

Zoom for Arlington Heights Memorial Library

10/26/22 @ 7:00pm

Special Needs Legal & Future Planning



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**Special Needs Legal
& Future Planning**

WWW.RUBINLAW.COM

EMAIL@RUBINLAW.COM

866.TO.RUBIN

"Legal and future planning for our fellow families of individuals with special needs, including intellectual disabilities, developmental disabilities, and/or mental illness, is not one thing we do, it's the only thing we do; it's not one area of our practice, it's our only area of practice."



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www.rubinlaw.com - email@rubinlaw.com

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Buffalo Grove - Chicago - Old Orchard

847-279-7999 - Toll Free 866.To.Rubin (866-867-8246) - Fax 847-279-0090



Brian Rubin — Mitchell Rubin — Benjamin Rubin

"Legal and future planning for our fellow Illinois families of individuals with special needs, including intellectual disabilities, developmental disabilities, physical disabilities, and/or mental illness, is not one thing we do, it's the only thing we do; it's not one area of our practice, it's our only area of practice."

Brian N. Rubin, Parent

Benjamin A. Rubin, Sibling

Benji Rubin
President
S.I.B.S.
Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network

Logos: MEMBER SNA, S.I.B.S., SIBLING LEADERSHIP NETWORK, RUBIN LAW

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S.I.B.S. www.sibsnetwork.org
Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network

Sibling Leadership Network
www.siblingleadership.org

The Sibling Leadership Network (SLN) is a national non-profit with state chapters that promotes a broad network of siblings who share the experience of disability and people concerned with sibling issues by connecting them to social, emotional, governmental, and professional supports across the lifespan enabling them to be effective advocates with their brother and sister, and to serve as change agents for themselves and their families. The mission of the SLN is to provide siblings of individuals with disabilities the information, support, and tools to advocate with their brothers and sisters and to promote the issues important to them and their entire families.

Join the network for free at www.siblingleadership.org.
Visit us on Facebook at The Sibling Leadership Network.

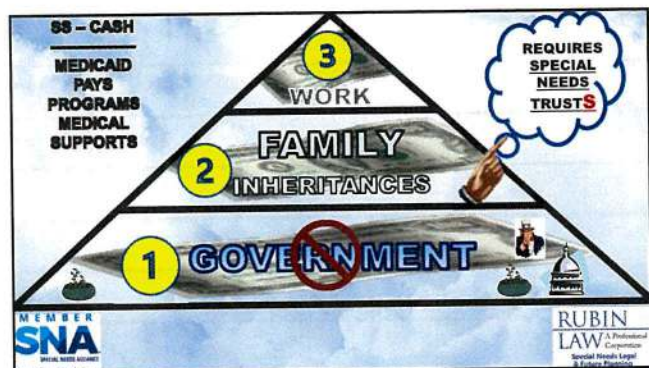
www.siblingleadership.org

Logos: S.I.B.S., SIBLING LEADERSHIP NETWORK, MEMBER SNA, RUBIN LAW

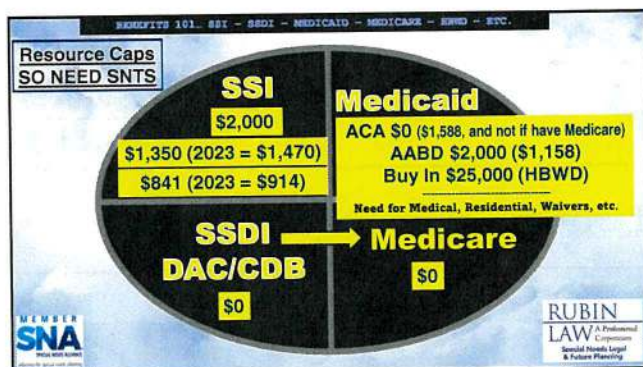
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HOW MUCH?
& FROM
WHERE?

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18



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PARENTS' HEALTH INSURANCE!

