (the broker-dealer). As a practical matter, this will usually block transfer of the asset until the conflict is resolved.

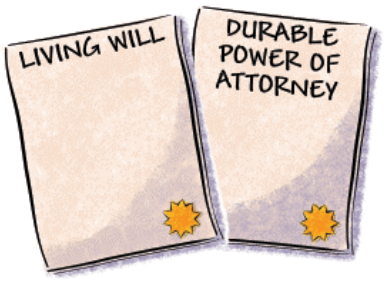
Seek Professional Guidance

As a general rule, TOD registration as an estate planning tool is most useful in smaller estates, those without estate tax problems, or in situations involving a single estate owner with a single beneficiary. Estate owners are advised to seek the advice and counsel of a competent estate planning attorney in their state of residence before making any decisions regarding the use of TOD registration.

[1] "Per stirpes" is a Latin term meaning "in the stirrups of." In estate planning it refers to a common method of dividing an estate among the heirs of an estate owner.

Advance Health Care Directives

End-of-Life Decision Making



Modern medicine can now keep a person alive in situations that, in years past, would have resulted in the individual's death. Frequently, a patient in such a condition is unable to communicate his or her wishes with regard to the type of medical care to be provided. In the absence of any other guidance, the attending physician will typically use all available means to keep the individual alive, even when death is certain, with no hope of recovery.

However, many individuals feel that once death is inevitable, life should not be artificially prolonged through the use of such technology. The decision to start or withdraw such life-sustaining support, although always difficult, can be made easier with advance planning.

The term "advance health care directives" is commonly used to describe two key documents (sometimes combined into one) designed to address these end-of-life decisions:

- **Living Will**
- **Durable Power of Attorney for Health Care**

Individual state law governs the use of these documents, and such legislation can vary widely. Individuals who live in more than one state may need to execute a living will and a durable power of attorney for health care for each state.

Living Will

A living will, also known as a "directive to physicians," is a written statement of the individual's health care wishes should he or she become seriously ill and unable to communicate. The document is designed to provide guidance to someone else appointed to make health care decisions for the individual, or to the attending physician if there is no health care agent. A living will might include:

- Directions as to pain medication.
- Directions as to when to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care, including cardiopulmonary resuscitation.
- A discussion of any religious beliefs that might impact medical treatment.
- Instructions for funeral and burial services.

Because it is impossible to foresee the future, the living will should be written in the broadest possible manner, to cover a wide range of situations.

Advance Health Care Directives

End-of-Life Decision Making

Durable Power of Attorney for Health Care

In a durable power of attorney for health care, sometimes known as a "health care proxy," an individual (the principal) appoints another person (the agent) to make health care decisions if the principal is incapable of doing so.[1] A durable power of attorney may employ a "springing" power, which means that the power "springs" into life when the principal becomes incapacitated.[2] Additional powers granted to the agent could include:

- Access to medical records.
- Authority to transfer the principal to another facility or to another state.
- Ability to authorize a "Do Not Resuscitate" (DNR) order.
- Postmortem powers to dispose of the remains, to authorize an autopsy, or to donate all or part of the principal's body for transplant, education, or research purposes.

Other Points

- **Talk about the issues** - the individual should spend time talking with family, friends, clergy, and physician about his or her wishes in end-of-life decisions.
- **Make the documents available** – if a living will and/or a durable power of attorney exist, be sure that those involved know where to locate the documents.
- **Revocation** – an individual can generally revoke a living will or durable power of attorney at any time.

Additional Resources

Several non-profit organizations provide support and education on end-of-life issues:

- **National Hospice and Palliative Care Organization** – (703) 837-1500, on the internet at: www.nhpco.org
- **Last Acts Partnership** – (800) 989-9455, on the internet: www.lastactspartnership.org

Seek Professional Guidance

The counsel and guidance of legal, religious, and medical professionals is essential to the successful preparation of advance health care directives.

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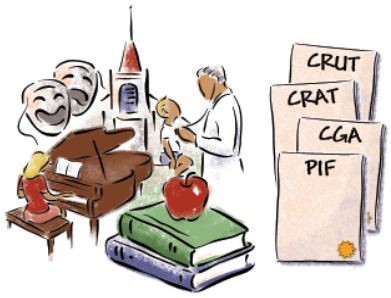
[1] Many states have provision in their laws for the appointment of a surrogate such as a spouse, domestic partner, or other close family member to make health care decisions for the principal, in situations where no durable power of attorney for health care exists.

