

# Estate Planning & Guardianship

*For Special Needs Children*



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[Vickstromlaw.com](http://Vickstromlaw.com)

# WHEN YOUR CHILD HAS A DISABILITY . . .

If you are raising a child with a physical or developmental disability, we understand the obstacles and difficulties you face on a daily basis.

Between running to and from specialist appointments, IEP meetings, occupational, and speech therapy and caring for your child's basic needs, among other things, there is little time to take care of the tasks of today, let alone plan for tomorrow.

But, as you already know, there are also legal and financial concerns that must be considered for the future such as:

- *Who would raise your child if something unexpectedly happened to you and/or your spouse?*
- *How can you ensure enough money is left behind should your child require a lifetime of care?*
- *What happens when your child turns 18? How can you continue to make medical and financial decisions on their behalf?*
- *How can you ensure your child is not taken advantage of financially or emotionally if you are no longer there to protect them?*

The answers to all of these questions are found in the pages of this guide. Which each legal situation is as unique as your child, we wrote this guide as a basic overview for busy parents with disabled children who simply need a roadmap for the future and simple action steps that tell them what to do and where to start.

Contact **Vickstrom Law** today to discuss your individual situation and how to build a fortress of protection around your child through all of life's transitions.





# PROTECTING YOUR MINOR CHILD BY NAMING LEGAL GUARDIANS

Naming legal **Guardians** is one of the first—and most important—steps a parent can take to ensure their child is raised by the people they want in the event of their unexpected death or incapacity.

It is no secret that caring for a disabled child can be challenging. That is why you want to choose someone who will love and care for your child the way you would if you were not around to raise him or her. You will also want to choose someone who cares about giving your child the best opportunities and quality of life that he or she deserves.

When choosing legal **Guardians**, we always advise parents to look beyond the obvious choices. Many times, parents will choose a **Guardian** because they have the most financial resources at their disposal. However, as you will learn in this guide, there are many other ways to ensure your child has adequate financial resources to last a lifetime. Choosing a **Guardian** based on financial status should not be your primary concern.

Instead, consider the candidates whose values and outlook on life are similar to your own. You will also want to choose someone who will be committed to your child for life, as many disabled children require supervision and support well into their adult years.

Other considerations when choosing a legal **Guardian** include:

- *Whether the potential parent or guardian has a similar parenting style to yours.*
- *Is your child already comfortable with this person?*
- *Is the potential guardian willing to take on the responsibility?*
- *Will they be emotionally able to care for your child(ren) after your death?*

Once you have decided whom to name as trusted **Guardian(s)**, work with **Vickstrom Law** to legally document your wishes. You should leave a copy of your documentation with your chosen caregivers, your child's school, babysitters and any other concerned party in the event something happens to you and/or your spouse.



# STARTING THE PROCESS OF ADULT GUARDIANSHIP WHEN YOUR SPECIAL NEEDS CHILD TURNS 18

Naming legal **Guardians** is not to be confused with the process of **Guardianship** that you will likely go through when your special needs child turns 18.

While naming **Guardians** when your child is a minor is necessary to ensure that the person *you want* raises your son or daughter if the unthinkable happens, you must also go through a separate process of setting up a **Guardianship** once your child turns 18 and becomes a “legal adult.”

During this process, the probate court gives someone (usually the parents) legal authority to continue to make medical and financial decisions for the young adult if it is determined that they are mentally and/or physically unable to do so for themselves.

At this time, parents can also name interested parties who can serve as successor **Guardians** for the disabled adult should the parents pass away or become unable to serve. These designations can be made in your Will. Alternatively, a parent can elect to serve as **Co-Guardian** with another adult or family member to ensure continuity in the event of the parent’s passing. **Vickstrom Law** will walk you through the process of **Guardianship** and help your family prepare for this necessary court procedure prior to your son or daughter’s 18<sup>th</sup> birthday.

**Vickstrom Law** can assist you with the **Guardianship** and/or Conservatorship process once your special needs child turns 18. We can also discuss if it is better for both parents to serve as **Guardian**, or only one parent, to preserve eligibility of the other **Non-Guardian** parent to be paid to provide care to their adult, special needs child in their home. Contact **Vickstrom Law** today to set up a consultation.





# PROTECTING YOUR CHILD'S RESOURCES BY SETTING UP A SUPPLEMENTAL NEEDS TRUST

A **Supplemental Needs Trust** (Special Needs Trust) is a legal tool used by families to ensure their child has enough financial resources to meet their future needs without jeopardizing their eligibility for state or federal benefits/aid.

