



3/24/2021
1:40 - 2:40 p.m.
"What families need to know
as they plan for the future"

EU LD Q #J X E LQ
Attorney & Parent
&
EH Q ML#J X E LQ
Attorney & Sibling

RUBIN
LAW A Professional
Corporation
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."

1

**IT IS
TIME TO
START...**

2

1st,
a "little"
about the
speakers




3

Brian Rubin

An attorney since 1976, Brian is the Parent of 3 children, one of whom, Mitchell, 40, has Autism, & now lives in a Clearbrook CILA (group home) in the northwest suburbs of Chicago.

Brian's law firm, since 1982, when Mitchell was one year old, has been dedicated to serving the legal & future planning needs of his fellow Illinois families of children & adults with special needs.



4

- Former Commissioner, State of Illinois Guardianship & Advocacy Commission
- Past Chairman, State of Illinois, Department of Human Services, Statewide Advisory Council on Developmental Disabilities
- Past Chairman, State of Illinois Legislature's Autism Task Force
- Past President, The Arc of Illinois
- Served on the State of Illinois Department of Human Services, Office of Inspector General, Quality Care Board ("over-sight of Agency) - Abuse and/or Neglect of individuals with developmental &/or intellectual disabilities, or mental illness
- Director, Clearbrook, since 1989, 32 years, an agency serving more than 8,000 children & adults with intellectual &/or developmental disabilities, including Brian's son, Mitchell
- Serves on the Board of Trustees of Life's Plan Inc. (Ray Graham Association), Trustee of both individual special needs trusts & "Pooled" special needs trusts



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- Former Director, DayOne Pact, special needs trusts' trustee, & guardian for individuals with developmental &/or intellectual disabilities
- Past President, Special Needs Alliance, the national, non-profit, membership by invitation, organization of special needs planning attorneys
- Was a Charter Member, Academy of Special Needs Planners, a national organization of special needs planning attorneys
- Continuing Legal Education Faculty (teaching other attorneys) on special needs trusts & special needs planning for Illinois Institute for Continuing Legal Education, Illinois State Bar Association, & American Bar Association
- Past Chairman, Special Leisure Services Foundation (SLSF), foundation for Northwest Suburban Special Recreation Association (NWSRA)
- Served as Founding Chairman of Foundation for Special Education District of Lake County Illinois (SEDOL Foundation)
- Former Director, Keshet & Northpointe Resources





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Benji Rubin

An attorney, Brian's youngest child, Mitchell's "little/big" brother, joined his dad's firm in 2010, and is now President of Rubin Law. Having Mitchell as a brother profoundly shaped who Benji is today, & thus the area of law he chose to practice. His personal experiences as a sibling offer a unique perspective into the responsibilities that come with caring for a sibling with special needs, a concern that he shares with all brothers & sisters of individuals with special needs.

8

- > Treasurer & Director, The Arc of Illinois
- > President & Director, of S.I.B.S., the Illinois Chapter of Sibling Leadership Network (National Sibling Association)
- > Member, Clearbrook Associate Board of Directors, agency serving over 8,000 individuals with intellectual and/or developmental disabilities, including Benji's brother, Mitchell
- > Chairman of the American Bar Association Special Needs Planning Committee
- > Director, DayOne Pact, trustee of special needs trusts & serves as guardian
- > Director, SEDOL (Special Education District of Lake County) Foundation
- > Member, Special Needs Alliance, the national, non-profit, membership by invitation, organization of special needs planning attorneys
- > Member of the national Academy of Special Needs Planners
- > Continuing Legal Education Faculty Member (teaching other attorneys) of the Illinois Institute for Continuing Legal Education, as well as for the Illinois State Bar Association, & for the American Bar Association, on the topic of special needs trusts, and special needs legal & future planning

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This presentation
is dedicated to
the memory of
Nicole Rosenthal
5/13/1978 – 11/30/2020
Brian's daughter,
Benji's and Mitch's sister.

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Brian Rubin – Mitchell Rubin – Benjamin Rubin



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Brian N. Rubin, Attorney & Parent
Benjamin A. Rubin, Attorney & Sibling



11

1/27/81
40 years ago...
The day my life took a fork in the road...



12



13



14



15

Growing up as a “Sibling”...

- **Helps put things in perspective in life**
- **Different than parents...**
- **Vacations...**
- **Trips to the Store...**

- **Understanding our future responsibilities**

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Benji Rubin


President
S.I.B.S.

Supporting **I**llinois **B**rothers & **S**isters
Illinois Chapter of the national Sibling
Leadership Network






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Special Needs Legal & Future Planning
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Illinois • 312-291-1100 • 312-291-1101

INFORMATION REQUEST FORM

DOCUMENTS WILL BE SENT BY EMAIL (select if boxes below)

- Special Needs Alliance "Special Needs Trust Handbook"
- Letters of Intent (Guidance & Information Form "for Future Use")
- Support on Income & Child Support on SSI & Medicaid
- Keeping your Child on YOUR Health Insurance (part 2)
- Guardianship & Alternatives (Powers of Attorney)
- Special Needs Trusts & Special Needs Future Funding
- Adult Sibling Group & 5th Step Information for younger siblings
- Support of Guardianship on Driver's License
- Trusts & Special Needs Trusts
- Trusts & Adult Health Waiver
- ABLE Accounts
- Military Pension Benefit (SBP)
- Pre-Paid Funeral Arrangements Rules
- Please add email to your list to receive your newsletters by email

Check appropriate box and complete the needed information.

