

GUARDING, ADVOCATING &  
PROTECTING ADULTS  
WITH INTELLECTUAL AND  
DEVELOPMENTAL  
DISABILITIES

South Carolina Autism Society

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Dear Parent:

The South Carolina Autism Society has created this guide to help you determine what legal action is appropriate for protecting your transitioning child. This handbook is intended to help you narrow down your legal options but in no way is intended to be legal advice or an endorsement of any attorneys of record.

Many parents of children worry about what will happen to their children as they become adults. This guide was created to give you important information about guardianships, conservatorships, and powers of attorneys. This document contains definitions of terms and a guide to applying for power of attorney, conservatorship, and guardianship.

Guardianship involves the appointment of an individual (a guardian) by the Probate Court to handle the personal, custodial, and healthcare decisions for an incapacitated adult (your child).

A Conservatorship involves the Probate Court appointing an individual (a conservator—you in most cases) to manage an incapacitated adult's (your child's) financial affairs or property.

Power of Attorney is a legal document, also filed in Probate Court, which establishes certain legal powers to act on the behalf of an individual (your child). These documents are for a specific function like medical or financial affairs, and end at a specific time, or after a specific function is carried out.

We hope that a few months before your child turns 18, you will have the necessary information to begin the process that is appropriate for your family. We have tried to keep this guide very specific for the legal process in South Carolina. This handbook is not intended to replace the advice of an attorney, but rather, allow you, as a parent, to make informed decisions about guardianship. It is important to remember that most of the laws regarding conservatorship, guardianship, and power of attorney were written to protect elderly adults and their assets. Fees and proceedings, therefore, cater to the elderly population. **Fees vary by attorney, but typically there is a \$150 filing fee, and then other court fees of \$25-50 dollars + attorney fees. Speak with your attorney about what the costs will be.** There are more options than Guardianship, and our hope is that after reading this document you will be able to speak to your attorney regarding specifically what you want to do to minimize attorney costs and make the process as efficient as possible.

There are also lists of resources that are available for your use. These resources are intended to provide more information so that you can arrive at a decision that is best for your family. We hope that this guide, and resources prove helpful in making the very important decisions of guardianship for your adult child.

## GUARDIANSHIP TO-DO LIST

### TO BEGIN:

<input type="checkbox"/>	Is your child 17? It is helpful to start the Guardianship process 2-3 months before your child's 18th birthday. However, keep in mind the Probate Court will not have jurisdiction to determine Guardianship until your child is 18. Accordingly, Guardianship proceedings cannot officially begin until your child is 18.
<input type="checkbox"/>	Call around for either an Estate or Probate Attorney. Not all Estate or Probate Attorneys practice or have experience with Special Needs Law.
<input type="checkbox"/>	Look at your personal finances, including debts, property and assets, making a detailed list.
<input type="checkbox"/>	What do you want your child to be able to do as an adult?
<input type="checkbox"/>	Realistically, what will your child need your help with as an adult?
<input type="checkbox"/>	Talk with family members. They are likely to have an "outsiders" perspective that could prove helpful in making your decision.
<input type="checkbox"/>	What does your child want when they are adults?
<input type="checkbox"/>	What would be in the best interest of my child's wellbeing and happiness?
<input type="checkbox"/>	Do I have an up-to-date will, letter of intent and personal history records of your child?

### CAN MY CHILD:

<input type="checkbox"/>	Can my child make educated and informed decisions about his/her health with their doctors including surgery, labs needed, medications, etc.?
<input type="checkbox"/>	Can my child make him/herself meals?
<input type="checkbox"/>	Can my child wake up for a job, or class, on his or her own? Can my child drive or navigate the public transportation system in order to keep employment and classes?
<input type="checkbox"/>	Can my child do daily living activities? Bathing, vacuuming, dishes etc?
<input type="checkbox"/>	Can my child confidently and safely interact with peers, strangers, and authority figures?
<input type="checkbox"/>	Can my child handle daily errands like grocery store, pharmacy, gas station?
<input type="checkbox"/>	Can my child manage money and understand money concepts?
<input type="checkbox"/>	Can my child maintain necessary paperwork for Medicaid renewals, and necessary documents for Social Security, leases, birth certificates and understand those documents?

