

# SECTION 9

LEGAL INFORMATION

[GUARDIANSHIP](#)

[POWER OF ATTORNEY](#)

[WILLS AND TRUSTS](#)

[LETTER OF INTENT](#)

[ABLE ACCOUNTS](#)

[SELECTIVE SERVICE](#)

[STATE ID](#)

[LEGAL/FINANCIAL PLANNING RESOURCES](#)

## **Legal Information**

This section will provide information and resources pertaining to the most critical legal elements of future planning: guardianship, power of attorney, wills, special needs trusts, letters of intent, state identification cards and selective services. For further detailed information regarding these topics, it would be advisable to seek legal counsel from an attorney who specializes in these areas. A list of legal and financial planning resources will be provided at the end of this section.

### **Guardianship**

A guardianship proceeding allows a court to give someone the authority to make decisions and manage the affairs of a person who, because of a disability, cannot manage his or her own affairs.

#### **Guardianship is not automatic.**

Many people of young adults with severe disabilities are surprised to learn that, after their child reaches adulthood (age 18), they (the parents), are no longer legal guardians. Guardianship of minor children by their parents is given, unless taken away by the court. Guardianship of any adult must be granted by the court.

Although a young adult who has a severe disability may remain in the family home, for all practical purposes, the responsibility of his or her parents, in the eyes of the law, he or she is competent until proven otherwise. This is true even in cases where most people would agree that the person is clearly incapable of self-direction.

Persons without guardians are legally capable of making their own decisions. The fact that parents are not legal guardians may cause problems for the family in many circumstances; most adult service providers will naturally involve family members in decision-making circumstances and planning in any case. However, it is important to realize that, without legal guardianship, parents do not have legal rights to enforce their decisions about their child. Service providers, such as hospitals, residential programs, vocational programs, etc. are legally obligated to treat a service recipient as capable of making his or her own decisions unless that person has had a legal guardian appointed by the court. Without guardianship, service providers have no legal right to treat a family member as the "official decision-maker" for that person.

#### **Why obtain guardianship?**

If a person is incapable of making or communicating responsible or safe decisions, guardianship puts this decision-making power in the hands of someone more capable.

#### **Types of guardianship**

The courts differentiate between guardianship of the person and of the estate. Guardianship of the person gives the guardian the power to make decisions about personal life, such as where the person should live, what medical procedures they should undergo, whether they marry, etc. Guardianship of the estate gives the guardian the right to make decisions about the management of the person's

property and finances.

**Co-Guardianship** is also available. In that case, more than one person shares the responsibilities of guardianship; for instance, a mother and father, or a parent and sibling of the person.

**Limited guardianship** is another option. Limited guardianship is a court order customized to fit the precise needs of the individual with a disability.

## **How to seek guardianship**

To obtain guardianship, the potential guardian must first petition the court to have the person declared incompetent which means, in a legal context, the person is not able to make or communicate responsible and safe decisions without help. Paperwork must be completed and a physician's statement must be obtained certifying that the person is permanently and significantly disabled to the point of being incapable of self-direction.

If these steps support the contention that the person needs guardianship, and no one opposes the petition to have the person declared incompetent, the court will issue a declaration to that effect and award guardianship. Unless there are other parties seeking guardianship, or opposing the award of guardianship to the person who initiated the proceedings, the court will simply give guardianship to the person requesting it.

## **Where to find assistance in seeking guardianship**

The family may hire an attorney to assist with the guardianship process or can complete the paperwork on their own. The Office of State Guardian, located in the county of residence, may be accessed by family at no cost.

### **[Cook County Guardianship of a Disabled Adult - Adult Guardianship Help Desk](#)**

**Location:** Richard J. Daley Center  
12th Floor, Room 1202  
50 West Washington Street  
Chicago, IL 60602

**Hours:** 9:00am to 1:00pm, Monday through Friday, except court holidays  
No appointments, first come, first served

The Help Desk provides assistance with petitioning for guardianship of a disabled adult and understanding the court procedure. The staff will help you fill out forms, but they do not offer legal advice. Assistance is for filing a petition for guardianship of the person only, not of the estate.