Do not contact me, just please send by email the information requested above.
Email address is: _____

Please contact me (or) to schedule an "Initial Consultation".
Day time phone number: (____) _____ Email: _____
Name(s): _____

Please contact me (or) to schedule a presentation to a group, organization, school, or agency.
Day time phone number: (____) _____ Email: _____
Name(s): _____

Join the network for free:
Visit us on Facebook at www.facebook.com/siblingleadership

www.siblingleadership.org

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What **YOU**,
 or "**OTHERS**", do
IMPACTS
 Government Benefits

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How much?

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WHERE FROM ?

- ✦ Working ?
- ✦ Parent(s) ?
- ✦ Siblings ?

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The
"GREAT" STATE OF
ILLINOIS
NOT!

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Attorney for special needs planning

WORK

FAMILY
INHERITANCES

GOVERNMENT

REQUIRES
SPECIAL
NEEDS
TRUSTS

23

BENEFITS 101... SSI - SSDI - MEDICAID - MEDICARE - HBWD - ETC.

SSI **Medicaid**

BEWARE... SSI/SSDI
If living "residential" then
only keep \$80 @ month
for personal use...

SSDI **Medicare**
TWO YEARS

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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 at does not hospital person handica occur limiting sustain depend other care & self-ents, or ime"

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800.276.2989 • 1st floor 500 N. LaSalle

INFORMATION REQUEST FORM

DOCUMENTS WILL BE SENT BY EMAIL (select 8 or boxes below)

- Special Needs Allowance "Special Needs Trust Handbook"
- Letters of Intent ("Substance & Information Form" for "future trust")
- Support on Divorce & Child Support on SIE & Medicaid
- Keeping your Child on YOUR Health Insurance (great PDF)
- Guardianship & Alternatives (Forms of Attorney)
- Special Needs Trusts & Special Needs Future Planning
- AAAT Billing Group & 503-Stop information for program eligibility
- Support of Guardianship on Driver's License
- Trusts & Special Needs Trusts
- Trusts & AAAT-MSB Worker
- ABLE Accounts
- Military Pension Benefit (MSP)
- Pre-Paid Funeral Arrangements Rules
- Please add labels to your list to receive your readership by email

Check appropriate box and complete the needed information.

Do not contact me, just please send by email the information requested above.
Email address: _____

Please contact me (call) to schedule an "Initial Consultation".
Day time phone number: (____) _____ Email: _____

Please contact me (call) to schedule a presentation to a group, organization, school, or agency.
Day time phone number: (____) _____ Email: _____

Name: _____

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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

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Special Needs Trusts

😊 **3rd Party**
Private & Pooled Versions


😞 **Self Settled**
aka, OBRA, 1st Party, Pay Back...
Private (d4A) & Pooled (d4C)

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2 Versions, both...

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

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3RD PARTY TRUSTS

ORIGINAL - GOOD

➔ by Court Decisions in Illinois 1982

➔ by Statute in Illinois 1991

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3RD PARTY TRUSTS

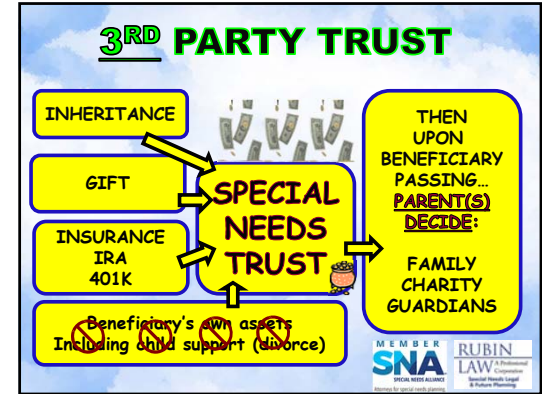
1st Version

INHERITANCES & GIFTS

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OK... SO
INSIDE WILL
OR LIVING
TRUST ?

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A cartoon character with a question mark is in the top right corner.

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WRONG WAY NO! NO! NOT!
“ ”
YOU WILL
OR LIVING
TRUST!

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A large red 3D 'X' is superimposed over the text.

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Won't
exist
until...

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#1 So NO "Piggy Backing"

#2 NO "Grand Fathering"

#3 NO Nursing Home Impoverishment

#4 NO Place for larger gifts from others to go to

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Again, spread the word...

NURSING HOME EXCEPTION
BUT BEWARE...

- Power of Attorney/Living Trust
- 3rd party trust with "required language"

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

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BUT I STILL
DON'T GET IT ?



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

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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**

REMEMBER

**3rd PARTY
SPECIAL NEEDS
TRUST**

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**How to put \$
in the Trust?
From your
& others'
Wills & Trusts**

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EXTENDED FAMILY & FRIENDS

- Instruction letter
- Form Codicil
- Form Trust Amendment
- Trust Certification
- Consult with their Attorneys/Advisors

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**But...
Beware of
absentee
parents &
grandparents**

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BEWARE!

EX-SPOUSE LETTER

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So...

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

But... But...

Things to do
Don't
496,304

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Change Beneficiaries

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

Don't
496,304

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

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BENEFICIARY
HAS ASSETS

Savings Bonds *UTMA Accounts AT 21* *Large Gift*
IRA - 401k *Law Suit Settlement*
 Excess SSI/SSDI **Inheritance** **WILL/TRUST/BENEFICIARY**

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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 1st!
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 law suit settlements
7. 2018 - Convert traditional 529 Account... up to \$15,000 limit...
8. 2018 - Additional contribution of the lesser of earned income from employment for year & \$12,060, 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

REQUEST FORM #11

- Illinois Statutes...
- **Not as advertised...**
- **No Pay Back** is being "advertised" BUT
 1. Doesn't apply to all 9 Illinois Medicaid Waivers including DDD and DRS, and specifically CILA/ICFDD, SODC, HBSS
 2. Doesn't apply to even medical Medicaid post age 55
- Tax Deduction... so what
- Child Support... Feds say NO!