[2] Under the Health Insurance Portability and Accountability Act (HIPAA), a physician is prohibited from discussing a patient's medical condition without the patient's consent. Thus, if an individual becomes incapacitated, the person named as agent under a durable power of attorney for health care may not have access to the principal's health-care information. Without this information, the agent would be unable to legally establish that the principal had become incapacitated, and would not be able to trigger any "springing" power. A HIPPA authorization can be used to give the agent access to the principal's health-care information.

Charitable Giving Techniques

Gifts to charity during lifetime or at death will reduce the size of the gross taxable estate. An additional benefit of lifetime gifts is that an income tax deduction is available within certain percentage limitations.



Split-Interest Gifts

If the estate owner is not willing or able to contribute the entire asset during lifetime, he or she may consider a split-interest, deferred gift.

The ownership interests in an asset can be split or divided into two parts, a stream of income payable for one or more lifetimes or a term of years (the income interest) and the principal remaining after the income term (the remainder interest).[1] In a split-interest gift, one portion is given in trust for the charity and the other portion is retained.

Charitable Remainder Plans

When the estate owner retains the right to the income but transfers his or her rights in the remainder to a trust, it is called a charitable remainder trust.

To qualify for an income tax deduction the trust must be a unitrust, an annuity trust, a pooled income fund or a charitable gift annuity.

- **Charitable remainder unitrust:** In this type of trust the donor usually retains a right to a fixed percentage of the fair market value of the trust assets, re-valued annually. If the value of the assets increases, so does the annual payout and vice versa. See IRC Sec. 664(d)(2).
- **Charitable remainder annuity trust:** This trust is similar to the unitrust but instead pays a fixed dollar amount year after year. The increases or decreases in the value of the trust do not affect the payments. See IRC Sec. 664(d)(1).
- **Pooled income fund:** Assets are transferred to a common investment fund maintained by the charity. Each donor receives annually a share of the income from the fund, in proportion to the contribution made. These annual payments continue for the lifetimes of the donor and spouse. At death, the corpus of the donor's gift, together with any capital gains, passes to the charity. Payments will increase or decrease with the investment performance of the fund. See IRC Sec. 642(c)(5).
- **Charitable gift annuity:** The donor transfers the asset directly to the charity in exchange for the charity's agreement to pay a fixed lifetime annuity.

The amount of the income tax deduction is dependent upon the percentage of the income interest and the period over which it will be paid (usually the life of the donor and his or her spouse). This is determined from the mortality tables published by the government.

[1] Technically, the present value of the income share and the present value of the remainder interest.

Review

Now that we have looked at the major parts of establishing an estate plan, we will review the major concerns of the caregiver.

What are the key areas that every family, parents or spouses of a person with a disability are concerned about?

1. Who will look after your family member with a disability when you are old, acquire a disability, or die?

2. Who will provide the necessary funds to ensure a comfortable quality of life? Most people with disabilities will receive some form of government benefits-SSI (Supplemental Security Income) or Medicaid. The amounts of these benefits are one-third less than a poverty level income. Parents traditionally provide the difference in cash and resources to bring up their child's comfort level and improve the quality of life for them. Where will this extra money come from if the parents are not there to provide it?

3. Who will manage the funds or resources you do leave, so they will last your child's lifetime? A lifetime with good medical care could extend many years after you are gone.

4. Where will your child live?

5. How will funeral expenses be paid? Funerals can be expensive, and will cost more in the future.

6. Will your family and friends support the decisions you make and fund? Will they be shocked with the unexpected responsibility, or welcoming and supportive of your decisions?

Life Plan

This involves a written plan as to your future dreams and hopes for the person with a disability. Include all areas of life such as medical care, education, housing employment, social and other aspects of life for your family member with a disability. This will assist in making a smooth transition of care.

Legal

This requires an attorney that is familiar with this type of planning and would include wills that would exclude, by name, the person with a disability. The other document would be a Supplemental Needs Trust that would hold all assets for the person with a disability and would be disbursed by the trustee that you would have chosen. You should also provide for successor trustees and guardians/conservators.

