



# PLANNING FOR THE FUTURE

A webinar for Children and Adults with Intellectual and/or Developmental Disabilities

**FEBRUARY 15, 2024**

**9:00 - 10:45 am - “Special Needs Estate & Future Planning”**

**presented by Brian Rubin, JD & Benjamin Rubin, JD, LLM, Rubin Law**



# 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.”**



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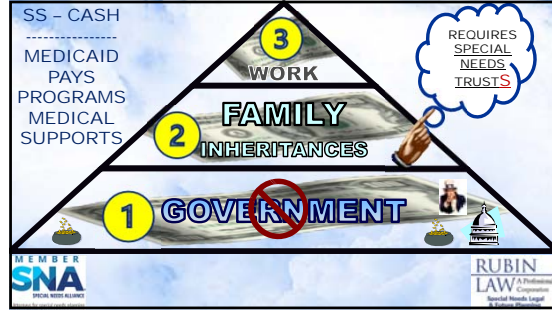
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**PARENTS' HEALTH INSURANCE!**

- 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 **incapacitated by a condition that requires continuing employment & maintenance on his or her part, 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

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## Special Needs Trusts

- ➔ 3<sup>rd</sup> Party
- ➔ Self Settled  
aka, OBRA, 1<sup>st</sup> 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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**3<sup>RD</sup> PARTY TRUSTS**  
**ORIGINAL - GOOD**

GIFTS INHERITANCES  
**NOT OWN**  
 1<sup>st</sup> Party!

➔ by Court Decisions **1982**

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

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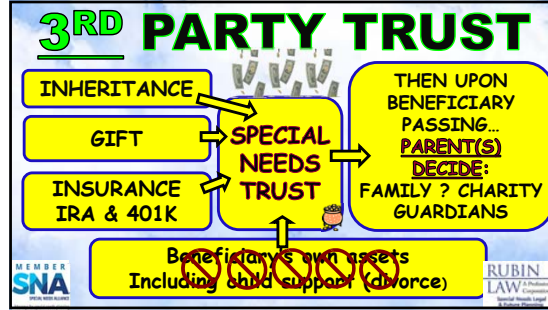
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**OK... SO**

**INSIDE WILL OR LIVING TRUST ?**

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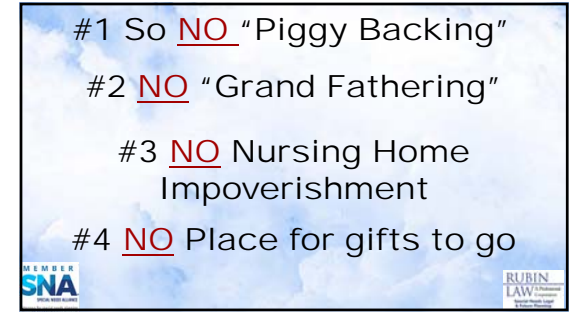
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**So far just**  
**3<sup>rd</sup> Party**  
**But what if...**

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**BENEFICIARY HAS ASSETS**

Savings Bonds  
 529? NOT!  
 IRA - 401k  
 Excess SSI/SSDI  
 UTMA Accounts at 21  
 Inheritance WILL/TRUST/BENEFICIARY  
 Large Gift  
 Law 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 1st!
2. Short term savings
3. For beneficiary to be in control of "same" spending money
4. Avoid 1/3 reduction for housing if on SSI
5. Small inheritances not correctly left to 3<sup>rd</sup> party trust
6. Small lawsuit settlements
7. Court ordered divorce child support not to exceed \$18,000 in a calendar year (2024)... **(MAYBE, beware?)**
8. 2018 - Convert traditional 529 Account... up to \$18,000 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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# Otherwise 1<sup>st</sup> Party Special Needs Trust

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

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# 1<sup>st</sup> 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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★ 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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COMMON ATTORNEY MISTAKES!

**Not  
100%  
Discretionary**



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

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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 "Contribution"  
or  
Gift Language  
3<sup>rd</sup> Party**



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**COMMON ATTORNEY MISTAKES!**

**No  
"Contingent"  
SNT for others**



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**COMMON ATTORNEY MISTAKES!**

**NO**  
**Nursing Home**  
**IMPOVERISHMENT**  
**PROVISION**



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**COMMON ATTORNEY MISTAKES!**

**NO**  
**TRS/SURS/Military**  
**& other "public"**  
**Pensions Sub Trust**



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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!**

**Other Documents**

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



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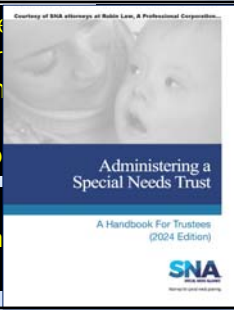
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**Request for  
Form  
Item  
# 1  
Handb  
Form**



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Back to dad for remaining topics...