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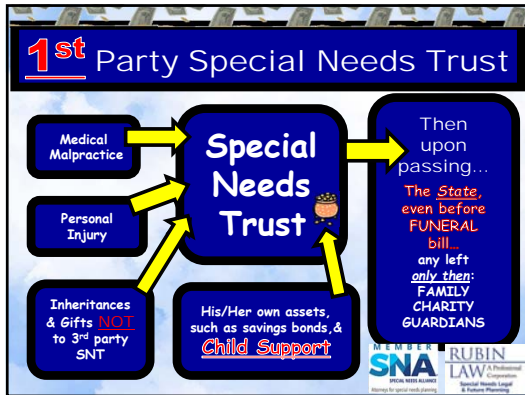
Otherwise
1st Party
Special Needs Trust

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

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1ST PARTY SNTS ARE THE VERSIONS REQUIRED FOR CHILD SUPPORT NOT 3RD PARTY SNTS! & AS OF NOW NOT ABLE!

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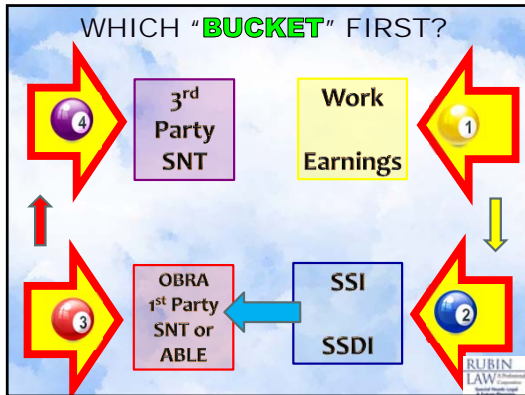
RUBIN LAW Special Needs Legal & Future Planning
1000 Lakeside Drive, Suite 1000
Chicago, IL 60606-3600
Tel: 312.329.1100 | Fax: 312.329.1101

Support for a non-minor child with a disability.
(750) ICS 5/111.5)

REQUEST FORM #3

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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 Medicaid Agency)?

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COMMON ATTORNEY MISTAKES!

Calling it an SNT doesn't make it an SNT!

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COMMON ATTORNEY MISTAKES!

No Grand-Fathering Required Language!

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COMMON ATTORNEY MISTAKES!

NO prohibition of 1st Party money in 3rd Party Trust!

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COMMON ATTORNEY MISTAKES!

**NO requirement
to use 1st Party
Trust money or
ABLE money prior
to 3rd Party Trust
money!**

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COMMON ATTORNEY MISTAKES!

**Not
100%
Discretionary**

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COMMON ATTORNEY MISTAKES!

**Permitting
Pay TO...**

*So **SHOULD** provide ability
to distribute to ABLE!*

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COMMON ATTORNEY MISTAKES!

Over Restrictive Language...

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COMMON ATTORNEY MISTAKES!

“No Trustee Powers to Correct” or terms not “broad” enough

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COMMON ATTORNEY MISTAKES!

No “Band Aid” or retro Language

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COMMON ATTORNEY MISTAKES!

No “Next Generation” Trustees...

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COMMON ATTORNEY MISTAKES!

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
“Contingent”
SNT for others**

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COMMON ATTORNEY MISTAKES!

**NO
“Public” Pensions
Required Language**

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COMMON ATTORNEY MISTAKES!

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

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COMMON ATTORNEY MISTAKES!

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

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COMMON ATTORNEY MISTAKES!

Other Documents

NOT JUST SPECIAL NEEDS TRUSTS!

- **Wills need special language!**
- **Living need special language!**
- **Insurance Trusts need special language!**
- **Powers of Attorneys need special language!**
- **Beneficiary Designations need special language!**

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COMMON ATTORNEY MISTAKES!

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

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Rest
For
Item
6
Hand
Material

SNA SNT HANDBOOK

Administering a Special Needs Trust

Courtesy of A Handbook For Trustees (2021 Edition)

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Form
/Taxes

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Who will be Guardian?

Let me live... **ONE** moment longer...

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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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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...

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SO... the questions to ask...

- Can he/she fully manage his/her personal, medical, education & financial decisions?
- Could he/she be vulnerable to or taken advantage of by others?

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Before considering "Guardianship", ALWAYS first consider the ALTERNATIVES

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ADULT GUARDIANSHIP & THE ALTERNATIVES...

Doing Nothing = HCSA

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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 life-sustaining treatment. Lack of decisional capacity, alone, should not prevent decisions to forgo the sustaining treatment from being made on behalf of persons who lack decisional capacity and have no known applicable living will or power of attorney for health care. Uncertainty and lack of clarity in the law concerning the holding of health decisions concerning medical treatment and to forgo life-sustaining treatment, without judicial involvement, causes unnecessary emotional distress to the individual's husband and family members upon the individual's right to forgo the sustaining treatment. The enactment of statutory guidelines for suicide decision-making will bring improved clarity and consistency to the process for implementing decisions concerning medical treatment and to forgo life-sustaining treatment and will substantially reduce the associated emotional distress for medical patients.

(b) Purpose. This Act is intended to define the circumstances under which private decisions by patients with decisional capacity and to promulgate decision-making guidelines for patients lacking decisional capacity to make medical treatment decisions and to terminate the sustaining treatment they do not wish to receive and to promulgate an act for use. This Act is intended to provide a process for their private decision-making. This Act is intended to clarify the rights and obligations of those persons in these private decisions on or on behalf of patients. This Act is not intended to curtail, withdraw, or amend an express living will or advanced directive. (Source: P.A. 87-749, eff. 8-1-02)

(755 ILCS 40/21) Sec. 21. Surrogate decision-making.