### WILL MY CHILD:

<input type="checkbox"/>	Receive an inheritance at 18? Or upon my passing? If so look into Trusts.
<input type="checkbox"/>	Need state funding for community supports, healthcare, and therapies?
<input type="checkbox"/>	Need assistance on daily functioning, personal care, financial care, and health care assistance? If this is the case, you may need to look into Guardianship.
<input type="checkbox"/>	Need help with medical decisions or financial decisions? I may want to look at the options for Power of Attorney.

## Introduction

It is inevitable; children grow up and make their own choices. It is natural for parents to worry about their child's ability to live on his or her own as an adult. As your child becomes an adult, what choices can your adult child make for him or herself? What are your options? What can you do to start planning to protect your adult child's rights and choices? This guide is designed to give you knowledge about what options are available to you, what the pros and cons of various options are, how best to choose for your family, and the resources that will help make the process as smooth as possible.

We at the South Carolina Autism Society believe that all individuals, regardless of ability, are entitled to rights and protections. All individuals have the right to be happy and healthy and make choices that shape their lives. As parents, we want the best for our children, even when they become adults. To be considered a functioning adult, a person must be able to adequately express themselves and demonstrate that they can make reasonable choices and decisions affecting daily life. Some children have a more difficult time expressing themselves or make "informed" adult decisions; they need someone to help them make decisions when they are adults. Other children do not have ability to make daily decisions, and as they grow into adults, they will require someone making daily decisions for them. **The first step in the process is determining what level of ability your child has, and then preparing for their future by reviewing your family's situation and speaking with an attorney. There are multiple options for parents to assist their child under the law.**

## Legal Terms

Before we get into the steps to creating a plan for your child as he or she becomes an adult, it would be beneficial to go over some of the terms that will be used in the rest of the guide. These terms are intended to teach you different plans that are available, so you can choose what will best fit your child's and family's need. These terms, and their relationships to other terms will be expanded later in the document. These are just definitions that will help make the process of guardianship, POA, Trusts, Wills etc. easier to understand

**Adult Health Care Consent Act:** The Adult Health Care Consent Act (“AHCCA”), S.C. Code Section 44-66-10 *et seq.* (Supp. 2010), may permit you to make healthcare decisions for your child if two physicians certify after performing independent examinations of your child that he or she is unable to give consent to his/her health care. However, in an emergency, the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional must give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. In non-emergent situations, if the two physicians certify that your child is unable to give consent, the AHCCA sets out the persons who may serve as a responsible adult for your child and make health care decisions on his or her behalf in the following priority: (1) a guardian appointed by the court, if the decision is within the scope of the guardianship; (2) an attorney-in-fact appointed by the patient in a durable power of attorney, if the decision is within the scope of his authority; (3) a person given priority to make health care decisions for the patient by another statutory provision; (4) a spouse of the patient unless they're separated; (5) a parent or adult child of the patient; (6) an adult sibling, grandparent, or adult grandchild of the patient; and (7) any other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient. S.C. Code Ann. § 44-66-30.

**Conservatorship:** A conservator is a court-appointed individual or entity that handles the management of financial affairs and property for an incapacitated adult who lacks sufficient understanding, insight, or capacity to make responsible decisions concerning his or her financial affairs and assets<sup>1</sup>. Accordingly, if your child does not have assets, property, funds, or an estate—such as an inheritance, personal injury settlement, beneficiary-designated funds, business affairs, or real estate in need of management, he or she may not need a Conservatorship. In addition, if your child is only receiving Supplemental Security Income or Social Security benefits, the appointment of a Conservator may not be necessary.

**Durable Power of Attorney for Financial Matters (DPA):** This is a type of “power of attorney” that allows the individual (known as the principal) to name someone or an attorney-in-fact (known as an agent) the authority to make financial decisions based



on permission from the principal. It does not eliminate the individual's rights. The individual and the agent have simultaneous control over his or her legal and financial affairs<sup>2</sup>.