- ☞ Dependent children **NOT** subject to "limiting age" provisions!
- ☞ **Even if** living "residentially"!
- ☞ **Even if** can't claim as dependent for IRS Income Tax purposes!
- ☞ **since 1969**, amended 1997 & 2007.

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“the attainment of the **limiting age** does not operate to terminate the hospital and medical coverage of a person who, because of a **condition** that occurred before the attainment of the limiting age, is **incapable of sustaining employment & dependent on his or her parents, or other care providers for lifetime care & supervision.**”

Request Form # 4

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WRONG WAY **X** **WRONG WAY**

- “Directly”
- No Will
- “Disinherit” & leave to others (“moral Obligation”)
- “Traditional Trust”

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Special Needs Trusts

→ **3rd Party**

→ **Self Settled**

aka, OBRA, 1st Party, Pay Back...

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SNTs.. 2 Versions, both...

- ✓ Reserve
- ✓ Supplemental Fund
- ✓ Over & Above Government Benefits
- ✓ No \$ limit
- ✓ Federal
- ✓ State

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3RD PARTY TRUSTS

ORIGINAL - GOOD

➔ by Court Decisions **1962**

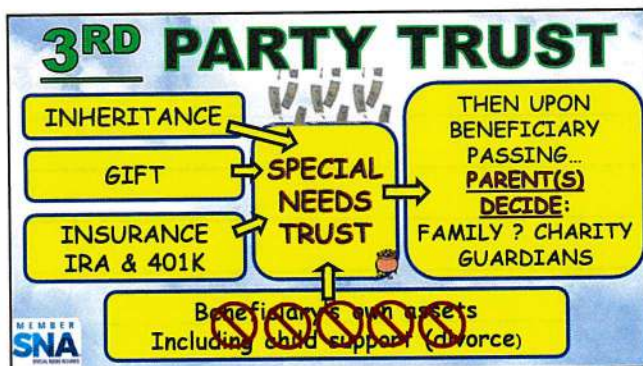
➔ by Statute 760 ILCS 3/509 (1/1/20)
Original statute 760 ILCS 5/15.1 **1991**

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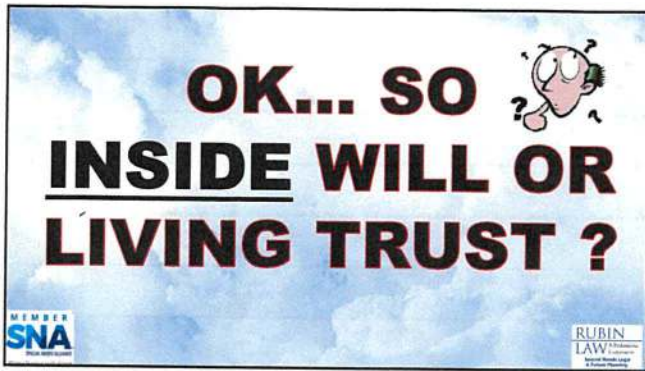
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GIFTS
INHERITANCES
NOT
OWN
1st Party!

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#1 So NO "Piggy Backing"

#2 NO "Grand Fathering"

**#3 NO Nursing Home
Impoverishment**


#4 NO Place for gifts to go

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**BUT I STILL
DON'T GET IT ?**



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**Just what
IS a Trust?**



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Just another way of holding “title” to, or “ownership” of, assets, investments or accounts...

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3rd PARTY SPECIAL NEEDS TRUST

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3rd PARTY SPECIAL NEEDS TRUST

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What **YOU**, **AND** what “**OTHERS**”, do, even **UNintentionally, IMPACTS** Government Benefits

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EXTENDED FAMILY & FRIENDS



- **Instruction letter**
- **Form Codicil**
- **Form Trust Amendment**
- **Trust Certification**

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But...






Beware of

absentee

parents &

grandparents

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EX-SPOUSE

LETTER

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Things to do

So...

- 1st **set up SNT**
- 2nd **reference in Wills/Trusts**
- 3rd **extended family too**

But... But...

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Things to do

Change Beneficiaries

- ✓ Life Insurance
- ✓ IRA
- ✓ 401k
- ✓ Profit Sharing
- ✓ Etc.