(a) When a patient lacks decisional capacity, the health care provider shall make a reasonable attempt to do the following and identify all of the persons who have authority to make decisions on behalf of the patient for health care purposes: (1) attempt to determine if the patient has a living will or power of attorney for health care purposes; (2) attempt to determine if the patient has a health care surrogate; (3) attempt to determine if the patient has a health care agent; (4) attempt to determine if the patient has a health care surrogate; (5) attempt to determine if the patient has a health care agent; (6) attempt to determine if the patient has a health care surrogate; (7) attempt to determine if the patient has a health care agent; (8) attempt to determine if the patient has a health care surrogate; (9) attempt to determine if the patient has a health care agent; (10) attempt to determine if the patient has a health care surrogate; (11) attempt to determine if the patient has a health care agent; (12) attempt to determine if the patient has a health care surrogate; (13) attempt to determine if the patient has a health care agent; (14) attempt to determine if the patient has a health care surrogate; (15) attempt to determine if the patient has a health care agent; (16) attempt to determine if the patient has a health care surrogate; (17) attempt to determine if the patient has a health care agent; (18) attempt to determine if the patient has a health care surrogate; (19) attempt to determine if the patient has a health care agent; (20) attempt to determine if the patient has a health care surrogate; (21) attempt to determine if the patient has a health care agent; (22) attempt to determine if the patient has a health care surrogate; (23) attempt to determine if the patient has a health care agent; (24) attempt to determine if the patient has a health care surrogate; (25) attempt to determine if the patient has a health care agent; (26) attempt to determine if the patient has a health care surrogate; (27) attempt to determine if the patient has a health care agent; (28) attempt to determine if the patient has a health care surrogate; (29) attempt to determine if the patient has a health care agent; (30) attempt to determine if the patient has a health care surrogate; (31) attempt to determine if the patient has a health care agent; (32) attempt to determine if the patient has a health care surrogate; (33) attempt to determine if the patient has a health care agent; (34) attempt to determine if the patient has a health care surrogate; (35) attempt to determine if the patient has a health care agent; (36) attempt to determine if the patient has a health care surrogate; (37) attempt to determine if the patient has a health care agent; (38) attempt to determine if the patient has a health care surrogate; (39) attempt to determine if the patient has a health care agent; (40) attempt to determine if the patient has a health care surrogate; (41) attempt to determine if the patient has a health care agent; 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(72) attempt to determine if the patient has a health care surrogate; (73) attempt to determine if the patient has a health care agent; (74) attempt to determine if the patient has a health care surrogate; (75) attempt to determine if the patient has a health care agent; (76) attempt to determine if the patient has a health care surrogate; (77) attempt to determine if the patient has a health care agent; (78) attempt to determine if the patient has a health care surrogate; (79) attempt to determine if the patient has a health care agent; (80) attempt to determine if the patient has a health care surrogate; (81) attempt to determine if the patient has a health care agent; (82) attempt to determine if the patient has a health care surrogate; (83) attempt to determine if the patient has a health care agent; (84) attempt to determine if the patient has a health care surrogate; (85) attempt to determine if the patient has a health care agent; (86) attempt to determine if the patient has a health care surrogate; (87) attempt to determine if the patient has a health care agent; (88) attempt to determine if the patient has a health care surrogate; (89) attempt to determine if the patient has a health care agent; (90) attempt to determine if the patient has a health care surrogate; (91) attempt to determine if the patient has a health care agent; (92) attempt to determine if the patient has a health care surrogate; (93) attempt to determine if the patient has a health care agent; (94) attempt to determine if the patient has a health care surrogate; (95) attempt to determine if the patient has a health care agent; (96) attempt to determine if the patient has a health care surrogate; (97) attempt to determine if the patient has a health care agent; (98) attempt to determine if the patient has a health care surrogate; (99) attempt to determine if the patient has a health care agent; (100) attempt to determine if the patient has a health care surrogate.

MEMBER SNA SPECIAL NEEDS ADVOCACY BUT JUST MEDICAL/HEALTH! RUBIN LAW A PROFESSIONAL CORPORATION Special Needs Legal Solutions

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**ADULT GUARDIANSHIP
& THE ALTERNATIVES...**

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**SUPPORTED
DECISION
MAKING?**

a few states by statute... not IL yet

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**ADULT GUARDIANSHIP
& THE ALTERNATIVES...**

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“TOOLS”

- ✓ Powers of Attorney
 - Financial/Property
 - Health Care/Medical
 - Mental Health Treatment
 - Special Education
 - SSA
 - DHS/HFS
- ✓ Representative Payee
- ✓ Joint Accounts

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So, does he/she have
“capacity”
 to sign such “tools”?

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ILLINOIS STATUTORY SHORT FORM
 POWER OF ATTORNEY FOR PROPERTY

1. Grant name and address of principal (hereby revoke all prior statutory powers of attorney for property executed by me and appoint _____ Grant name and address of agent(s) (NOTE: You may not name co-agents using the term “as my attorney-in-fact” (my “agent”) to act for me and to my estate (to any and to liquidate an estate) with respect to the following powers, as defined in Section 3 of the “Statutory Short Form Power of Attorney for Property Law” (including all amendments), but subject to any limitations or additions to the specified powers recited in paragraph 2, or below:

(NOTE: You must check out any one or more of the following categories of powers you do not want your agent to have. Failure to check the title of any category will cause the powers described in that category to be granted to the agent. To check out a category you need check a box through the title of that category.)