**Family Educational Rights and Privacy Act (FERPA):** This is a federal law that protects a student's privacy. Once a student reaches 18 years of age, parents are not granted access to their child's educational records.<sup>3</sup> However, if your child signs a letter, or waiver, saying that you have access to his or her educational information, you should have access to that information. It is advised that you speak with the school to see what they would require.

**"First Party" Trust:** This is a trust that protects an individual who will, or is, receiving public benefits (e.g. Medicaid, Waiver programs, Social Security Income). It sets aside funds that are used as "supplemental" (or additional) to cover the cost of care that the public funds do not cover<sup>4</sup>. There are qualifications for the trust. These qualifications are that the first party -a parent, grandparent, or legal guardian- establish the trust. The trust must be irrevocable- meaning that it cannot change throughout the child's life. The assets of the individual are used to fund the trust. The individual must be under the age of 65 at the time the trust is started. Upon the death of the individual, the state Medicaid agency must be reimbursed from any remaining funds.

**Guardian Ad Litem<sup>5</sup> ("GAL"):** This is an attorney appointed by the Court to represent and protect the best interests of a person (a minor or an alleged incapacitated person ("AIP")) who cannot make decisions for him/herself in Court proceedings. It is the role of the GAL to investigate and recommend to the Court what is in the best interests of the AIP. Such investigation includes review of the relevant mental health records, medical records, and materials of the minor or AIP. The GAL will also interview the AIP with and/or without others present and will interview relatives, mental health providers, caseworkers, and other persons who have been involved in caring for or treating the AIP. The GAL attends the Guardianship hearing, and may or may not issue a written report depending on the local county/judge's preferences.

**Guardianship<sup>6</sup>:** A Guardian is a person appointed for an incapacitated adult to make routine and non-routine health care, personal, and/or custodial decisions for an incapacitated adult. The South Carolina Probate Courts have jurisdiction to appoint and monitor guardians of incapacitated adults.

**Health Care Power of Attorney<sup>7</sup> (HCPA):** A person can choose someone to assist him or her in healthcare matters if there is a time when he or she cannot make those decisions independently. In South Carolina a person is allowed to state whether they want life supporting functions including: life support, feeding tubes, and more. If the individual does not want these functions, the HCPA is supposed to follow those wishes.

**HIPAA (The Health Insurance Portability and Accountability Act of 1996):** This act protects personal information regarding medical information, billing information,

insurance information, and personal privacy on health records, demographic information, and other information used by healthcare professionals<sup>8</sup>.

**Incapacitated Adult:** An individual over the age of 18 who suffers from a mental or physical illness or disability, mental deficiency, advanced age, chronic use of drugs or alcohol, or any other cause to the extent that the individual lacks sufficient understanding, insight, or capacity to make responsible decisions concerning his or her person or property<sup>9</sup>.

**Informed Consent:** The ability for individuals to choose to have a medical procedure or not after the doctor has told them about the risks and consequences of having or not having the procedure done. According to the South Carolina Adult Health Care Act, a person giving informed consent must understand the patient's medical condition, make a reasonable decision regarding the health care, and communicate that decision clearly<sup>10</sup>.

**Letter of Intent:** The letter of intent is an informal letter written to future caregivers about things that the primary caregiver knows about the child. This includes favorite foods, medications, and specific services you want your child to have so that when the primary caregiver is deceased, the caregivers can give the child the best care according to your wishes.

**Notary Public:** A notary public is an individual that is granted the authority from the Secretary of State to verify legal documents, typically involving the transfer of property. For a list of Notaries in SC, please visit the Secretary of State's website at [http://www.sos.sc.gov/Notaries\\_and\\_Apostilles/Notaries](http://www.sos.sc.gov/Notaries_and_Apostilles/Notaries). On the website, there is also contact information if you have questions about notaries<sup>11</sup>.

**Pooled Trust<sup>12</sup>:** A pooled trust is similar to a first party trust except that a non-profit association for the benefit of the person with disabilities manages it. There are requirements for a pooled trust also. First, the trust has be established and managed by a nonprofit association. Secondly, while the individual has his or her own account with the trust, the non-profit association makes the investments and managements together- or "pools" the resources. Next, these trusts are created only for the benefit of the disabled individual. Parents, legal guardians, able individuals and the Courts can create the trusts. Finally, when the disabled individual who has the trust is deceased, the remaining funds in the account will pay the state in the amount equal to the total medical assistance paid during the individual's lifetime.