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WHAT ABOUT GIFTS ?

- ☒ **NOT** Directly
- ☒ **NOT** ABLE (stay tuned!)
- ☒ **NOT** UTMA

YES 3rd Party SNT

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So far just
3rd Party
But what if...

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BENEFICIARY HAS ASSETS

Savings Bonds 529? **NOT!** UTMA Accounts at 21 Large Gift
 IRA - 401k Excess SSI/SSDI Inheritance WILL/TRUST/BENEFICIARY Low Suit Settlement

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CHILD SUPPORT - DIVORCE

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If "NOT that much"

...consider spending it down on allowed expenditures, such as:

- ✓ COMPUTER, TV, DVD PLAYER...
- ✓ VACATION
- ✓ PRE-PAID FUNERAL
- ✓ PAY OFF DEBTS... EVEN TO PARENTS...
- ✓ CLOTHES
- ✓ **BUT** MUST BE FOR HIS/HER
- ✓ **SOLE BENEFIT...**

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If “NOT that much”

When to consider ABLE?

1. Excess SSI/SSDI/Earnings to avoid \$2,000 issue?
 - But if SSD not SSI... & working, consider HBWD Ist!
2. Short term savings
3. For beneficiary to be in control of “some” spending money
4. Avoid 1/3 reduction for housing if on SSI
5. Small inheritances not correctly left to 3rd party trust
6. Small lawsuit settlements
7. Court ordered divorce child support not to exceed \$16,000 in a year (\$17,000 in 2023) (stay tuned)
8. 2018 - Convert traditional 529 Account... up to \$16,000 (\$17,000 IN 2023) limit...
9. 2018 - Additional contribution by BENEFICIARY of the lesser of earned income from employment for year & federal poverty level amount, if no contribution by or for to an employer retirement saving plan. However, the earned income will still be counted for purposes of eligibility.

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ABLE SIDE NOTE

- Illinois Statutes - Not as advertised...
- “No Pay Back” is being “advertised”

HOWEVER BEWARE REQUEST FORM # 11

1. Per Feds (CMS) “No Pay Back” **doesn’t apply** to all 9 Illinois states including DDD and DRS, and MICFDD, SODC, & HBSS.
2. Also, per Feds (CMS) the “No Pay Back” **doesn’t apply** to any medical Medicaid post age 55.

- Tax Deduction... so what

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Otherwise 1st Party Special Needs Trust

Federal Law 8/10/93
Illinois Law 1/1/96

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1st Party SNT
 Called... **"Self Settled"**... or

- ☑ **"OBRA 93 Trust"**...
- ☑ **"(d)(4)(A) or (C) Trust"**
- ☑ **"PAY BACK Trust"** (like an ABLE account...
- ☑ **because...**

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1st Party SNT...
"NOT" SO GOOD...

- ☒ Only if **NOT 65**
- ☒ Only by Parents, grandparents, Courts, guardians & self, **NOT others, so not siblings...**
- ☒ **SSA Position...**
- ☒ Courts often require...
- ☒ Pay Back to day 1...

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Spread the word...

NURSING HOME EXCEPTION

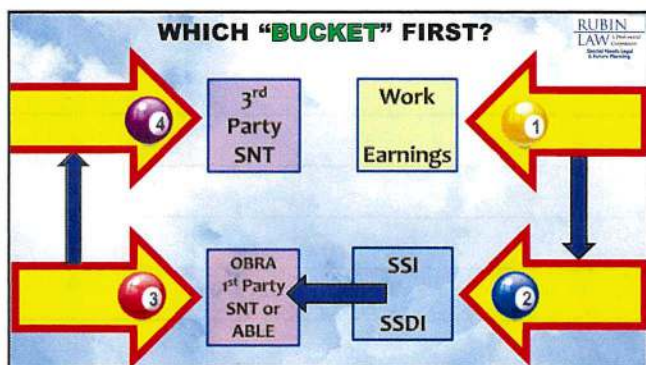
BUT BEWARE...