- (1) Real estate transactions.
- (2) Financial institution transactions.
- (3) Stock and bond transactions.
- (4) Tangible personal property transactions.
- (5) Bank financial institution transactions.
- (6) Insurance and annuity transactions.
- (7) Retirement plan transactions.
- (8) Social Security, employment and military service benefits.
- (9) Tax matters.
- (10) Claims and litigation.
- (11) Commodity and option transactions.
- (12) Business transactions.
- (13) Lending transactions.
- (14) Estate transactions.
- (15) All other powers of attorney.

(NOTE: Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or general rules on borrowing by the agent.)

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\$ FINANCIAL \$

**Print?
 Mark?
 Direct
 others
 to sign?**

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Example **additional** Powers, when appropriate...

- Government Benefits
- IRS
- Residential
- Employment matters
- Funding/establishing self settled (d4A/C) SNTs and ABE Accounts
- HIPAA release
- School
- UID/PW
- Copies

1987 form!

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NOTICE TO THE INDIVIDUAL, NEXT OF KIN OR EDUCATIONAL DECISION MAKER REGARDING THE 1987 HEALTH CARE

This is to advise you that your rights as a parent or guardian of a child with a disability or as a next of kin are being transferred to the designated representative named below. This transfer of rights is effective as of the date of the execution of this document. If you have any questions, please contact the designated representative or the law firm of Rubin Law, P.C. at (800) 541-5211 or (978) 682-1111.

WHAT ARE THE THINGS MY HEALTH CARE AGENT TO DO?

The designated representative will have the authority to:

- Obtain, review, and disclose to health care professionals information about the individual's health status, including medical records and test results;
- Authorize or refuse medical, surgical, dental, or other health care services;
- Authorize or refuse life-sustaining treatment;
- Obtain, review, and disclose to health care professionals information about the individual's health status, including medical records and test results;
- Obtain, review, and disclose to health care professionals information about the individual's health status, including medical records and test results;


WHAT SHOULD I DO BEFORE SIGNING THIS DOCUMENT?

Read this document carefully. If you have any questions, please contact the designated representative or the law firm of Rubin Law, P.C. at (800) 541-5211 or (978) 682-1111.

WHO SHOULD I CHOOSE TO BE MY HEALTH CARE AGENT?

The designated representative should be a person who:

- Is a resident of this state;
- Is at least 18 years old at the time of signing this document;
- Is capable of exercising judgment and understanding the nature and consequences of the actions he or she will take on behalf of the individual;
- Is not a restricted partner, officer, director, or trustee of the individual's health care provider;
- Is not a person who is prohibited by law from acting as a health care agent for the individual;
- Is not a person who is prohibited by law from acting as a health care agent for the individual;



HEALTH CARE

**1987 – 1 page
2020 – 6 pages**

**Print?
Mark?
Direct others to sign?**

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DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISION

On this _____ day of _____, 20____, I, _____, am 18 years of age or older and a student who has the right to make educational decisions for myself under State and federal law. I have not been adjudged incompetent and, as of the date of the execution of this document, I hereby designate my right to give consent and make decisions concerning my education to _____ My Designated Representative, who will be responsible for my education. I understand that I have the right to terminate this delegation at any time and assume the right to make my own decisions regarding my education. I understand that I must notify the school district immediately if I revoke this Delegation of Rights prior to its expiration.

Accepted by:

Student

Designated Representative

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8/23/07 School

**Print?
Mark?
Direct others to sign?**

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MENTAL HEALTH

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, volitionally and knowingly make this declaration for mental health treatment to be followed if it is determined by 2 physicians or the court that my doctor is unable and unable information effectively or communicate decisions is required to such an extent that I lack the capacity to refuse or consent to mental health treatment. Mental health treatment means electroconvulsive treatment, treatment of mental illness with psychiatric medication, and admission to and retention in a health care facility for a period up to 15 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

_____ I consent to the administration of the following medications:

_____ I do not consent to the administration of the following medications:

ELECTROCONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

_____ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations:

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Special Health Legal
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Social Security

SSA REQUIRES THEIR OWN FORM

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THE STATE

DHS/HFS REQUIRES THEIR OWN FORM

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What if he/she:

- has capacity to “sign” **BUT** refuses to “sign”, or doesn’t want **YOU** as agent?
- doesn’t have “capacity” to “sign”?
- just can’t help **getting himself/herself into trouble**; maybe legal, maybe criminal, maybe financial, maybe personal, maybe medical/health related?
- is a danger to himself/herself or others?

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ADVOCATES FOR SPECIAL NEEDS LAWYERS

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WHAT IF he/she **DOES** have “capacity” for PAs and **DOES** sign them...

1. **Will** he/she allow you to act, or will he/she terminate/void the PA/tools, as soon as... when...?
2. **Doesn't prohibit** him/her from...
3. Remain **vulnerable**?

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Will Powers be enough ?

- What if he/she is on computer **buying things with mom's credit card**.
- What if he/she announces that he/she is **getting married** or moving in with “friend”.
- What if he/she **refuses to have parents at meetings**, or is **“tricked”**.
- What if **asked to sign**...?