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You need to write it ALL down!

**Guidance & Instructions For  
Future Guardians,  
Trustees, & Care Providers.**

AKA Letter of Intent...

An illustration of an open book. The left page says "ABOUT MITCH RUBIN". The right page shows a cartoon character with a pencil writing. The book is surrounded by several red hearts. At the bottom, there are two blue arrows pointing outwards.

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**Request  
Form  
Item # 2  
Fillable PDF Form  
& Articles on Topic**

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**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 Magazines**  
February 2011  
Brian Rubin

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

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

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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**?

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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**What are the ALTERNATIVES?**



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**OPTION #1**

Do nothing?  
Actually...

If **NO** "CAPACITY"  
FOR **MEDICAL DECISIONS...**  
THEN →

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**Illinois  
Health Care  
Surrogate Act**

(IF **NO** decisional capacity)

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Capacity For **Medical** Decisions:

Decisional capacity for **MEDICAL/HEALTH** 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...  
**I know... clear as mud ☹...**

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(75S RLCS 402) Health Care Surrogate Act.

(75S RLCS 402) Sec. 1. Short title. This Act may be cited as the Health Care Surrogate Act. (Source: P.A. 80-096.)

(75S RLCS 402) Sec. 3. Legislative findings and purposes.

1. LACKS decisional capacity for **MEDICAL/HEALTH** AND

2. NO health care agent (i.e. No Health Care DPA), THEN

3. In order (1) Guardian of Person... (2) spouse... (3) any adult children... (4) any parent... (5) any sibling.

**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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**SUPPORTED DECISION MAKING?**

**ILLINOIS PUBLIC ACT 102-0614 - EFFECTIVE 2/27/2022 (755 ILCS 9/1)**

1. Authorizes the creation of supported decision-making agreements
2. Allows a "supporter" to assist a "principal"...
3. **WHO HAS AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY...**
4. **WHO HAS DECISIONAL CAPACITY:** "in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement." *I know, "CLEAR AS MUD!"*
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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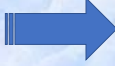
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**OPTION #3**

**AGAIN, IF *DO HAVE* Decisional Capacity**

then... 

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**Power S of Attorney**

**(IF decisional capacity)**

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Capacity for **"FINANCIAL"** Decisions

Capacity for financial decisions, for **an Illinois Durable Power of Attorney for Property**, is the same as capacity to sign a Will, defined in Illinois as the **mental ability**:

1. to know and remember who are the **natural objects of one's bounty**; AND
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**.

***I know, again, "CLEAR AS MUD!"***  
***To know what they are signing & why....***

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ILLINOIS STATUTORY SOURCE CODE  
 POWER OF ATTORNEY AND TRUSTS

**\$ FINANCIAL \$**

**1987**

**Print?  
 Mark?  
 Stamp?**

**Direct others to sign?**

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Example **additional** Powers, when appropriate... 1987 to 2024

- IRS
- Residential
- Employment matters
- Funding/establishing self settled (d4A/C)
- SNTs & ABL Accounts
- HIPAA release
- UID/PW
- Copies
- ***AND MUCH MORE...***

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**R** 1987, 2011 & several revisions thereafter...  
**HEALTH CARE**  
 Print?  
 Mark?  
 Stamp?  
 Direct others to sign?  
 1987 was 1 page  
 2024 Now 7 pages

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**DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISIONS**  
*Illinois Statute 105 ILCS 5/14-6.10*

**EDUCATION**  
**SPECIAL ED -2007**  
 Print?  
 Mark?  
 Stamp?  
 Direct others to sign?

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**DECLARATION FOR MENTAL HEALTH TREATMENT**

**MENTAL HEALTH**  
 Print?  
 Mark?  
 Stamp?  
 Direct others to sign?  
 5 PAGE FORM

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**SSA**  
**REQUIRES THEIR OWN FORM**  
**Print?**  
**Mark?**  
**Stamp?**  
**Direct others to sign?**

