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Planning for the Future with PLAN|NJ **Frequently Asked Questions**

LIFE PLANNING

- **If my child has an Individual Support Plan (ISP), why does he need a LifePLAN?**
An ISP is utilized for the delivery of services by Direct Support Professionals, whereas a LifePLAN is geared toward family involvement and coordination of care. More specifically, a LifePLAN provides direction for future caregivers regarding the individual's goals, wishes and preferences in all areas of life, and how a family views what a good life looks like for their loved one. It includes legal, financial, home and community areas of planning.

- **If I have drafted Letter of Intent, do I need a LifePLAN?**
A Letter of Intent includes important instructions for the Guardian and conveys a parent's wishes, but it is sometimes lacking in practical substance and detailed information necessary to advocate on an individual's behalf. A LifePLAN is more about integrating an individual's needs with a parent's wishes.

- **My child's sister knows her so well; why do we need a LifePLAN?**
A LifePLAN contains the information that can be used by any future or successor Guardian or advocate. Many times, a sibling knows their brother or sister well, but not the systems and supports that are in place for his or her care. Furthermore, additional successor Guardians that may be in a decision-making capacity will benefit from LifePLAN information provided directly by the parents.

- **If there are no residential placements being made by DDD, how do I plan for housing for the future?**
It is important that while your loved one is on the waitlist for residential placement you take the time to acquaint yourself with different agencies that provide residential services, perhaps through Day Program agencies that also offer residential services. Take this time to identify the type of residential placement that would be ideal for your loved one – different types of placements could include supervised apartments or group homes which will best suit the individual's skills and abilities.

- **Is the LifePLAN a legal document that will control who becomes the Successor Guardian and Trustee?**
No. A LifePLAN is not a legal document to designate successor Guardians or Trustees. These roles should be designated in your Last Will and Testament and your Special Needs Trust document, respectively. The successors chosen in your Will and Trust should be reflected in the LifePLAN, so

those providing advocacy and future supports have knowledge of the legal designees who will oversee your loved one's care.

GUARDIANSHIP

■ **Am I taking away my loved one's independence?**

Not necessarily. Guardianship is about protecting your loved one. The role of the Guardian is to foster as much independence in your loved one as possible by encouraging their participation in decision-making. Limited guardianship can allow the individual rights while protecting them in other areas where surrogate decision-making is needed. The NJ Guardianship statute encourages guardians to assist individuals to participate in the decision-making process. Best practice Guardianship standards recommend the promotion of self-determination and informed consent for individuals under Guardianship.

■ **Is it better to have co-guardians?**

Sometimes, it can be difficult to have multiple co-Guardians available for decision-making at the same time, especially in medical situations. Since a Guardianship needs to be modified in court after one Guardian passes, even when a co-Guardianship is already in place, designating a successor Guardian, instead of a co-Guardian, may allow for easier and quicker decision-making since only one party would need to be consulted.

■ **When do I file for guardianship? What happens during the gap between my child's 18th birthday and the finalization of guardianship?**

You cannot apply for Guardianship until your child's eighteenth birthday. In the rare instance that Guardianship is required during the gap, such as a medical emergency, you can file to obtain emergency temporary Guardianship.

■ **If my spouse and I are divorced and have joint custody, do we automatically become co-Guardians?**

Joint custody does not predetermine co-Guardianship. Many other issues come into determination of Guardianship, including preference of the individual. The court appointed attorney, and in some cases a Guardian ad litem, will report to the court as to the preferences and best interests of the alleged incapacitated person.

■ **How do I choose a Successor Guardian?**

Always select someone who is capable and willing, who knows your child well and will do what is best for your child. You do not need to designate the same person in the different Guardianship roles; you can have a Guardian of Person who is different from the Guardian of Estate (Property), based on each individual's areas of strength. Always designate multiple successors, should some be unable or unavailable to serve when the time comes. Whenever possible, designate individuals who are younger or closer in age to your child. If you run out of family members to serve in the Guardianship roles, consider an agency like PLAN|NJ.