### **[Cook County Guardianship of a Minor - Guardianship Assistance Desk for Minors](#)**

**Location:** 69 West Washington Street, Room 1020,  
Chicago, IL 60602  
(across the street from the Richard J. Daley Center)

**Phone:** (312) 603-0135  
**Hours:** 8:30 am to 4:30 pm, Monday through Friday, except court holidays  
No appointment necessary, but available upon request

The Help Desk provides assistance with petitioning the guardianship of a minor. The staff will help you fill out court forms. Assistance is for filing a petition for guardianship of the person only, not of the estate. Referrals are given for more complex cases. The help desk also offers self-help packets if you wish to prepare your own forms. The packets have forms with instructions on how you should be prepared and explanations of guardianship requirements.

[Brochure: Guardianship for Minors: What Prospective Guardians Need to Know, 2016](#)

### **Lake County Guardianship of a Disabled Adult**

Clerk of Circuit Court- Probate Department

**Location:** 18 N. County Street  
Waukegan, IL 60085  
**Phone:** (847) 377-3380 - Main Phone  
(847) 377-3260 - Probate  
**Hours:** All Circuit Clerk Locations are open 8:30am-5:00pm, Monday through Friday

Located in the basement of the Lake County Courthouse and Administrative Complex at 18 N. County Street, the Lake County Circuit Clerk's Main Branch offers a variety of services and departments. Visitors may enter the building through the new Criminal Court Tower located at 301 Washington Street or through the north entrance of the Court Complex located near the County parking garage.

## **Power of Attorney**

A power of attorney is an authorization to act on someone else's behalf in a legal or business matter. Just as important as obtaining guardianship, your child will need guidance when making decisions and handling affairs. Durable Power of Attorney is an alternative to guardianship. Individuals who are in need of only minimal intervention by a substitute decision maker may be more appropriately protected by use of a Durable Power of Attorney either of the person or of property or both. This does not require a court hearing.

## **Wills and Trusts**

### **What is a will?**

A will or testament is a legal declaration by which a person names one or more persons to manage their estate and provides for the transfer of property at death.

In the strictest sense, a "will" has historically been limited to real property while "testament" applies only to dispositions of personal property thus giving rise to the popular title of the document as "Last Will and Testament," although this distinction is seldom observed today. A will may also

create a testamentary trust that is effective only after the death of a person. Remember, any assets given to your son or daughter with a disability may disqualify them from any Social Security or state benefits. Any time there is a child with disabilities involved, it is even more important to take the time to plan for the future of that child.

## **Living Will**

Living wills are instructions given by individuals specifying what actions should be taken for their health in the event that they are no longer able to make decisions due to illness or incapacity, and appoints a person to make such decisions on their behalf. A living will is one form of advance directive, leaving instructions for treatment. Another form authorizes a specific type of power of attorney where someone is appointed by the individual to make decisions on their behalf when they are incapacitated. People may also have a combination of both. It is often encouraged that people complete both documents to provide the most comprehensive guidance regarding their care.

## **Letter of Intent**

A letter of intent is designed to give successor caregivers and trustees the realistic information they need to carry on effectively as caregivers after parents (or other family member) can no longer provide the care themselves. This practical information could also alleviate concerns that caregivers and trustees might have about how they can best fulfill expected family obligations. A letter of intent is a living document and should be reviewed and updated annually. We have provided one as a sample template at the end of this section.

## **Letter of Intent Template**

The Letter of Intent is a personal roadmap. It places all of your wishes and expectations into one document. Those wishes and expectations will allow family members and others to assume responsibility for your loved one's care in the event that you are no longer able to do so. This is a living document that should be reviewed and updated *annually*. This document is considered a template. Supplementing this with a video, IEP copies, a Medicaid waiver application, etc. will help someone who is to care for your loved one.

[Google Doc Template](#)  
[PDF Template](#)

## **Special Needs Trust**

A Special Needs Trust is a specialized legal document designed to benefit an individual who has a disability. A Special Needs Trust is most often a "stand alone" document, but it can form part of a Last Will and Testament.

A Special Needs Trust enables a person with a physical or mental disability, or an individual with a chronic or acquired illness, to have, held in Trust for his or her benefit, an unlimited amount of

assets. In a properly drafted Special Needs Trust, those assets are not considered countable assets for purposes of qualification for certain governmental benefits. You will need a special needs attorney to draft and set up a Special Needs Trust.