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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"? **OR**
- **DOESN'T HAVE CAPACITY** to "sign"? **OR**
- **HAS CAPACITY, HOWEVER**, just can't help **getting himself/herself into trouble**; maybe legal, maybe criminal, maybe financial, maybe personal, maybe medical/health related? **OR**
- **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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**OPTION # 4**

**Guardianship...**



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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?
- ↳ **Guardian Liability Concern? Stay tuned @...**
- ↳ Court... Law Suit... Venue – County where individual resides (Not where petitioners reside)...
- ↳ Report – Illinois M.D., ***IF I/DD can be a clinical psychologist licensed under the Clinical Psychologist Licensing Act, but M.I. must be IL. M.D.***
- ↳ Summons (14 days)
- ↳ Who can be appointed (U.S. Resident)
- ↳ Required notices

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**GUARDIANSHIP**

- ↘ When can do it ?
- ↘ Person vs. Estate \$\$\$\$ ?
- ↘ Residential Placement ?
- ↘ Sterilization
- ↘ Annual Reports ? 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**

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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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**GUARDIANSHIP**

- Move out of State
- Move out of County
- Why some parents/siblings decline due to possible liability or?
- Then what?
- State (vs County) Guardian/Private?
  - DayOne Pact...

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**Co-Guardians ?**

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

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**“When considering appointing co-guardians, the court shall consider the proposed co-guardians' history of cooperating and working together on behalf of the person with a disability. The court shall appoint only co-guardians who agree to serve together.”**

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**NO DRIVER'S LICENSE IF PLENARY GUARDIANSHIP**

Illinois State Law (755 ILCS 5/11a-25) requires the probate court to notify the Secretary of State's Driver Services Department when a person is adjudged to be a person with a disability and a plenary guardian is appointed, no later than 7 days after the entry of the probate court order.

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When the Secretary of State receives the required notification from the probate court, that office is subject to the Illinois State Law at 625 ILCS 5/6-103, specifically paragraph 5 of that law, which provides that the Secretary of State shall not issue, renew, or allow the retention of any driver's license nor issue any permit under this Code to any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease.

**REQUEST FORM # 8**

**Beware of the law!**

Even if DMV, (Liability - Insurance)

**NOT IF F... ed needed!**

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**Why/When Limited Guardianship?**

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

MEMBER SNA

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**Limited Guardianship**

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



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**Use Short Term Guardian Declaration to delegate to Co... or Cos to a 3<sup>rd</sup> 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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**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 **MUST**
- **File with court a certificate of completion within one year**
- *The court may for "good cause" waive upon motion.*

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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: <https://onenet.illinois.gov/guardianship>

Click here if you would like to view the training without registering; you will not be provided a certificate: <https://onenet.illinois.gov/page.aspx?Item=115268&review=1>

Click here for a list of disability related resources: <https://onenet.illinois.gov/page.aspx?Item=116040>

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

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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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**QUESTIONS**



**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."**



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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**

**NO travel needed... consultations and document signing, ALL virtual, via zoom, now permitted in accordance with new Illinois laws...**

*"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*

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**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*

**I received the following from a fellow father of a child with special needs.**

### **Someone I Love**

- **Someone I love relies on me in ways you will never understand.**
- **Someone I love endures pain and challenges that break my heart and renew my spirit at the same time. Someone I love is unable to advocate for themselves for things that most of us take for granted.**
- **Someone I love will never have the opportunities that every child should have.**
- **Someone I love will need unconditional love and support after I am gone - this frightens me to the core.**
- **Someone I love encounters pity, stereotyping responses, and prejudice at every turn, because they look, act, and/or learn differently than others.**
- **Someone I love has needs that require me to allow "outsiders" to have power and input in areas that should be mine alone to meet.**
- **Someone I love will continue to look to me for everything in life long after other children are able to assume a place as part of the world.**
- **Someone I love has needs that require more time and energy than I have to give.**
- **Someone I love has needs that mean I am not able to meet basic needs of my own.**
- **Someone I love has needs that have become the driving force behind major decisions my family makes.**
- **Someone I love has changed me in ways I will never be able to describe.**
- **Someone I love has taught me about love and about the really important things in life...**
- **And still others don't understand what it is to be me.. they aren't living in my skin.**

**Brian Rubin**