If your child already receives benefits from Social Security or MassHealth (Medicaid), you know they are very limited and cannot possibly cover all the expenses necessary to enjoy the quality of life you desire for your son or daughter.

For that reason, many well-meaning parents will choose to leave their disabled child a large portion of their estate in a Will, without realizing their child could lose their benefits as a result, which in the case of MassHealth, may be the only health care option available to your child. Instead, parents of special needs children should set up a **Supplemental Needs Trust** which will "hold" assets for your child without actually putting them in his or her name. The assets in the trust will then be administered by a trustee of your choosing and according to the rules you set forth in your estate plan.

This helps to keep MassHealth and Social Security benefits intact while providing your child with additional resources necessary for his or her care.



# HOW THE SUPPLEMENTAL NEEDS TRUST WORKS

There are several ways to set up and fund a **Supplemental Needs Trust**, and these can be done before or after your child's 18<sup>th</sup> birthday. The **Supplemental Needs Trust** can spring to life upon your passing or be set up during your lifetime.

If you are the only one to contribute, then a trust that springs to life upon your death may be the best choice.

If other family members such as grandparents, aunts or uncles will also be contributing to the trust, then it makes the most sense to create the trust now.

One of the biggest considerations that needs to be made is who will be the trustee. This is the person who will administer the **Supplemental Needs Trust** that has been created to care for your child. Careful thought needs to go into choosing this person, as he or she will have a significant impact on the life of the person cared for by the trust. The trustee will also have access to funds and will make a lot of important decisions.

**Vickstrom Law** can help you to define the role of this person through your legal documents, but you still want to choose someone who is trustworthy and has your child's best interests at heart. He or she should also be very familiar with the specific needs of the person they will be responsible for, which could range from medical concerns to favorite foods and hobbies. Your chosen trustee may or may not be the same person you designate as **Guardian**.

Additionally, you want to choose someone who has the ability to create and execute a reasonable budget. One option is to name both a family member and a professional as co-trustees. Contact **Vickstrom Law** to set up a consultation to discuss how a **Supplemental Needs Trust** fits your unique estate planning needs.



# FUNDING A SUPPLEMENTAL NEEDS TRUST

Knowing where the funding or financial resources will come from to fund a **Supplemental Needs Trust** can add an extra layer of concern. Medical concerns and housing options are certainly just the tip of the iceberg when it comes to planning the rest of your child's life.

Chances are, you have been dealing with these expenses all along and are concerned that there will be nothing left to provide for your child.

Of course, if you have a valuable estate to leave behind, much of this can be used to fund the **Supplemental Needs Trust**. Whether you dictate that real estate be sold upon your death to benefit your child or you have created some sort of savings program that will meet his or her needs, then you're doing really well. **Vickstrom Law** will help you direct these funds appropriately.

However, for what is probably the majority of the population, leaving such a sizeable estate behind to care for a special needs child is just not in the cards. So, what do you do in a situation like this? One common answer is to purchase a life insurance policy that pays out directly to the **Supplemental Needs Trust**.

Contact **Vickstrom Law** to connect you with a trusted, experienced financial advisor to help you fund your **Supplemental Needs Trust**.





# IT TAKES A VILLAGE: HOW TO BUILD A NETWORK OF SUPPORT

As much as any parent hates to admit it, none of us are invincible. At some point, disability, illness, or even death may prevent you from giving your child the care that he or she needs. For this reason, it is critical that you start building a team of caregivers and trusted advisors *now* who can immediately jump in on your child's behalf if a crisis situation occurs. Starting now will also help to ensure that you have the *right* people in place who will not take advantage of your child when he or she needs help the most.

Ideal members of your team may include your chosen **Guardians**, a trusted doctor or specialist, an estate planning attorney, a financial advisor, and dedicated family and friends. After creating your support team, be sure to communicate regularly with everyone so they know exactly what to do and how to help if called upon in an emergency.

Another great way to help your team is by composing a **Letter of Intent** that would be included as part of your estate plan to help guide your support team in your absence. Remember, the documentation that you create with **Vickstrom Law** will be quite detailed and will take an incredible amount into consideration, but it will likely not cover every possible concern or wish you may have for your child's future care. For that purpose, many parents work with **Vickstrom Law** to create a **Letter of Intent**.

The **Letter of Intent** is a personal letter, rather than being a more formal legal document. It is used with your unique estate plan to provide additional information to those who will be caring for your child if or when you are unable to do so or if you pass away. Your child's caregivers along with the trustee can use the letter to help interpret your desires and to help follow through on the wishes you have for your child. The **Letter of Intent** can be updated as your child's needs change.