- Power of Attorney/Living Trust
- 3rd party or 1st party SNT ?

ANOTHER REASON FOR SNT NOT INSIDE YOUR WILL OR YOUR LIVING TRUST!

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- ★ You say you **already have** a special needs trust?
- ★ Does it **qualify**?
- ★ Was it **approved** by SSA & State Medicaid Agency
- ★ Will it be approved when it is submitted (It **must** be submitted to SSA & State)? – 10 day rule...

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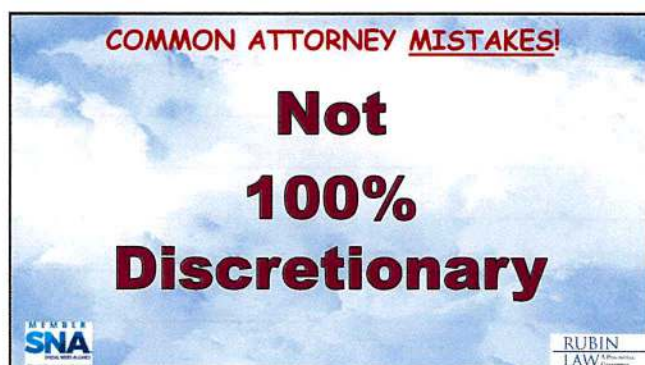
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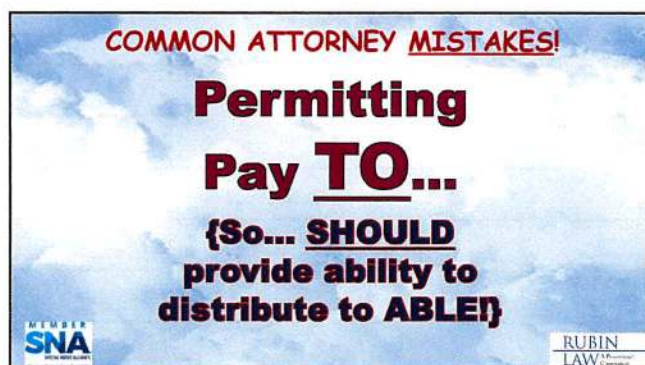
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COMMON ATTORNEY MISTAKES!

No “Next Generation” Trustees...

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**No “Contribution”
or
Gift Language
3rd Party**

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COMMON ATTORNEY MISTAKES!

**No
Termination
Provision...**

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COMMON ATTORNEY MISTAKES!

**NO Trustee(s)'
or Guardian
Power to change
corporate trustee...**

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COMMON ATTORNEY MISTAKES!

**NO Change
of State
Provision...**

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COMMON ATTORNEY MISTAKES!

**1/1/2020
Trust Code
BEWARE!**

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COMMON ATTORNEY MISTAKES!

Other Documents

- Wills need special language!
- Living Trusts too
- Insurance Trusts too
- Powers of Attorney too
- Beneficiary Designations too

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COMMON ATTORNEY MISTAKES!

...and these are just a few of the attorney mistakes that we see...

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Re F I Han Fo

Best Item 6 ding erial #10

Administering a Special Needs Trust

A Handbook For Trustees (2022 Edition)

COMPLIMENTARY FOR LITIGANT PROFESSIONAL CORPORATION MEMBERS OF THE SPECIAL NEEDS ALLIANCE

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COMMON ATTORNEY MISTAKES!

Other Documents

- Wills need special language!
- Living Trusts too
- Insurance Trusts too
- Powers of Attorney too
- Beneficiary Designations too

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OK...
But we have other children?
Cutting up the pie...
Head vs. Heart

Formula?

2nd to Die/Survivorship Life Insurance?

%S

SECURE ACT

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When someone is an adult, 18 in Illinois,
that person is **presumed fully legally competent...**
...and only IF a court (Judge) determines
otherwise, is that person **NOT** deemed
competent...