■ **Do I need a lawyer to obtain guardianship?**

No. You can obtain "pro se" Guardianship of the Person and Estate for an individual eligible for DDD services through your local surrogate's office. All of the forms necessary, which are the same forms that attorneys use, are available online at the link below:

https://www.njcourts.gov/forms/10558_guardianship_person_and_estate.pdf

SPECIAL NEEDS TRUSTS

■ **What happens if I do not create a Special Needs Trust?**

If you do not create a Special Needs Trust, the portion of your Estate designated to benefit your child with special needs will be distributed directly to him and it will put the individual's means-tested benefits in jeopardy due to over-resourcing. As a result, any means-tested benefits could be terminated due to having more than \$2,000 in assets per SSA and Medicaid guidelines. Therefore, future decision-makers would be required to create a First Party Special Needs Trust, which is subject to a Medicaid lien with the individual's assets to preserve their original benefits.

■ **How do I choose a Trustee?**

*It is important to choose a Trustee who knows the laws and will keep current with changing regulations governing Special Needs Trusts. The Trustee will ensure the trust is appropriately administered in order to maintain public benefits. It may be advisable to select a trustee who is **not** a family member, especially since this can cause tension in family relationships. As with Guardianship, plan for a line of successors in the Trustee role and consider an agency like PLAN|NJ if you have limited successors available.*

■ **Does the Trustee get paid?**

The Trustee can be paid as long as a provision is written into the Trust to provide for payment. Subsequently, if a Trustee should not be paid, a provision to that effect should be added to the Trust.

■ **Is there any way my family member can have oversight of the Trust but not serve as the Trustee?**

Yes. You can designate a family member as a Trust Protector to ensure the Trustee is managing the Trust responsibly. The Trust Protector would not be responsible for the day-to-day distributions, maintenance and investment of the trust but would have oversight and the ability to question the Trust management should an issue arise.

■ **Can I pay for housing from a SNT?**

*You can pay for housing from a Special Needs Trust, but it may affect an individual's public benefits. Since this is very case specific, a Trustee should **always** seek legal advice when considering this.*

■ **Can I put money from a SNT into an ABLÉ account?**

Yes. You can transfer money from a Special Needs Trust to an ABLÉ account. The transfer must not exceed the maximum allowable per year (\$15,000). Transfers to an ABLÉ account are subject to Medicaid repayment upon the individual's death. If the transfer is from a First Party Trust to an ABLÉ account and it is for \$5,000 or higher, the trustee must notify the State Medicaid Legal and Regulatory Office pursuant to regulations.

ABLE ACCOUNTS

► **Do I need a SNT if I have an ABLE account?**

There are limits on the amount of money that can be deposited into an ABLE account in a given year (\$15,000). A Special Needs Trust is advisable if you intend to leave assets in excess of the ABLE limits. Also, a Trust, unlike an ABLE account, would not be subject to Medicaid Recovery, if the Trust is a Third-Party Special Needs Trust. ABLE accounts can only be established for individuals who have a proven disability with an onset prior to the age of 26.

► **Can I pay for housing with an ABLE account?**

Parents can put money into an ABLE account, and it can be used for rent without the In-kind Support and Maintenance reduction to Supplemental Security Income (SSI)..

► **Does my child have control over the funds in an ABLE account?**

An ABLE account provides the individual with some choice and control over the ABLE funds that he or she would not have with a Trust, since the Trustee makes the decisions regarding spending. If your child has a Guardian, the Guardian would have oversight of the ABLE account.

► **Who can establish an ABLE account on behalf of an individual?**

The individual him or herself (if not under Guardianship), a parent of a minor child, Guardian of Property, or agent through a Power of Attorney can establish an ABLE account on behalf of an individual. A Representative Payee may not establish an ABLE account on behalf of an individual.

► **How can I get more information on ABLE accounts?**

You can learn more about ABLE accounts by visiting the ABLE National Resource Center or NJ ABLE at the websites below:

<https://www.ablenrc.org/service-providers/what-is-able/>

<https://savewithable.com/nj/home.html>

For more information, contact PLAN|NJ at 908-575-8300.