Financial

The next problem that has to be handled is to determine how much money will be needed for the family member with a disability, where will it come from and how will it integrate with retirement and other financial plans. A qualified estate planner that has extensive experience in working with persons with a disability should be consulted.

Plan Management

How do you implement and manage the Life Plan, so it will carry out your wishes when you are unable to care for the person with a disability? How can you assure that it will be current?

LETTER OF INTENT (LIFE PLAN)

SPECIAL NOTE: The term's son, daughter, and parent were used for convenience, but the same principals should be used whatever the relationship is between the care giver and the person with a disability.

Preparing a Letter of Intent is one of the first steps in developing a Comprehensive Life Plan for a family who has a member with a disability.

In many ways, it is the most important document that a parent or caregiver can prepare. This instrument will help the guardians, trustees, courts, and any other person, interpret your hopes and desires for the future of the person with the disability. The Letter of Intent is not a formal "legal" document along the same lines as the Wills and Trusts. However, the courts and future care givers rely on this record for guidance in understanding the wishes of you and your family member with the disability. The courts tend to favor the parent's wishes when it comes to life decisions involving a person with a disability. The Letter of Intent is the glue that holds together all the other pieces of the Comprehensive Life Plan.

Many hundreds of teachers, doctors, caseworkers and other professionals come and go during the lifetime of a person with a disability. You have been the only constant in the life of the person with a disability. If you put a past, present or future into some general record, such as a Letter of Intent, the wheel (which may be painful) will not have to be reinvented. By compiling as much information about your family member with a disability, and your desires for him or her, you will be giving future care providers the knowledge and insight they will need to provide the best and your expectations about the future possible lifestyle. They will not have to waste precious time learning the likes, dislikes, talents and skills and/or medical management techniques that you have found to work so well . . . those same things you tell the new caseworker when he or she comes along every six months.

Many families who have a member with a disability find that they must overcome some major emotional hurdles while writing this document. It is, most often, the first time parents have put in writing many of the concerns they have felt since the son or daughter was officially diagnosed with the disability. Please understand, the feelings you experience as you work through organizing this letter are the same as most families in a similar situation. Parents or Caregivers need to go through this very difficult process to guarantee a well-planned future for the person with a disability. ***As much as possible, always include input from the person with a disability.***

Unlike the traditional "letter" which you write, send and then forget about, this one doesn't leave home, and it should never end. Once you write the Letter of Intent, you simply sign and date it. Each year, you take it out the Planning Portfolio and add to it, sign and date it.

The directions in the Letter of Intent may change as you, your loved one, government regulations and services, and society change. Unless there have been some dramatic events in your family member's life and within your feelings and attitudes, additions can be made on a specific day each year, i.e., Christmas, Birthday's, etc. Occasionally, there will be a significant change, such as a new residential placement, bad reaction to a new type of medication, etc., which would require an immediate addition.

The Letter of Intent is not an essay for school. Don't worry about grammar, spelling or the number of words. Your major concern will be to make sure that your family member with a disability will have a happy and respectful lifestyle.

LEGAL COMPONENT

This requires an attorney that is familiar with this type of planning to assure that your plan will be legally sound and provide your family member with a disability with a excellent quality of life.

Your wills must contain special language that will prevent any estate assets from going directly to the person with a disability. Any inheritance to the person with a disability must be directed to the Supplemental Needs

The other document would be a Supplemental Needs Trust that would hold all assets for the person with a disability and would be disbursed by the trustee that you would have chosen. You should also provide for successor trustees and guardians/conservators.

Supplemental Needs Trust

In order to preserve the public assistance benefits of a person with a disability, such as a child with a developmental disability, people should use a Supplemental Needs Trust.

The Medicaid (Medical Assistance in Minnesota) program pays medical expenses and offers other programs. This benefit has limits regarding the individuals' income and assets.

In order to qualify for the program prior to spending down one's estate, some individuals attempt to give their assets to relatives or invest them into an exempt form, such as a personal residence in which the spouse resides. Single persons sometimes transfer their residence to their children and retain the right to live in the house for the remainder of their lifetime.

The law denies persons eligibility for Medicaid (Medical Assistance) benefits if assets were transferred less than ***60 months*** before the application for benefits. This is a complicated and changing area of the law

Trusts for Children with Disabilities

A parent of a child with a disability should review each asset to see whether or not it will pass to that child at time of the parent's death. For example, life insurance, annuities, IRAs, pension benefits, joint bank accounts, etc., often pass to persons other than those named in one's will or trust. **If such assets pass to a child with a disability, he or she could lose current government benefits.**

One must also decide whether or not to disinherit a child with a disability or use a supplemental needs type of trust.