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- Schools?
- Doctors/Hospitals
- Insurance Claims?
- Signing documents/Contracts
- Dealing with SSA /State
- Residential/Living arrangements
- Employment/Day Programs
- Agencies
- Marriage
- Driving
- Arrests – DD/ID/MI is NOT Diplomatic Immunity...

STOP!
This means YOU.

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SO... the questions to ask...

- Can he/she fully manage his/her personal, medical, education & financial decisions?

Even IF can...

- Could he/she be vulnerable to, or be taken advantage of by others?

IF SO, THEN...

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Before considering
"Guardianship",
ALWAYS
first consider the
ALTERNATIVES

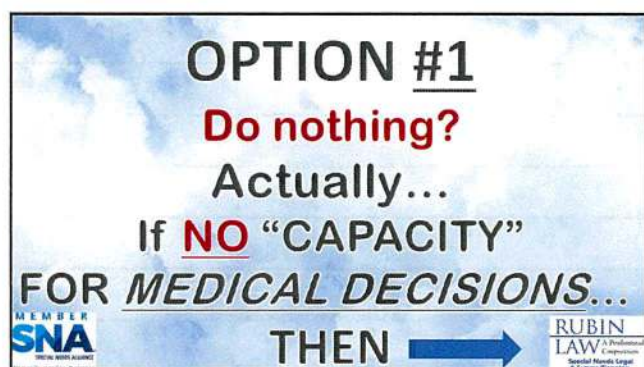
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Capacity For **Medical** Decisions:

Decisional capacity means:

1. the **ability to understand and appreciate** the nature and consequences of a decision regarding medical treatment or forgoing life-sustaining treatment **and**
2. the **ability to reach and communicate an informed decision** in the matter **as determined by the attending physician.**

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(755 ILCS 40/) Health Care Surrogate Act.
(755 ILCS 40/) Sec. 1. Short title. This Act may be cited as the Health Care Surrogate Act. (Source: P.A. 87-749.)
(755 ILCS 40/) Sec. 5. Legislative findings and purposes.

(a) Findings. The legislature recognizes that all persons have a fundamental right to make decisions relating to their own medical treatment, including the right to forgo the administration of life-sustaining medical treatment, and that the legislature's primary responsibility is to protect the rights of persons who lack the capacity to make their own decisions regarding medical treatment. The legislature also recognizes that the right to make decisions regarding medical treatment is a fundamental right of all persons, and that the legislature's primary responsibility is to protect the rights of persons who lack the capacity to make their own decisions regarding medical treatment. The legislature also recognizes that the right to make decisions regarding medical treatment is a fundamental right of all persons, and that the legislature's primary responsibility is to protect the rights of persons who lack the capacity to make their own decisions regarding medical treatment.

(b) Purpose. The purpose of this Act is to provide a framework for the exercise of the right to make decisions regarding medical treatment, and to provide a framework for the exercise of the right to make decisions regarding medical treatment.

1. LACKS decisional capacity AND
2. NO health care agent . THEN
3. In order (a) Guardian of Person... (b) spouse... (c) any adult children... (d) any parent... (e) any sibling

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But just MEDICAL/HEALTH!

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OPTION #2

IF DO HAVE

"Decisional Capacity"

then... ➡

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Supported Decision Making

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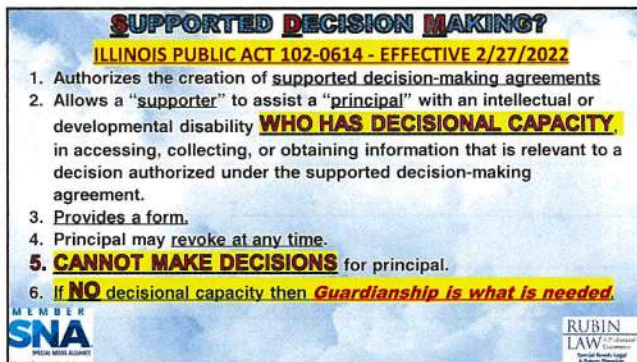
Capacity for Supported Decision

Testamentary capacity is defined in Illinois as the mental **ability**:

1. to know and remember who are the **natural objects of one's bounty**;
2. to comprehend the **kind and character of one's property**; and
3. to make **disposition of the property according to some plan formed in one's mind**.