# AVOIDING MISTAKES IN SPECIAL NEEDS PLANNING

As special needs lawyers, we realize disabled children have unique planning needs. Unfortunately, there are many misconceptions when it comes to securing the legal and financial future your child deserves. Even well-meaning caregivers and service organizations do not fully understand issues and give bad advice. It is critical for these families to understand their options because these misconceptions can result in costly mistakes. Below are just a few.

## ■ **COSTLY MISTAKE #1: *Disinheriting your child to preserve government benefits***

As previously mentioned, children and adults with special needs often rely on government benefits such as SSI and MassHealth for their basic needs, including health insurance. There are some well meaning people and general practice attorneys who would suggest that you disinherit your child to protect his or her benefits. But government benefits provide only enough to secure food, clothing and shelter. So what happens after you become incapacitated or pass away? Will your child be able to maintain the life that you have so carefully crafted for them? Probably not. If your child is likely to require government assistance to meet his or her basic needs, you should consider establishing a **Supplemental Needs Trust**. Again, if done properly, a **Supplemental Needs Trust** can protect your child's public benefits and help them maintain their lifestyle, even after you are no longer there to support them.

## ■ **COSTLY MISTAKE #2: *Procrastination***

It is critical that all parents with minor children do estate planning. You just never know when you might become incapacitated or die. But, it is even more critical that parents of special needs children plan early. That is because a child without special needs will be able to work and provide for their own financial well-being when they become adults. However, your special needs child may not be able to support themselves. Plan early, because your failure to properly plan for them can never be undone.

## ■ **COSTLY MISTAKE #3: *Creating a "DIY" or generic trust***

**Supplemental Needs Trusts** must be created by a lawyer who focuses in this area of the law. That is because **Supplement Needs Trusts** are subject to both federal and state laws, and because the laws of each state can vary. A "Do It Yourself" or generic trust is ill-advised as they may not comply with federal and state laws, and will not be personalized to meet your child's particular needs. It is critical to craft an individualized **Supplemental Needs Trust** that will ensure your child's specific requirements are considered. For example, your child may require, or greatly benefit from, special group programs, individualized physical therapy, or other details that a generic trust does not address.

# OTHER IMPORTANT ESTATE PLANNING DOCUMENTS

In addition to drafting a **Supplemental Needs Trust** and taking care of nominating **Guardians** for your special needs child, there are several other important **estate planning documents** every parent should have in place.

Contact **Vickstrom Law** to schedule a consultation to determine which documents you will need in order to create your personalized estate plan.

## Health Care Proxy

A **Health Care Proxy** names someone to make medical decisions for you if you become incapacitated. You will want to make sure that this document is drafted properly to protect your own health and keep your family out of court and a costly **Guardianship** proceeding.

## Durable Power of Attorney

A **Durable Power of Attorney** names someone to make financial decisions for you if you become incapacitated. Since you are likely in some ways always going to be tied to your special needs child's financial well-being, it is important that you name someone who can take over your role if you are temporarily or permanently out of the picture. This avoids court and a costly Conservatorship proceeding.

## Last Will & Testament

A **Last Will & Testament** names a trusted individual to manage your estate and can direct that all, or a portion of your estate, go to your child's **Supplemental Needs Trust**, thereby protecting their public benefits. If you pass without a Will, your child could lose their benefits by receiving funds outright.

## Revocable Trust

A **Revocable Trust** avoids probate by keeping your estate out of the court system. Instead, proceeds are paid directly to beneficiaries and/or your child's **Supplemental Needs Trust**.





# CONCLUSION

Planning for a child with disabilities is an extremely important and time-sensitive task. Your child is counting on you to create a plan that not only protects them now, but that will continue to protect them well after you are gone. Special needs planning makes that a possibility and gives you some level of control over the future.

By planning now, you can have the peace of mind knowing everything will be taken care of, no matter what happens. **Vickstrom Law** will draft your estate plan, including a **Supplemental Needs Trusts** so that you can focus on choosing the *right* **Guardians** for your child—and not just those who have enough resources to care for him or her in your absence.

Remember, you are your child's greatest advocate and lifeline for the future. Gathering the information you need costs you nothing, but failing to take action can cost your family *everything* if the unthinkable happens.

Please contact **Vickstrom Law** to get started with your planning, and discuss your family's unique needs. We look forward to working with you.



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# Vickstrom Law, PC

- Estate Planning
- Special Needs Planning
- Elder Law
- MassHealth/Medicaid Planning
- MassHealth Applications & Appeals
- Guardianships & Conservatorships
- Estate Administration
- Wills & Trusts

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