



LAW OFFICE OF
SEAMUS KELLY

**PLANNING FOR THE FUTURE
WILLS, TRUSTS, AND ABLE ACCOUNTS**

WILLS

No one likes to think about their end of life, but unfortunately as parents or guardians of children with disabilities, we face additional fears. What will happen to our children when we're gone? Who will take over our role? Who will provide care and who will pay for it? All of these fears are exactly why parents of children with disabilities **MUST** plan ahead.

The simplest and most direct way to do so, is to establish an estate plan and a Letter of Intent. No, estate plans aren't just for rich people. Whether you realize it or not, if you have a child with a disability any amount of money they would inherit from you may have serious repercussions on how they receive services. You can use a Letter of Intent to explain to whomever will be providing care or services for your child who your loved one is, what they like and how to best serve them.

**I HEARD THAT I MUST DIS-INHERIT MY CHILD WITH A DISABILITY SO
THEY KEEP RECEIVING BENEFITS?**

ABSOLUTELY NOT! This myth has been floating around a while and perhaps this was sound advice at one time, but now you have better options to provide for your children with disabilities

TRUSTS:

I know, I've heard it too: Trusts are expensive, they are only for rich people, we don't have enough money for a trust. While it's true there is an upfront cost to establish a trust, administration fees can be significant, negligible, or non-existent depending on your situation.

A Third-Party Special Needs trust is a type of trust that will enable your child to continue to remain on benefits such as SSI or Medicaid while enjoying resources that you or others may want to provide for them. You can establish a Supplemental Needs Trust as part of your estate plan and leave the share of your estate that you would pass to your child with a disability to the trust. The Trustee of the trust then has an obligation to use those assets for the benefit of your child with a disability. The rules surrounding Trusts can be complicated so make sure who you are working with is someone who understands your situation and wishes and knows current laws.

I'VE BEEN HEARING PEOPLE TALK ABOUT ABLE ACCOUNTS?

An ABLE account serves a similar purpose to the trust, but **REMEMBER** the money you place in an ABLE account can be reclaimed by the government after your child's death. Therefore, it is best used for money they already have access to that can affect eligibility, **NOT** as an estate planning tool.

QUESTIONS?

I provide free consultations for people planning for their child's future, I would be happy to meet with you to explain the process in detail and help you decide what would work for you. Feel free to call or email.



LAW OFFICE OF
SEAMUS KELLY

**GUARDIANSHIP
WHEN, WHY, & HOW**

WHEN?

Parents are able to make decisions for their minor children. However, once a minor becomes an adult, they are presumed to be legally competent and are responsible for making decisions about their own lives. This can cause problems in the case of an adult child with a disability that prevents them from being able to make reasoned decisions regarding their lives.

In Nebraska, the age of majority is 19. What this means is that a child is still a minor until they turn 19. This is sometimes confusing for parents because for many other purposes, Supplemental Security Income (SSI) for example, 18 is considered the age of majority. Therefore, is it likely that a person with a disability may be eligible for and should apply for SSI at age 18, but that guardianship decision can't be made until age 19. An adult with whom a guardian is appointed is generally called a "ward".

WHY?

Whether a person needs a guardian or not is often a difficult decision and one that should not be made lightly. I recommend that all people considering guardianship reach out to knowledgeable people about the proposed ward and whether a guardianship is needed. Generally speaking, a guardian is needed when a person experiences a disability that prevents them from being able to understand the possible consequences of decisions, lacks the ability to make safe, reasoned decisions, or is significantly vulnerable to be abused or taken advantage of.

There are nine guardianship powers in Nebraska as laid out in state law but they may be thought of as covering three basic areas of life: money and property, life choices, and medical decisions. A person may need a guardian in some areas but not others, and so a Limited Guardianship may be appropriate. That's why it's important to meet with an attorney and have discussions about what the proposed ward's strengths and weaknesses may be.

Guardianship is about keeping people safe while allowing them to be as independent as possible, in my opinion, it is not about parents or someone telling a person with a disability how to live, but rather helping them live with the highest quality of life possible.

HOW?

Guardianship is a formal process in which a judge determines that a person doesn't have capacity and then appoints someone to serve as guardian. Documents need to be filed with the court, you must make an appearance at a hearing before the judge. It all sounds a lot scarier than it is. But because it is a court process that takes time, I recommend you contact an attorney a few months before the ward turns 19 to get the process started.

QUESTIONS?

I provide free consultations for anyone considering guardianship, I would be happy to meet with you to explain the process in detail and help you decide whether guardianship is appropriate in your case. Feel free to call or email.