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SUPPORTED DECISION MAKING?

ILLINOIS PUBLIC ACT 102-0614 - EFFECTIVE 2/27/2022

1. Authorizes the creation of **supported decision-making agreements**
2. Allows a "supporter" to assist a "principal" with an intellectual or developmental disability **WHO HAS DECISIONAL CAPACITY**, in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.
3. **Provides a form.**
4. Principal may **revoke at any time**.
5. **CANNOT MAKE DECISIONS** for principal.
6. **If NO** decisional capacity then **Guardianship is what is needed**.

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More i
Sc
SDM ?
OF
& THE
FORM
D PDFS...

<https://www2.il...>
<...ision%20Making.aspx>

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DOCUMENTS WILL BE SENT BY EMAIL (check 8 boxes below)

- ☐ Special Needs Alliance "Special Needs" Trust Worksheet?
- ☐ Letters of Intent ("Trusts & Informal Plan" for "Future Trust")
- ☐ Impact on Income & Child Support on SSI & Medicaid
- ☐ Review your SSI or Medicaid Trusts (current year SSI)
- ☐ Beneficiary & Alternative Powers of Attorney (Special Needs Trust)
- ☐ Special Needs Trusts & Special Needs Future Planning
- ☐ Adult Living Arrangements & SSI (for information for younger siblings)
- ☐ Support of Beneficiary on SSI or SSI
- ☐ Trusts & Special Needs Trusts
- ☐ Trusts & SSI (SSI) Review
- ☐ ABA's Assets
- ☐ Address Future Needs (SNA)
- ☐ Pre-Need Trusts/Arrangements Done
- ☐ Please add date to your list to receive your worksheets by email

Check appropriate box and complete the needed information.

☐ For all contact needs, just please send by email the information requested above.
Email address to: _____ Email: _____
Day time phone number: (_____) _____

☐ Please contact me only to schedule an "Initial Consultation".
Email address to: _____ Email: _____
Day time phone number: (_____) _____

☐ Please contact me just to schedule a presentation in a group, organization, school, or agency.
Email address to: _____ Email: _____
Day time phone number: (_____) _____

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OPTION #3
AGAIN, IF DO HAVE
Decisional Capacity
then... 

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PowerS of
Attorney
(IF decisional
capacity)

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[illegible][illegible]

[illegible]

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THE STATE
DHS/HFS
REQUIRES THEIR
OWN FORM
Print?
Mark?
Stamp?
Direct others to sign?

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What if he/she:

- **DOES HAVE CAPACITY** to "sign" **BUT** refuses to "sign"?
- **DOESN'T HAVE CAPACITY** to "sign"?
- **HAS CAPACITY, HOWEVER**, just can't help getting himself/herself into trouble; maybe legal, maybe criminal, maybe financial, maybe personal, maybe medical/health related?
- **HAS CAPACITY, HOWEVER**, is a danger to himself/herself or others?

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AND WHAT IF he/she DOES HAVE CAPACITY to "sign" **BUT**

- **He/She** terminates/voids the PA as soon as... when...?
- **AND...**
 - Doesn't **prohibit** him/her from...
 - Remains vulnerable?

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That is, will Powers be enough?

- What if he/she is on computer buying things with mom's credit card.
- What if he/she refuses to have parents at IEP/504/ISP meeting, or is "tricked".
- What if he/she is being asked to sign ____ ?

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If he/she can't, or won't "sign" DPAs...

AND/OR if you determined that SDM, DPAs, or HCSA, are simply **NOT ENOUGH** to assist and/or protect him/her...

THEN, MAYBE... JUST MAYBE, "some form" of **GUARDIANSHIP** would be appropriate to help, and to protect him/her, from himself/herself, and from others...

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The Guardianship Law!

755 ILCS 5/11a

Going to court to take away someone's rights...