**Power of Attorney (POA):** A POA is a legal document in which the principal (in our cases your adult child) with sufficient capacity to enter a legal contract appoints an agent (typically you, the parent and primary caregiver) to act on his or her behalf. This allows the agent to legally act and function on behalf of the principal<sup>13</sup>.

**Protected Order:** A protected order is issued by the Probate Court protecting the assets of minors or disabled adults. These orders could include Conservatorships.

**Representative Payee<sup>14</sup>:** the Social Security Administration appoints a person who receives, and manages an individual's Social Security Disability, Supplemental Security Income or Social Security Retirement benefits for the minor or the individual that is incapable of managing their own benefits. The important thing to note is that the Social Security Administration appoints this person.

**Testamentary Guardian<sup>15</sup>:** A person nominated as guardian to a minor or disabled person. The testamentary guardian must be over 18 years of age and be chosen by the disabled person or child's parents, a spouse or named in a legal Will.

**Third Party Trust:** Another type of trust that benefits the individual with special needs. The individual however is someone who is receiving or may receive need based public benefits. It is created and funded by someone other than the disabled person who is benefiting from the trust.

**Trustee<sup>16</sup>:** A trustee is a person or corporation that manages the assets of a trust for the benefit of the beneficiary(ies) of the trust, which may include or be a disabled person.

**Will<sup>17</sup>:** A Will is a legal document that clearly states what a person's wishes are regarding property, money, other assets and children in the event of death. In South Carolina, wills must be signed by a testator with two witnesses and notarized.

### **Where do we go from Here?**

As the parent of a child who is transitioning into adulthood, you must be thinking about how to best respect your child's autonomy and abilities while ensuring your child is properly cared for and protected as an adult. Legally, your child will become an adult at eighteen years of age. Keeping in mind what your child can realistically do, in what capacity will you need to help him or her?

Here are some questions that you should ask yourself to guide you in making the correct choices for your family. Remember, every child and every situation is different; therefore, it is important that you ask your attorney about any specific questions you have about your situation. Many children, can do some of these things without help, while others cannot do many of them. Being realistic about your child's abilities ensures that you choose the coverage that best protects them, yet does not restrict too much of their adult freedom. It is recommended that you have a place to write down what your child is good at, what they can do, and things that they struggle doing so you can see their abilities as you make these decisions.

The following questions are aimed at getting you to think about your child, and his or her realistic abilities. If there are questions that you think of that are not asked below, write them down as well. This will be helpful when meeting with an attorney.

- Can your child at 18 live on their own away from you?  
If not, in what ways are you worried about them being away from you? Is it just that you are concerned about their money management and ability to pay bills? It might be helpful to discuss DPOA for Financial Matters with your attorney. Alternatively, is your child incapable of independent living, requiring constant adult supervision? You might want to consider guardianship with your attorney. Or does your child fit somewhere in between? If that is the case, your child may need only Powers of Attorney and not Guardianship. Having specific things that you are concerned about can help narrow down the possibilities for legal actions.
- Can your child at 18 take his medications by him/herself and make medical decisions for him or herself? As medications, vitamins, supplements and doctors' appointments have become part of adult life, being able to manage daily healthcare is an important factor to consider. If your child will only need assistance, Guardianship may be too limiting for your child.
- Can your child at 18 years old perform daily household duties such as cleaning, cooking, bathing him/herself, dressing him/herself, taking medications, and/or doing laundry? If not, you may need to look more into Guardianship.
- Can your child talk to school officials at IEP meetings without you present? At 18 years of age, children are protected under FERPA, and without proper

legal documents, the school cannot legally include you in proceedings or provide you with records. Your child can sign a waiver, or letter, saying that you have access to these records. You can also have a Durable POA for Educational purposes. You may not need Guardianship for educational reasons.