Supplemental needs trusts are generally established by the parents or other relatives of the child with a disability. The trustee should have absolute discretion over how to expend the trust funds for the benefit of the person with a disability.

Government benefits – Government benefits should be used to meet basic needs such as food, clothing, and shelter.

Supplemental needs trust - The funds from the trust should be used for supplementary needs such as utilities, medical care, special equipment, education, job training or entertainment.

Seek Professional Guidance

Since the laws in this area are very complex and vary from state to state, experienced, knowledgeable legal counsel should be retained to draft the appropriate documents.

A 50-month look-back period applies to payments from certain trusts.

THE SUPPLEMENTAL NEEDS TRUST AS PART OF YOUR ESTATE PLAN

When there is a member of the family with a disability, special provisions must be made to properly and effectively provide for them. In the preparation of an estate plan, the person who has a family member with a disability should include a supplemental needs trust as an important part of their plan.

1. **What is a supplemental needs trust?**

   The supplemental needs trust (sometimes called a special needs trust) is a fund established by parents or other family members to provide for the well being and needs of their family member with a disability.

2. **What is the purpose of a supplemental needs trust?**

   The trust is intended and designed to pay for those "extra" items which are not provided by or paid for by publicly funded (government) programs.

3. **Does the law support the use of supplemental needs trusts?**

   For years, the legislation, court cases and Department of Human Services rules of many states have allowed the use of a supplemental needs trust (for example in Minnesota: statue M.S. 501B.89, the Minnesota Court of Appeals case known as Carlisle 498 N.W. 2d 260 (Minn. App. 1993), and DHS Instructional Bulletin 93-16M). The passage of the federal law known as OBRA 1993, 42 USC 1396p(d)(4)(A), and the Zebley US Supreme Court, 110 S. Ct. 885 (1990), act as the foundation for federal support for the use of supplemental needs trust.

4. **Will the trust disqualify the beneficiary from publicly funded benefits?**

   If the trust is properly drafted, funded and administrated in accordance with the above noted laws, the trust will not disqualify the beneficiary with a disability from any publicly funded (government) programs.

SUPPLEMENTAL NEEDS TRUST
(Continued)

5. Can the supplemental needs trust be incorporated into my Will?

A parent, grandparent, sibling or other interested person can include a provision in their Will which, upon their death, will establish and fund a supplemental needs trust. As an example, following the parent's death the trust will there after pay for the "extras" for the children with a disability which were previously being paid for by the parent.

6. Can the supplemental needs trust instead be established and used during the parent's lifetime?

Instead of establishing the trust upon death by means of the Will, the supplemental needs trust may be created and established as a separate trust by a parent, grandparent, sibling or other interested person during their lifetime. In most cases, this type of trust is preferable because it allows for greater flexibility in the estate plan and will likely insure that the trust is "grandfathered in" if there is a change in the law. Such a trust allows the parent to supervise and operate the trust to establish a history and insure the foundation is laid for the ongoing administration of the trust. It also allows other persons to put funds into the trust, such as a grandparent placing funds into the trust established by the parent of the child with a disability.

7. How can the supplemental needs trust be funded?

The trust can be funded in many ways including gifts, life insurance proceeds and distributions from a Will.

8. What types of assets can the trust own?

The trust can own various types of assets including bank accounts, certificates of deposits, stocks, bonds, real estate and personal property such as a computer or television.

9. Who should be the trustee?

The trustee's duty is to invest, manage and distribute the trust assets in a manner which is in the best interest of the beneficiary with a disability. Therefore, the trustee must be qualified and motivated to do so. The trustee could then be parents, siblings, family members, friends or a professional trustee such as a bank trust department.

10. What about the personal well being of the beneficiary?

It is the trustee's job to handle financial matters, not to make decisions relative to the beneficiary's personal care such as medical care, residential program, educational or vocational program. Such issues are handled by the conservator (or guardian) of the person with the disability. Although a probate court proceeding is necessary to actually establish the conservatorship and appoint the conservator, the supplemental needs trust should nominate, thereby indicating to the court, the person best suited to act as conservator.