Such benefits may include Supplemental Security Income (SSI), Medicaid, vocational rehabilitation, subsidized housing, and other benefits based upon need. For purposes of a Special Needs Trust, an individual is considered impoverished if his or her personal assets are less than \$2,000.00.

A Special Needs Trust provides for supplemental and extra care over and above that which the government provides, such as medical and dental expenses, special equipment (such as vans for the disabled), training and education, insurance, transportation, special dietary needs, spending money, electronic equipment, computers, vacations, movies, and for a companion/respite worker.

By creating a Special Needs Trust now, a relative or friend can either gift monies to your child's Special Needs Trust or leave a portion of their inheritance directly to the Special Needs Trust. The relative or friend does not need to create a Special Needs Trust, if you have already created one. All that the relative or friend needs to do is name the Special Needs Trust as a beneficiary or designate that a specific sum of money or a portion of their estate be distributed to the Special Needs Trust. You do not want the relative or friend to distribute money directly to your child in his or her name, as it would impact government benefits and services. Accordingly, your Will would not give money directly to your disabled child but would give the money to the "Special Needs Trust." Likewise, the beneficiary for life insurance policies and retirement funds would not be the disabled child, but would be the "Special Needs Trust," so that the money would flow to the Special Needs Trust.

Talk with your attorney about the various ways to fund your Special Needs Trust. This could include having a life insurance policy where the beneficiary is the trust.

## **ABLE Accounts**

Many of you have probably heard about "ABLE" accounts. The concept is for individuals with disabilities to have a tax-free savings account similar to a 529 College Savings Plan (ABLE accounts will be "529A" accounts). An ABLE account may be a very useful additional "tool" in some circumstances.

An ABLE account is limited in terms of the amount of money that can be deposited on an annual basis; the current limit is \$15,000 per year, and there is a limit of one ABLE account per individual. Second, the total value of an ABLE account cannot exceed \$100,000 or the individual will have their SSI eligibility suspended until the account balance returns below that level. Also, the ABLE account is capped at the College Savings 529 Plan maximum in the state in which the ABLE

account is open; the Illinois limit is \$400,000. Third, ABLE accounts can be used solely to cover disability related expenses or face a penalty. An ABLE account also requires strict, complex reporting and record keeping. Finally, there is a "payback" to the state upon the individual's death for the cost of all Medicaid services, which were provided to them after the establishment of the ABLE account.

There are several circumstances in which an ABLE account may be very useful. For example, in situations where an individual with disabilities wants to save excess work earnings or Social Security money so that it may be used in the future, as this money cannot be accumulated over \$2000 in their own name (under SSI and "traditional" Medicaid rules) but they can place up to \$15,000 a year into an ABLE Account which the individual with disabilities has full and complete control over unless there is a Guardianship established, or the individual is a minor. It might also be useful where a relative has left an inheritance of less than \$15K directly to the child who is on "traditional" Medicaid and/or SSI and mistakenly did not leave it to a 3rd party Special Needs Trust. Another possible use for an ABLE account might be to receive "adult" child support ordered by a court, in order not to impact SSI or Medicaid. Lastly, it might be the perfect vehicle for small litigation settlements. But, due to the "payback" to the State(s) for Medicaid use, it is definitely not an appropriate vehicle for gifts or inheritances from others for the benefit of the individual with disabilities, unless there is the strong belief that all funds gifted will be spent for disability related expenses before the individual with disabilities dies. In that situation a Third Party Special Needs Trust is the only appropriate option and with a Third Party Special Needs Trust's favorable income tax rules, that is, being taxed as a Qualified Disability Trust, the Trust can shelter potentially more than \$15,000 in annual investment income.

In short, the ABLE account has some use for the individual's own savings, but not for gifts or inheritances from others.