- Is your child very dependent on you? If so, do you have a legal will that will protect them in the event of your (primary caregiver's) death? Arrangements should be made to establish a primary caregiver, or testamentary guardian according to the wishes in your will. Even after guardianship is established, once your child is an adult it is recommended that your Will be updated ensuring that your adult child has a guardian for the duration of their life.
- Can your child attend his or her own doctor's appointments without you? Like school meetings, at 18 privacy laws apply and the doctor's office staff, doctors and nurses will not be able to include you in care, treatment, or even in the appointment itself. HIPAA protects medical records, insurance records, and medical treatment information. Once a child reaches 18 medical records, appointments and test results are between individual and their physicians and considered protected health information. The Adult Health Care Consent Act may provide certain protections regarding your ability to stay involved in your child's medical care, though some doctors may be concerned about respecting HIPPA despite your rights under the AHCCA.

## The First Steps in the Process for Any Situation

### Wills

Every parent should have a Will for the sake of his or her child. A Will allows you to state your preferences as to who will serve as the guardian of your minor child who is not incapacitated. A Will can designate who will be guardian for an incapacitated adult child once guardianship is granted through Probate Court.

As a part of the process of having a Will prepared you need to:

- Determine who will be your beneficiaries (the people that you want to benefit from the assets of your estate in the event of your death).
- Determine who will be the Personal Representative (Executor) of your estate. The executor is the person who pays your debts and funeral expenses, estate administrative expenses, and then distributes the assets of your estate as you have directed in your Will.
- Consider not only a guardian, but also an alternate to the primary guardian in the event that the first person that you have chosen for the important task of raising your child is unable to do so.
- Consult with an estate attorney or an attorney that works in the Probate Court. Attorney fees will vary, and there are many attorneys who specialize in Wills.
- A Will needs to be signed by you (the testator), witnessed by two people, and notarized by a notary public who can, but does not have to be, one of the witnesses.
- Create a list of any items of personal property or personal effects that you want to pass to specific individuals. For example, “to my husband, Mark Smith, I leave my wedding rings.” This “personal effects memorandum” must be signed but does not have to be a part of your Will and can be changed by you at any time.
- It is helpful to your survivors for you to create a list of your assets and liabilities (debts) so that they will know what to look for. This includes an approximation of the value of the items.
- Review the beneficiaries you have named of your life insurance policies and your retirement plan benefits.

- Joint bank accounts will pass to the other person named on the account if you die first – even if, for example, you designate one child on the account, “for convenience,” but intend that it pass equally to all of your children.
- Investigate any other assets that are jointly owned to determine what will happen to that asset in the event you predecease the other listed owner.
- Make your family aware of your burial wishes – a Will is typically not read until after death. Also, your Will is not “filed” until after your death.

Wills can be created at any time and are the first step in protecting guardianship of a minor or incapacitated child.

### **The Letter of Intent**

Another thing that can be done for any child is the letter of intent. This does not have to be a formal document. It is just a letter for caregivers, containing information about the child that you know and they would not know. For example if your son calls soda “bubbles,” any caregiver would need to know that information in order to understand that your child wants a soda and give him what he is requesting. While the example is generic, the main point is to include in this letter things that any caregiver would need to know about your child in order to care for him or her as you were. It does not necessarily mean that you need to go through every daily routine, but if your child will only take medicine in applesauce, anyone giving him medicine would need to know that information. It is important to also mention if your child will only take naps with a certain toy, or only eat certain foods, etc. Letting other caregivers know this information allows everyone to understand your child in ways that you do, and creates a standard level of care, regardless of who is caring for him or her. This document can be changed as the child’s preferences change. It can be given to new caregivers such as ABA therapists and speech therapists as those individuals change. Letters of intent are useful in establishing uniform care across caregivers and can ease the stress of your passing if the routine of their care remains constant.

### **Personal History**

Another thing that can be done for any child is to maintain a copy of the individual’s medical, educational, and personal records for any future primary caregivers. While your child is a minor, your child’s doctor will gladly copy this information for you after a HIPPA approved record release is completed.