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ADVOCATES FOR SPECIAL NEEDS LAWYERS

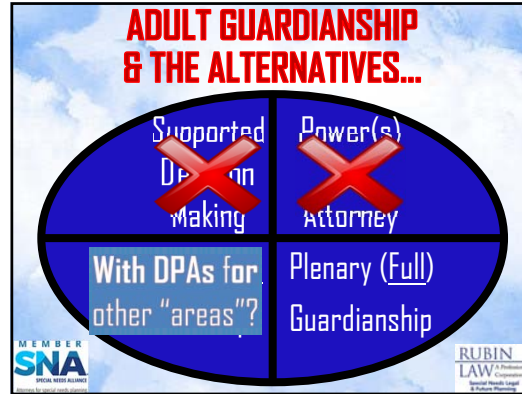
RUBIN
LAW
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IF he/she can't, or won't" sign" powers of attorneys or other tools... **AND** If you determined that "powers" or other alternatives are simply **not enough** to assist and protect him/her... **THEN, maybe... just maybe,** "some form" of **Guardianship** could be appropriate **to help, and to protect** him/her, **from himself/herself, and from others...**

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

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GUARDIANSHIP

- ↘ Independence vs. Protection?
- ↘ Court... Law Suit... Venue
- ↘ M.D. Report – Illinois M.D.
- ↘ Summons (14 days)
- ↘ Who can be appointed (U.S. Resident)
- ↘ Required notices

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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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County Specific Instructions Provided To Clients

RUBIN LAW

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GUARDIANSHIP

- Move out of State
- Move out of County? ✓ (Depends on County)
- Why some parents/siblings decline?
- Then what?
- State Guardian/Private?

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1745 N. Lake Cook Rd., Suite 500, Northbrook, Illinois 60062-2857
 847.564.2200 Fax 847.564.2299. http://www.rubinelaw.com
 email: rubin@rubinelaw.com www.rubinelaw.com
 Illinois: Robert A. Rubin, Robert A. Rubin, James M. Rubin
 1998 Institute for Healthcare, Health Services, Life Care

**(625 ILCS 5/6-103)
 DRIVER'S LICENSE
 Individual with Physical
 or Mental Disability**

Sec. 6-103. The Secretary of State shall not issue, renew, or alter the condition of any driver's license, nor issue any permit under this section.

6-103.010. In any permit, on a driver, who has previously been subjected to an alcohol test, or anything from, any physical or physical disability or disease and who has not at the time of application been rendered incompetent by the conditions provided by this section.

6-103.020. In any permit, on a driver, who has previously been subjected to an alcohol test, or anything from, any physical or physical disability or disease and who has not at the time of application been rendered incompetent by the conditions provided by this section.

6-103.030. In any permit, on a driver, who has previously been subjected to an alcohol test, or anything from, any physical or physical disability or disease and who has not at the time of application been rendered incompetent by the conditions provided by this section.

6-103.040. In any permit, on a driver, who has previously been subjected to an alcohol test, or anything from, any physical or physical disability or disease and who has not at the time of application been rendered incompetent by the conditions provided by this section.

6-103.050. In any permit, on a driver, who has previously been subjected to an alcohol test, or anything from, any physical or physical disability or disease and who has not at the time of application been rendered incompetent by the conditions provided by this section.

(Source: P.A. 92-365, eff. 1-1-82)

Request Form # 8

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Special Needs Legal
 Attention: Special Needs Alliance

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What if:

- He/she needs a Guardian, but won't cooperate? or
- He/she will be "driving"?

... then try "Limited" Guardian?

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**Limited Guardianship
 Appointment of a
 Limited Guardian
 DOES NOT
 constitute a finding of
 legal incompetence!**

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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! It's "the law"... **BUT BEWARE... DMV may allow... but don't do it!**

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



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REQUIRED TRAINING!

NEW ILLINOIS LAW - Public Act 100-483
 Effective September 8, 2018
REQUIRED TRAINING FOR GUARDIANS... even for parents
EXCEPT FOR COOK COUNTIES, BUT ALL OTHER 101 COUNTIES?????

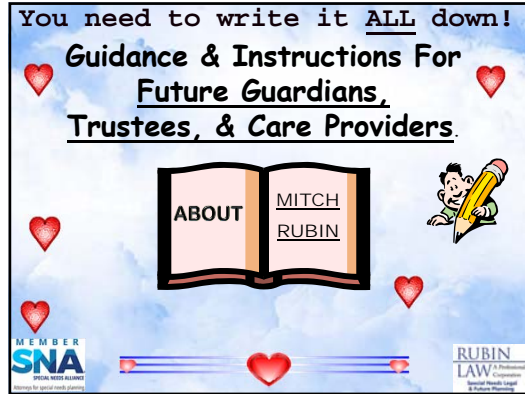
- Required Training
 - outlines the duties and responsibilities of guardians...
 - outlines the rights of a person with a disability...
 - at no cost, and shall
- File with court a certificate of completion within one year, EXCEPT... "the court may, for good cause shown, exempt from this requirement..."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

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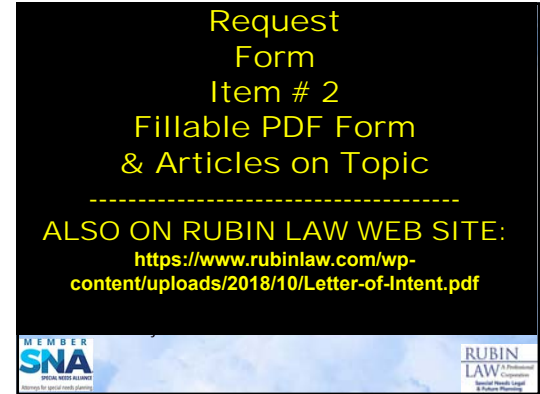
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**In EP Magazine
February 2011
Brian Rubin**

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

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

Special Needs

The Guidance and Information Document
For Future Care Providers and Trustees

Running START
First Steps for Writing
the Letter of Intent

News From The Center

MetLife

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1400 N. Dearborn • Chicago • Ill. 60610
312.276.2400 • info@rubinlaw.com
847.276.7999 • 1400 N. Dearborn, Suite 200
Chicago, IL 60610