All should keep in mind that there is, in fact, already an existing option in Illinois for many of these situations, known as Health Benefits for Workers with Disabilities (HBWD) which allows individuals who are working to save up to \$25,000 in their own name, and allows them to save unlimited amounts in IRAs, 401ks, or pension plans, and they pay a small premium that's usually less than \$100 a month, and often much less than that, and obtain full Medicaid services, including Medicaid Waiver programs; the only program it does not pay for is Community Integrated Living Arrangements (CILAs, commonly called Group Homes) or Intermediate Care Facilities for Individuals with/DD (ICFDDs, such as Lambs Farm and Misericordia). HBWD can, therefore, be an easy substitute to opening an ABLE account in many cases.

Lastly, many believe that the most beneficial provision of an ABLE account is that it grows "income tax free," at least for Federal Income Tax purposes. However, if you "do the math" you will see that, that fact is really of little benefit. If the individual is receiving SSI, the ABLE account cannot have more than \$100,000. The individual can use their personal exemption and

standard deduction to shelter their earned income and any income on ABLE account investments potentially to the extent of over \$15,000. Further, if you add the average individual's (receiving SSI) annual earned income to the current possible return on \$100,000 in ABLE account investments, you will see that more than likely than not there wouldn't be any income tax anyway on those funds, even if they were "taxable."

There are current proposals in Congress to make ABLE accounts more beneficial to those with disabilities and to deal with some of the drawbacks. The proposals include an increase from 26 to 46 for the age that disability must have occurred, a move to allow traditional 529 plans to be rolled over into ABLE accounts (529A Accounts), and permitting individuals with disabilities to save additional monies to an ABLE account above the annual maximum (\$15,000.00) now in place if the individuals with disabilities work and earn income. Regardless of the success of these proposals, it is important to remember the benefits as well as the shortcomings of ABLE accounts as you consider them as one of the savings tools for an individual with disabilities. Before considering an ABLE account you should consult with an experienced special needs planning attorney.

To find such an attorney, contact:

[Arc of Illinois](#) at (815) 464-1832, and/or visit [Special Needs Alliance](#), a national not-for-profit association of experienced special needs planning attorneys (attorney membership by invitation only) or [Special Needs Answers](#).

#### **For More Information:**

- [ABLE National Resource Center](#)
  - [ABLE Act: 10 Things to Know](#)
- [National ABLE Alliance](#)
- [Illinois ABLE](#)
- Download a free guide to navigating the Illinois Disability System:  
[http://www.farley1.com/The\\_Book\\_Robert\\_H\\_Farley\\_Esq.pdf](http://www.farley1.com/The_Book_Robert_H_Farley_Esq.pdf)
- More resources can be found at: <http://www.rubinlaw.com/category/resources/>

### **Selective Service System for Males**

All male U.S. citizens living in the U.S. who are 18 through 25 years of age are required to register with Selective Services. Even though a male is registered, it does not automatically mean that he will be inducted into the military.

#### **Non-Citizens**

Some non-citizens are required to register. All male non-citizens are required to register, including illegal aliens, legal permanent residents and refugees. If a male non-citizen becomes a resident in the U.S. before his 26<sup>th</sup> birthday, he must register with the Selective Service.

#### **Hospitalized or Incarcerated Men**

Men in hospitals, mental institutions, or prisons do not have to register while they are committed. They must register 30 days after being released if they have not yet reached their 26<sup>th</sup> birthday.

**Men with disabilities**

Men with disabilities who live at home must register with Selective Services if they can reasonably function in public and without assistance. A male with a disability may receive assistance to complete the form if needed. The Selective Service does not presently have authority to classify men, so even men with obvious handicaps must register now, and if needed, classifications will be determined later. Some disabilities, it would seem, would be cause for disqualification. It is necessary to register anyway.

To register for the Selective Service, go to <http://www.sss.gov> and click on "register online."

**State of Illinois-Identification Cards**

All adults in the state of Illinois need a photo ID. Many people obtain a driver's license. However, if any adult does not drive, a photo ID may be obtained from a local Secretary of State's office. You can obtain a typical ID card or receive a card for persons with a disability. In order to obtain a disability ID, you need to complete an application and have it signed by a doctor familiar with the person with the disability. ID cards for disabled persons are free. Click [here](#) for the application.