SUPPLEMENTAL NEEDS TRUST
(Continued)

11. What if the trustee or conservator can no longer perform their duties?

The supplemental needs trust is intended to last for the lifetime of the family member with the disability. Therefore it is likely that the person named as trustee or conservator may, at some point, be unable or no longer willing to act. The trust should nominate a series of successors to take over when such an event occurs.

12. How does the trustee determine what type of items should be paid for by the trust?

The trustee must work closely with the beneficiary, or their conservator, to assess and provide for the needs of the beneficiary. However, the trustee should not pay for any items which would be provided by any publicly funded (government) program. Further, the trustee should not make a distribution which would exceed the income or asset limitation imposed upon the beneficiary by various government programs. It is recommended that the parents provide their successor trustees with a letter of instructions which can provide guidance and knowledge to the trustee as to the personality and preferences of their child, what has been successful in the past, and their hopes and dreams for their child's future.

13. Can the person with a disability place their own assets into a supplemental needs trust?

Based upon the recent evolution of the law two different types of supplemental needs trust are now being used:

(1) The first and more traditional type of supplemental needs trust (under Minnesota Statue 501B.89 subdivision 2, passed in 1993) is one which is funded by assets which belong to someone other than the beneficiary with a disability (typically the parents, grandparents or siblings).

(2) The second and newest type of supplemental needs trust (under Minnesota Statute 501B.89 subdivision 3, passed in 1995 and under 42USC 1396p(d)(4)(A) passed as apart of OBRA of 1993) is one which is funded by assets which are in the name of, and belong to, the person with a disability who is the beneficiary of the trust. These funds may be from an inheritance, personal injury or medical malpractice settlement or award due to the beneficiary. The key difference between these two types of supplemental needs trusts is what happens to the assets remaining in the trust after the death of the beneficiary.

14. Upon the death of the trust beneficiary, what happens to the remaining assets of the trust?

The trust should provide for the arrangement and payment of an appropriate funeral. Thereafter:

(1) If the trust was funded by assets belonging to someone other than the beneficiary with a disability, then any remaining assets of the trust will then be disbursed in accordance with the directions set forth in the trust by the parents or the person who created the trust. This might include distributions to other children or grandchildren or non-profit organizations

(2) If, however, the trust has been funded by assets belonging to the beneficiary with a disability, then any assets remaining in the trust must first be used to repay Medical Assistance, or other governments funding sources, for the total amount they have paid out on behalf of the beneficiary. Thereafter, any remaining funds can be distributed to the person or organization designated by the one who created the trust.

15. Can the supplemental needs trust incorporate provisions for a non-profit organization?

Many times the family has a strong desire to distribute a portion of the remaining trust assets to a non-profit organization which has provided invaluable services and support to their family member with a disability. The supplemental needs trust can be prepared to accomplish this objective. In addition, the supplemental needs trust coordinates very well with other charitable giving techniques such as a charitable remainder trust.

16. How can I find out more about establishing a supplemental needs trust?

Consult with your professionals regarding your situation or feel free to contact Arnie Gruetzmacher at (763-473-6623) to discuss how the supplemental needs trust can and should be a part of your estate plan.

Financial

HOW MUCH IS ENOUGH??
First you need to determine the amount of assets you want to have in the trust when you are no longer here. We will review current needs and also government benefits remembering that these benefits may be reduced.

WHERE WILL IT COME FROM
Direct from your estate? Will your estate be large enough after you go through retirement? When you are retired, will you be hesitant to spend money for your enjoyment so that there will be adequate assets for the trust? We will find answers so you can be assured that the trust will be fully funded and you can still spend your money on your retirement

Plan Management

After you have completed the rest of the steps, you should review this plan with your selected successors. Keep a specific file where you will have everything needed to settle your estate, tell your successors where this information is and annually review your plan with the professionals to assure yourself that the plan is still going to accomplish what you wanted.

The last item is to **RELAX.** You have done everything possible to protect a quality of life for your family member with a disability.

For more information on establishing a Complete Life Plan or to answer any questions, please contact **Arnie Gruetzmacher at 763-473-6623 or email at gruet001@tc.umn.edu.**

Important Notice

This report is intended to serve as a basis for further discussion with your professional advisors. The actual application of some of these concepts may be the practice of law and is the proper responsibility of your attorney.