INFORMATION REQUEST FORM

DOCUMENTS WILL BE SENT BY EMAIL (select all boxes below)

- Special Needs Affidavit "Special Needs Trust Handbook"
- Letters of Intent (Guidance & Information Form) for "Future Trust"
- Impact on Divorce & Child Support on SSI & Medicaid
- Keeping your Child on YOUR Health Insurance (Leaflet)
- Guardianship & Affidavits (Powers of Attorney)
- Special Needs Trusts & Special Needs Future Planning
- Adult Sibling Group & SSI Stop Information for younger siblings
- Impact of Guardianship on Grantor's Lifetime
- Taxes & Special Needs Trusts
- Taxes & ADAP/MSD Worker
- ABLE Accounts
- Military Pension Benefits (SRP)
- Pre-Paid Funeral Arrangements Rules
- Please add details to your list to receive your newsletters by email

Check appropriate box and complete the needed information.

- Do not contact me now, just please send by email the information requested above.
Email address to: _____
- Please contact me just to schedule an "Initial Consultation".
Day time phone number: (____) _____ Email: _____
Name(s): _____
- Please contact me just to schedule a presentation to a group, organization, school, or agency.
Day time phone number: (____) _____ Email: _____
Name(s): _____

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Attorney for special needs planning

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Email form
To
email@rubinlaw.com

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QUESTIONS - IF TIME

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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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Special Needs Planning is:

NOT JUST special needs trusts, NOT just documents...

- **Not just** additional special provisions in Wills, Living Trusts, & Powers of Attorney
- **Not just** extended family instructions & forms
- **Not just** planning for probate court avoidance
- **Not just** federal & state estate tax (death tax) avoidance or minimization planning
- **Not just** at 18 guidance & advice on guardianship & alternative options to guardianship
- **Not just** assistance & forms for changing titles & naming beneficiaries
- **Not just** guidance & forms for “Letters of Intent”, guidance for the “future team”
- **Not just** consulting & planning on the impact of divorce on SSI & Medicaid
- **Not just** consulting & planning on the impact of litigation settlements on SSI and Medicaid
- **Not just** advice & consulting on the proper or appropriate use of ABLE accounts
- **Not just** assistance navigating a move to another State due to different laws & programs
- **Not just** assistance & intervention with Government Benefits issues & responding to correspondence from SSA & the State Medicaid Agency)
- **Not just** telling you of new laws, regulations, policies, & options impacting your planning
- **Not just** parent to parent & sibling to sibling mentoring
- ❖ **But ALL of the above & much, much more**
- ❖ **It is a RELATIONSHIP that should not end with the signing of your documents & should continue, always available.**
- ❖ **www.specialneedsalliance.org**

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Corporation

Special Needs Legal & Future Planning

Buffalo Grove • Chicago • Old Orchard
www.rubinlaw.com • email@rubinlaw.com
847-279-7999 • Toll Free 866.To.Rubin

RUBIN LAW... THE VALUE ADDED HOW WE ARE DIFFERENT

Our law firm's commitment, our mission, is, with compassion and understanding, to always be there for our clients*, our fellow families of individuals with intellectual disabilities, developmental disabilities, and/or mental illness.

Unlike most law firms and attorneys, our fees are "fixed" fees, not hourly, for all services rendered. Clients are never "on the clock", never on a meter. Our policy is, and has always been, that we do not charge clients for phone calls, email communication, written correspondence, or future office conferences that the clients have with attorneys and/or staff of Rubin Law, or that the attorneys and/or staff of Rubin Law have with third parties at the request of the client(s), specifically including, but not limited to, any matter related to the clients' estate plan documents, contacts with State of Illinois Agencies, the Social Security Administration, and/or the Internal Revenue Service, regarding any drafted special needs trusts, questions related to government benefits, questions related to navigating the "maze" of the State of Illinois' children and adult programs, as well as questions "broadly" related to special needs legal and future planning. There is no annual maintenance fee. We want clients to call. There is no such thing as a "silly" question.

The only time there could be additional fees is if the clients request additional services after the clients sign their estate plan documents, such as for:

1. Changes to their estate plan documents, or additional estate plan documents
2. Guardianship Probate Court Proceedings
3. Consultations with clients' other attorneys and/or advisors related to dissolution of marriages (divorce), or litigation settlements such as medical malpractice cases, and related matters
4. Estate or Trust administration upon the death of the client(s)

As to the four items listed above, we would first have a phone consult or an in office meeting with the client(s) (this is at no charge to the client(s), as outlined above) to discuss the possible changes or additional documents, possible Guardianship proceeding, impact of a divorce or litigation settlement, and/or Estate/Trust Administration, at which time client(s) are informed of the fixed or hourly fee for such additional services, At that time the clients have the choice to either proceed with the discussed services, for the fee quoted, or not to proceed. A new Attorney Fee Agreement would be required for such additional services.

Please note that if the clients establish new or additional estate plan documents or amend and/or change any existing estate plan documents prepared by Rubin Law, with another attorney or law firm, or engage such other attorney or law firm for guardianship representation, additional fees may apply for any and all future services by Rubin Law.

*client(s) are individual(s) who have executed a Rubin Law "ATTORNEY FEE AGREEMENT – ESTATE PLANNING"



Brian and Benji Rubin

Attorney Brian Rubin, is the founder of Rubin Law, a former IRS Agent and former IRS Attorney, has been a practicing attorney since 1976, has been married to his wife Linda for the past 44 years, and is the parent of three children, one of whom, Mitchell, 40, has Autism. Brian's law practice, for nearly four decades, since Mitchell was one year old, has been dedicated to serving the legal and future planning needs of his fellow Illinois families of children and adults with intellectual disabilities, developmental disabilities, and/or mental illness.