Information that may need to be kept is:

- Shot records
- Birth certificates and Social Security cards (copies and real)
- Insurance cards (copies)
- Life insurance policies

- Specialist reports (Those records will need to be given to you by the specialist. Under HIPPA, your child's primary care physician cannot give those reports because their office did not generate them. Each of the specialty physicians' offices should have a records release in which you can request those records.)
- Reports from physical or checkup (Well) visits
- Surgical records (The same rules as with specialist reports applies. If your child's pediatrician attended to him in the hospital, the pediatrician may have notes from that; however, the surgeon would be able to provide those records with a Release form.) The main information that you will want from surgeries are they type of surgery, the date, and if there were any complications. For example, John Smith had a tonsillectomy on December 5, 2004 with no complications. You may be able to remember this information without getting records from the surgeon.
- An accurate record of medication- both prescription and over the counter- including dosages, names of medications, substitutions that are given and why the medication is taken. An example is:
  - Zyrtec (Cetirizine) 1 10mg pill per day for allergies
  - Paxil (Paroxetine) 10 mg pill twice daily for depression

Records received from the school under FERPA until the child is 18 include:

- IEP records
- Report cards
- 504 plans
- BIP meetings
- Disciplinary actions

Regarding both medical and educational records, once your child is 18, he or she will have to sign releases to allow you access to this information; unless you have legal documentation that you are entitled to this information, you will not be able to receive any copies.

Having a will, letter of intent and a personal history of medical, educational, and personal records will help ensure that in the event of an emergency, necessary information is easily accessible. It also allows the transition from a parent being a primary care giver, to another person as listed in the will to be smoother and less chaotic by maintaining the child's routine in the event that the parent passes predeceases the child.



### **Preparing Your Finances for the Changes Ahead**

Any of the legal processes are going to have fees associated with them. It is important before any of the legal actions are started that the family examines the financial picture. The financial situation should be understood by all parties involved so that no one is surprised by unexpected legal fees. It is recommended that all legal actions be done under the advice of an attorney who specializes in Family Law, Elder Law, or Probate Law, depending on what you are trying to accomplish. Not every attorney specializing in these types of law is going to have experience in Special Needs Law, but calling and asking if they do will help narrow down your list of attorneys that are available to you. Remember every situation is different, and in most cases, adult children who function at or around a typical level will need less legal protection than children who are considered low functioning and require more intensive one-on-one personal care.

Fees are going to vary as much as individual family situations. That is why it is important to be realistic in both what is needed and what the costs will be. One of the first things that can help is establishing a trust for your child. By establishing a trust, the assets that the child will get once turning 18 (Social Security Income, Military pay from a deceased parent etc.) will be protected from limiting their need based eligibility for services such as Medicaid, waiver supports and community supports that are needs based. Any needs based services that are available are provided under the assumption that the person cannot afford such services out of pocket. To be eligible for most services, the monthly income of the child cannot be higher than \$2000 per month. If the individual has any hidden assets, services can be denied, and anything that Medicaid pays for would be affected, including medications, doctor's appointments and therapies, etc. For most individuals, the need to establish a trust is not a concern, but if there is a chance that upon turning 18 years of age your child will have an inheritance that could change his or her assets and therefore need based eligibility, it is important to protect those assets, and protect those needs based resources.

Another important thing to remember when thinking about guardianships, trusts, conservators, etc. is that the laws and guidelines that exist were primarily written for older adults protecting assets that they have accumulated over a lifetime. Therefore, even though you will be establishing some of these things for your transitioning child when they become an adult, the fees will be the same as those paid by someone establishing the same rights for an elderly parent. In addition, the State Judicial Department's website has standard forms to help file your petition at <http://www.judicial.state.sc.us/forms/index.cfm> under both Probate Court and Family Court menus. These documents are intended to allow you to see what the paperwork looks like and gather the appropriate information, not to start any legal action without advice of counsel. It is advised that you consult with an attorney about the appropriate county in which to file any legal petition or document with the Court.