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GUARDIANSHIP

- Independence vs. Protection?
- Court... Law Suit... Venue
- Report – Illinois M.D., or IF I/DD can be a clinical psychologist licensed under the Clinical Psychologist Licensing Act”
- Summons (14 days)
- Who can be appointed (U.S. Resident)
- Required notices

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755 ILCS 5/11a GUARDIANS FOR ADULTS WITH DISABILITIES

- 755 ILCS 5/11a-5 **Who may act as guardian.**
- (a)
 - (1) has attained the age of 18 years;
 - (2) is a legal resident of the United States; *(that is not need be Illinois)*
 - (3) is not of unsound mind;
 - (4) is not an adjudged person with a disability
 - (5) has not been convicted of a felony, *unless* the court finds...
- (b) Any public agency, or **not-for-profit corporation** found capable by the court
- (c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian of the estate of a person with a disability

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GUARDIANSHIP

- ✓ Guardian ad Litem
(Depends on County)
- ✓ Parents as “Co”
- ✓ Siblings, others, as “Co”
- ✓ Agencies’ positions

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GUARDIANSHIP

- When can do it ?
- Person vs. Estate ?
- Residential Placement ?
- Sterilization
- Annual Reports ? Depends on County... Now On Line... E-File!

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**NO MORE MAILING
ANNUAL REPORTS**
or even hand delivering!
**MUST NOW
E-FILE AS OF 1/1/18**
Cook County?

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(755 ILCS 5/11a-14.1)
Residential placement

No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian, shall have the power, unless specified by court order, to place his ward in a residential facility.

The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall pursue appropriate alternatives as needed.

(Source: P.A. 90-250, eff. 1/1/18)

**Back to Court
For
"residential"
placement!**

**Need to
educate agencies!**

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GUARDIANSHIP

- Health Care Surrogate Act – Guardian #1
- Make medical treatment decisions including decisions to forgo or withdraw life-sustaining treatment.

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[illegible]

Why/When Limited Guardianship?

- ✓ Needs Guardian, **but** won't cooperate? Suggest "**limited**"...
- ✓ Liability concerns of Guardian candidates? Consider "**limited**"...
- ✓ He/she will be "driving"? **MUST** only have "limited", **NOT** plenary!



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Limited Guardianship

Appointment of a Limited Guardian

DOES NOT
constitute a finding of legal
incompetence!



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REQUIRED TRAINING!

NEW ILLINOIS LAW - Public Act 100-483

Effective September 8, 2018

REQUIRED TRAINING FOR GUARDIANS... even for parents

- Required Training
 - outlines the duties and responsibilities of guardians...
 - outlines the rights of a person with a disability...
 - at no cost, and shall
- File with court ^{good} certificate of completion within one year, EXCEPT... "the court may, for good cause shown, exempt from this requirement..."
- **However, only applies to 101 of the 102 Illinois counties... That is, NOT applicable to Cook UNTIL 1/1/23! Don't ask...**

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GAC - Office of State Guardian
Guardianship Training

Click here to take the Guardianship training that will provide you with a certificate that you can file with the court; to obtain the certificate and take the training you will need to register with an email address: gsa@gsnet.ilnet.us

Click here if you would like to view the training without registering; you will not be provided a certificate: <https://gsnet.ilnet.us/page.aspx?item=115288&review=1>

Click here for a list of disability related resources: <https://gsnet.ilnet.us/page.aspx?item=115268>

Guardianship Training Link:
<https://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Training.aspx>

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Co-Guardians ?

- Law ?
- Agencies ?
- M.D.s/Hospitals?

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• Use Short Term Guardian Declaration to delegate to Co... or Cos to a 3rd party?

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(755 ILCS 5/11a-18.3)

**Duties of short-term
Guardian of a disabled person**

(a) ...The short-term guardian of the person shall have authority to act... without direction of the court..., *in no case shall exceed a cumulative total of 60 days in any 12 month period for all short-term guardians appointed by the guardian.*

(b) ... *not have any authority to act as guardian of the estate* ...

(Source: P.A. 90-796, eff. 12-15-98.)