For any ID card, you will need:

- Social Security card or passport
- Birth Certificate
- Proof of residency
- Doctor signature for the disability ID

**Local Office:**

Deerfield Secretary of State's Facility  
Deerfield Park Plaza  
405 Lake Cook Rd.  
Deerfield, IL 60015  
(312) 793-1010

**Hours:**

Sunday, Monday - Closed  
Tuesday-Friday - 8:00am-5:00pm  
Saturday - 7:30am-2:00pm

## Legal and Financial Planning Resources

Attorneys for families with children with special needs: (Special needs trusts, estate planning, guardianship, etc.)

### [Spain, Spain, and Varnet](#)

Theresa Varnet, Richard & Nancy Spain  
33 North Dearborn Street, Suite 2220  
Chicago, IL 60602  
(312) 220-9112

### [Rubin Law](#)

Brian Rubin and Benjamin Rubin  
1110 West Lake Cook Road  
Buffalo Grove, IL 60089  
(847) 279-7999

### [Rivkin & Rivkin, LLC Estate Planning](#)

440 Milwaukee Avenue, Suite 200  
Lincolnshire, IL 60069  
(847) 793-2484

### [L. Mark Russell](#)

401 E. Prospect Avenue, Suite 106  
Mt. Prospect, IL 60056  
(847) 991-7451

### [The Dignity Group](#)

Thomas J. Reilly  
1163 Ogden, Suite 705-354  
Naperville, IL 60363  
(630) 681-1119

Amy Handler Kasallis

[Amy@kasallislaw.com](mailto:Amy@kasallislaw.com)

500 Lake Cook Road, Suite 350  
Deerfield, IL 60015  
(773) 370-1856

### [Special Needs Alliance](#)

National Alliance to help locate attorneys for special needs  
(877) 572-8472

## Financial Planning Assistance with Applying for SSI, Medical, and Medicaid

### [Protected Tomorrows](#)

Mary Anne Ehlert  
103 Shelter Road  
Lincolnshire, IL 60069  
(847) 522-8086

### [Klassman Financial Services](#)

Dean Klassman  
3325 N. Arlington Heights Road, Suite 200  
Arlington Heights, IL 60004  
(847) 454-0660

### [Family Benefit Solutions, Inc.](#)

Sherri Schneider  
1110 W. Lake Cook Road, Suite 150  
Buffalo Grove, IL 60089  
(847) 279-8506

### [Sage Planning](#)

910 Skokie Boulevard, Suite 102  
Northbrook, IL 60062  
(847) 509-4300

### [Oak Wealth Advisors, LLC](#)

Michael Walther, CPA  
500 Lake Cook Road, Suite 350  
Deerfield, IL 60016  
(847) 943-8888

### [Life's Plan, Inc.](#)

901 Warrenville Road, Suite 500  
Lisle, IL 60532  
(630) 628-7169 (Dawn Feldt)  
(630) 628-7189 (Scott Nixon)

[Stacey Dembo, LLC](#)

33N Dearborn Street, Suite 400  
Chicago, IL 60602  
(312) 702-1490

[Benefit Boost, Inc.](#)

Teri Bodeman  
640 Meadow Lane  
Libertyville, IL 60048  
(847) 561-1722

**Additional Advocacy Agencies**

[Illinois North Suburban Regional Office of the Guardianship and Advocacy Commission](#)

9511 Harrison Avenue, W-335  
Des Plaines, IL 60016  
(847) 294-4264

[Center for Disability and Elder Law](#)

(Cook County residents only and income requirements for free services)  
79 W. Monroe Street, Suite 919  
Chicago, IL 60603  
(312) 376-1800

[Family Resource Center on Disabilities](#)

11 E. Adams Street, Suite 1002  
Chicago, IL 60603  
(312) 939-3513

[Guardianship and Advocacy Commission](#)

(866) 274-8023

[Illinois Life Span Project](#) and [The Arc of Illinois](#)

*Both located at the following address:*

9980 190th Street, Suite C  
Mokena, IL 60448  
(800) 588-7002 - Illinois Life Span Project  
(815) 464-1832 - The Arc of Illinois

[North Suburban Legal Aid Clinic](#)

PO Box 256  
491 Laurel Avenue  
Highland Park, IL 60035  
(847) 737-4042

[Equip for Equality- Northeastern Region](#)

20 N. Michigan Avenue, Suite 300  
Chicago, IL 60602  
(800) 537-2632  
(312) 341-0022