

33rd Annual
Tax Symposium

PLANNING FOR DISABLED CLIENTS

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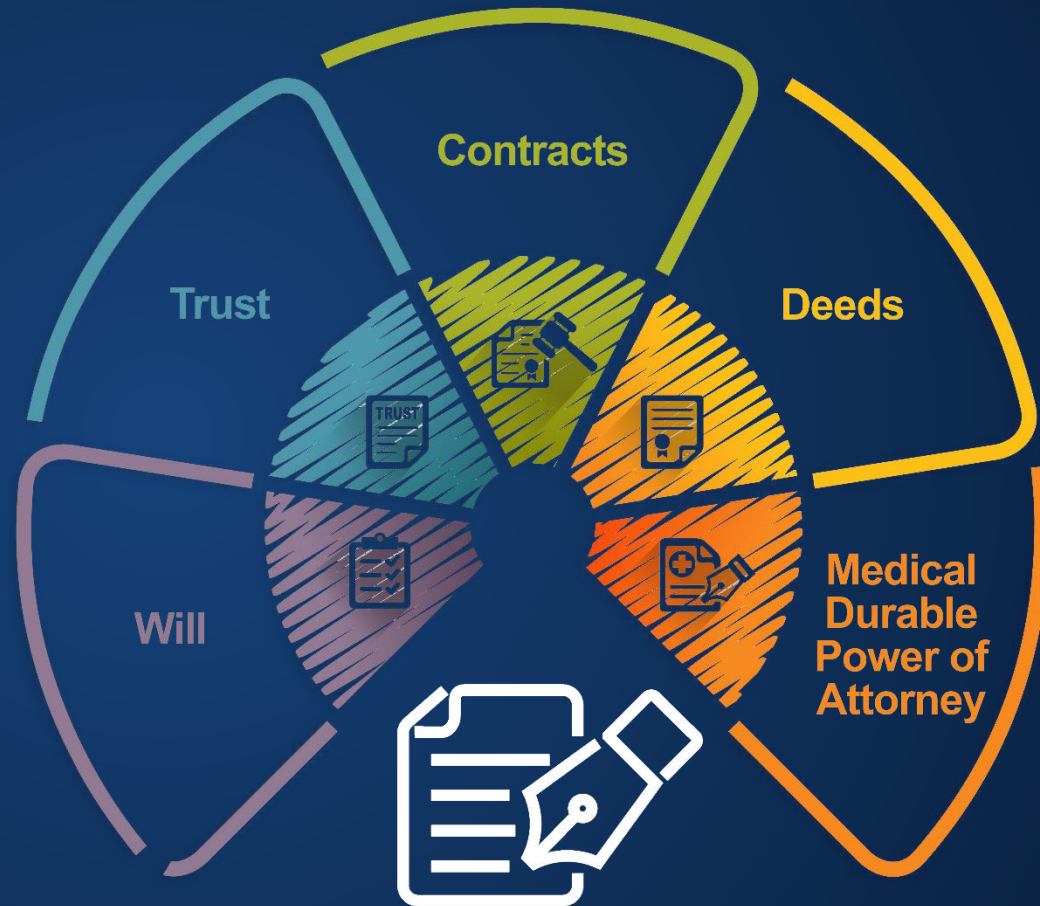
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CAPACITY TO EXECUTE DOCUMENTS

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- Will
- Trust
- Medical Durable Power of Attorney
- Deeds
- Contracts



REPRESENTING THE CLIENT

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- Who is the client?
- Financial Exploitation Prevention Act





DOCUMENTS NEEDED FOR THE CLIENT

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- Last Will and Testament
- Trust
- Medical Durable Power of Attorney
- General Durable Power of Attorney
- HIPAA
- Funeral Representation Designation



LAST WILL AND TESTAMENT

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- Personal Representative
- Testamentary Capacity
- Personal Representative (gathers the decedent's assets, pays creditors, distributes remaining assets to beneficiaries as provided in the Will)



TRUSTS

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- Does the client need to preserve government benefits?
- Many clients with disabilities utilize government benefits – which are needs based
- Supplemental Security Income (SSI) and Medicaid
- Goal - Provide for the disabled client without forfeiting SSI and Medicaid benefits



SPECIAL NEEDS TRUSTS SNT

SPECIAL NEEDS TRUSTS - SNT

- Provide benefits to the disabled client without forfeiting government benefits
- First Party SNT
- Third Party SNT



WHAT TYPES OF NEEDS CAN BE PAID BY THE SNT?

- Medical Needs
- Maintenance and Living Expenses
- Transportation
- Enrichment Items and Activities
- SNT as a Sub-Trust or Stand Alone Trust



ABLE ACCOUNTS

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- Allows funds to be set aside for certain disabled individuals
- Can only be funded by the annual exclusion amount (\$18,000 in 2024) each year
- ABLE Assets do not disqualify the individual from government benefits
- Upon the death of the disabled individual, the ABLE funds need to be used to repay Medicaid



MEDICAL DURABLE POWER OF ATTORNEY

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- Appoints Patient Advocate who can exercise powers concerning the care, custody and mental health treatment decisions for the patient
- Only effective when the patient is unable to participate in medical or mental health treatment decisions
- May include language allowing the Patient Advocate to withhold or withdraw treatment that would then allow a patient to die
- Requirements for signing of the MDPOA

GENERAL DURABLE POWER OF ATTORNEY

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- General Power of Attorney authorizes someone (the “Agent”) to handle financial and other matters for the client (the “Principal”)
- Durable Power of Attorney is effective even if the Principal is later determined to be incompetent
- Uniform Power of Attorney Act
- Power of Attorney will be durable if it is properly executed
- “Acknowledged” Power of Attorney

GENERAL DURABLE POWER OF ATTORNEY

A person refusing to accept an acknowledged Power of Attorney has liability for reasonable attorney's fees and costs incurred to mandate acceptance of the Power of Attorney

GENERAL DURABLE POWER OF ATTORNEY

- Statutory Form Power of Attorney provides authority for the Agent in the following categories:

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes





HIPAA AUTHORIZATION

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- HIPAA restricts access to “protected health information”
- Client should sign an authorization to allow a health care provider to disclose the protected health information





FUNERAL REPRESENTATIVE DESIGNATION

FUNERAL DESIGNATION

- Michigan Statute provides the power to make decisions regarding funeral arrangements in order of priority:
 - A person designated to direct the disposition of the service member's remains
 - A designated funeral representative
 - Surviving Spouse
 - The individual or individuals 18 years of age or older in the following order of priority
 - The decedent's children
 - The decedent's grandchildren
 - The decedent's parents
 - The decedent's grandparents
 - The decedent's siblings
 - A descendant of the decedent's parents
 - The descendant of the decedent's grandparents
 - The Designation must be in writing



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THANK YOU



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