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**BUT, EVEN IF A
PLENARY GUARDIAN
IS APPOINTED...
THE WARD CAN
STILL VOTE...
*FOR THIS IS ILLINOIS!***

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**Guardians
are
nominated
in parents
Wills!**

CONSIDER
even if
don't
think
"ever"!

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(755 ILCS 5/11a-16)

Testamentary guardian

A parent of a disabled person **may designate by will** a person, corporation or public agency qualified to act... to be appointed as... successor guardian of the person or of the estate or both of that person...

If the court finds that the appointment of the one so designated will serve the best interests and welfare of the ward, it shall appoint the one so designated...

(Source: P.A. 81-795.)

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Who will be Guardian?

- Who will make all of the necessary decisions?
 - Medical?
- Government Benefits?
 - School Issues?
- Recreation & Social?
 - Employment?
 - Day Programs?
 - Residential?

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Who will be Guardian?

Who is going to fill our shoes?

- Can they understand?
- Job will outlast them!
- Other Children? Siblings? Grandparents? Friends?
- School District of Guardian?
- Married Couples?
- Same as Trustees?

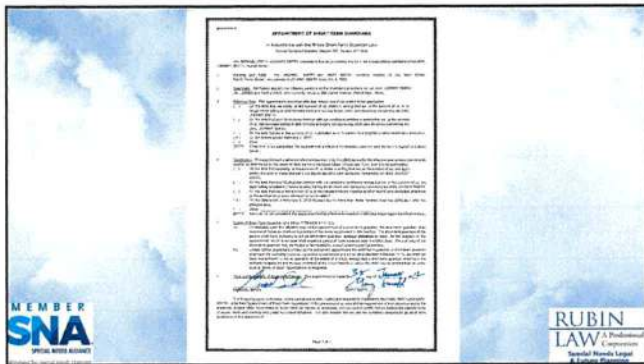
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**Request
Form
Item # 2**

**Fillable PDF Form
& Articles on Topic**

ALSO ON RUBIN LAW WEB SITE:
<https://www.rubinlaw.com/wp-content/uploads/2018/10/Letter-of-Intent.pdf>

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**In EP Magazine
February 2011
Brian Rubin**

**In Parenting
Special Needs
Jan/Feb 2014
Brian Rubin**

**In Met Life
Agent/Broker
Newsletter
Edition 4 2013
Brian Rubin**

The children and adolescents' insurance
for future care provisions and transfer

Running START
A Letter to the Attorney
The Letter of Intent

**News From The Center
MetLife**

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DOCUMENTS WILL BE SENT BY EMAIL, unless it is noted below:

- ☐ Special Needs Trusts "Special Needs Trusts"
- ☐ Letters of Intent "Letters of Intent" (for "Future Intent")
- ☐ Report on Review & Ongoing Support in SSI & Medicaid
- ☐ Keeping your child in Medicaid Health Insurance (part 2)
- ☐ Special Needs Trusts & Special Needs Financial Planning
- ☐ Asset Allocation & SSI: Step Information for asset allocation
- ☐ Letter of Authorization or Review of Services
- ☐ Taxes & Special Needs Trusts
- ☐ Taxes & Asset Allocation
- ☐ Asset Allocation
- ☐ Special Needs Trusts (SNT)
- ☐ Pre-Post Financial Arrangements
- ☐ Please add detail to your list to include your own notes to email

Check appropriate box and complete the needed information

☐ I agree to receive emails, but please send by email the information requested above

Send address to _____

☐ I agree to receive emails but to subscribe as "Future Consideration"

See the phone number (_____) _____ Email _____

Notes: _____

☐ I agree to receive emails but to subscribe as a professional or a group, organization, school, or company

See the phone number (_____) _____ Email _____

Notes: _____

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QUESTIONS





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"Legal and future planning for our fellow families of individuals with special needs, including intellectual disabilities, developmental disabilities, and/or mental illness, is not one thing we do, it's the only thing we do; it's not one area of our practice, it's our only area of practice."