- Past President (2011-2015), The Arc of Illinois, served on The Arc of Illinois Board for 15 years (2004-2019)
- Past Chairman, State of Illinois Statewide Advisory Council on Developmental Disabilities (2000-2004)
- Past Chairman, State of Illinois Autism Task Force (2004-2015)
- Former Commissioner, State of Illinois Guardianship & Advocacy Commission since (2013-2020)
- Served, State of Illinois Department of Human Services Office of Inspector General Quality Care Board (2006- 2012)
- Director, Clearbrook (an organization serving more than 8,000 individuals with intellectual and/or developmental disabilities (including his son, Mitchell) since 1989
- Trustee, Life's Plan, Inc. (a subsidiary of Ray Graham Association) which serves as Trustee of Special Needs Trusts
- Past Chairman (2011-2013), and Director (2006-2019), the Special Leisure Services Foundation, the foundation supporting the Northwest Suburban Special Recreation Association (NWSRA)
- Founding Chairman (1989-1991), and Trustee, Foundation of The Special Education District of Lake County (1989-1997)
- Former Director, KESHET (Jewish Parents of Children with Special Needs) (1990-1996)
- Serves on the Advisory Council of Encompass (Encompass in partnership with Jewish Child & Family Services, Jewish United Fund, JVS Chicago, JCC Chicago, Keshet, and The Center for Enriched Living and Center for Independent Futures) serving individuals with intellectual disabilities
- Former Director, DayOne Pact, which serves as Trustee of Special Needs Trusts as well as Guardian for individuals with intellectual disabilities, developmental disabilities, and/or mental illness (2008-2015)
- Former Director, Northpointe Resources, also an agency serving individuals with intellectual disabilities (1990-1991)
- Past President (2017-2018), and Director (2008-2019) of the Special Needs Alliance, the national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only)
- Former member, Special Needs Law Section Steering Committee, National Academy of Elder Law Attorneys (2009-2015)
- Charter Member, Academy of Special Needs Planners (2006)
- Faculty, Illinois Institute for Continuing Legal Education (IICLE), American Bar Association and Illinois State Bar Association, on the topic of special needs planning, as well as text-book author for IICLE
- Elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC)
- Received the highest attorney rating from Martindale-Hubbell of "AV® Preeminent™"
- Received AVVO's highest attorney rating of "Top Attorney"

Attorney Benjamin (Benji) Rubin, Brian's youngest son, Mitchell's "little/big" brother, is President of Rubin Law, has been a member of the Law Firm since 2010. Benji graduated from the University of Illinois College of Law, Magna Cum Laude, received his undergraduate degree from Northwestern University, and his Graduate Law Degree, an LLM (Tax), with honors, also from Northwestern University. Benji is married to his wife Debi, and they have two children.

- Member, Academy of Special Needs Planners
- Member, by invitation, Special Needs Alliance (the national not for profit association of special needs planning attorneys)
- Chairman, The American Bar Association Special Needs Planning Committee
- President, SIBS (Supporting Illinois Brothers and Sisters), Illinois chapter of national Sibling Leadership Network, an organization of siblings of individuals with intellectual disabilities, developmental disabilities, and/or mental illness
- Director and officer (Treasurer), The Arc of Illinois
- Member, Clearbrook Associate Board, organization serving more than 8,000 individuals with disabilities, including his brother, Mitchell
- Director, DayOne PACT, Trustee of Special Needs Trusts and Guardian for individuals with intellectual disabilities, developmental disabilities, and/or mental illness
- Trustee, Foundation of Special Education District of Lake County (SEDOL Foundation)
- Member, Advisory Council of Encompass (Encompass in partnership with Jewish Child & Family Services, Jewish United Fund, JVS Chicago, JCC Chicago, Keshet, and The Center for Enriched Living and Center for Independent Futures)
- Faculty, Illinois Institute for Continuing Legal Education (IICLE), American Bar Association and Illinois State Bar Association, on the topic of special needs planning, as well as text-book author for IICLE

RUBIN

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Corporation

**Special Needs Legal
& Future Planning**

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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.”

INFORMATION REQUEST FORM

DOCUMENTS WILL BE SENT BY EMAIL (select boxes below)

1. Special Needs Alliance "Special Needs Trust Handbook"
2. Letters of Intent ("Guidance & Information Form" for "future team")
3. Impact on Divorce & Child Support on SSI & Medicaid
4. Keeping your Child on YOUR Health Insurance (past 26)
5. Guardianship & Alternatives (Powers of Attorney)
6. Special Needs Trusts & Special Needs Future Planning
7. Adult Sibling Group & Sib Shop information for younger siblings
8. Impact of Guardianship on Driver's License
9. Taxes & Special Needs Trusts
10. Taxes & Adult HBSS Waiver
11. ABLE Accounts
12. Military Pension Benefit (SBP)
13. Pre-Paid Funeral Arrangements Rules
14. Please add me/us to your list to receive your newsletters by email

Check appropriate box and complete the needed information.

1. Do not contact me/us, just please send by email the information requested above.

Email address is: _____

2. Please contact me (us) to schedule an "Initial Consultation".

Day time phone number: (_____) _____ Email: _____

Name(s): _____

3. Please contact me (us) to schedule a presentation to a group, organization, school, or agency.

Day time phone number: (_____) _____ Email: _____

Name(s): _____