## Trusts<sup>18</sup>

A Will is a one party document – you sign your Will. Trusts are two party written “agreements” – you sign as the Settlor or Grantor (the person establishing the Trust) and the Trustee signs agreeing to accept the assets of the Trust and carry out the directives in the Trust document. The Trustee is a person or organization that you choose to be responsible for managing, investing and distributing the assets of trust as you have directed. The type of Trustee and their duties are determined by the type of Trust that is established. Trusts can be prepared to be used alone, or to be used in conjunction with a Will. Trusts serve many purposes, including:

- Assets titled in the name of a Trust during your lifetime are not subject to “probate” at your death- that is, they do not have to go through Probate Court.
- In some situations, Trusts can achieve estate tax savings.
- Trusts may also prevent your assets from being included in the total income of your adult child. This assists in maintaining his or her state need based funding, such as Medicaid and Social Security.

### **Things to Think about when Establishing Trusts**

There are many things to consider when thinking about establishing a Trust. There are trusts that manage supplemental assets of the person with special needs. Often there are rules as to when, how, and where the funding comes from, who manages the account, and the type of trust you are interested in starting. Here are some things to consider when thinking of starting a Trust.

- What resources would transfer to your child when he or she turns 18?
- What assets of yours would transfer to your child in the event of your death? If your property, business, money, retirement, settlements, life insurance will transfer to your child or children when you pass, a trust can protect these assets and allow your child to continue to receive need based support, i.e. Medicaid and Social Security.
- What type of assets do you have, if they would transfer to your child?
- Would you want to consider establishing a trust?
- Do you want to give monetary support to your child after they become adults, but do not want to give it to a sibling or to the child directly? If this is the case, a Third Party Trust would be a logical option.

**Third Party Trusts** are established and funded by someone other than the individual who is receiving benefits (i.e. your child). It can be established by a parent, grandparent, or sibling and can have specific stipulations on its uses. If it is a “stand alone” third party trust, it is irrevocable in most instances and is normally not monitored by the court. Another advantage of a Third Party Trust is that anyone in the family can contribute to

the trust, not just the trustor (the person who created the trust for their child). Third Party Trusts are less costly to start than most of the trusts available, and will not prohibit the use of state benefits, such as Medicaid. It is recommended that you seek the advice of an Estate lawyer to help you establish the trust if you choose to do so.

Many other forms of trusts are available to you. It is always a good idea to consult with an Estate lawyer. They can assist you in the establishment and protection of the trust and may have other recommendations for you. There will be attorney fees and fees associated with establishing the trust. However, an irrevocable trust adds protection that the individual will have the long-term health care needed to keep your child happy and healthy.

### Power of Attorney

Another option that may be useful to your Child is a Power of Attorney (“POA”).

- According to South Carolina Law, in order for a principal (your child) to consent to an agent (you) acting on their behalf, the principal must have the mental capacity to understand the contract which they are entering. A Durable POA or POA cannot be valid if the child does not have the mental capacity to understand the contract they are creating with the parent. *See In re Thames*, 344 S.C. 564, 570-571, 544 S.E.2d 854, 856-857 (Ct. App. 2001). Accordingly, depending on the nature and extent of your child’s disability, he or she may or may not have the mental capacity to understand and enter into a POA (a legal contract) with you to act on their behalf- Guardianship would then be recommended. Some parents opt for POA to spare their child incapacity proceedings in court. As the parent, you must do what is in the best interest of your child –even if that means Guardianship instead of POA.
- If your child does have sufficient mental capacity to enter into a POA, and you do not want to pursue Guardianship, there are many different types of POA’s and they can be specific to their use, and specific to the duration of the power of attorney.
- They do not have to be life-long, but can be if they are a Durable POA.
- Another advantage to POA is that it does not take away your adult child’s rights. Your adult child will appoint you as their agent to legally act on their behalf.
- There are general POA and specific POA.
  - If your adult child will only need help administering medications, the agent, will be able to pick up prescriptions, refill prescriptions and help administer medication if that is specifically what is needed under that POA.
  - If your child needs assistance with all medical decisions and procedures, the principal (your adult child) can appoint you and Medical Power of Attorney. This entitles you to be included in Medical treatments and procedures, obtain medical records, and make decisions of medical care based on the behalf of the principal.
- Having Medical POA does not take away your child’s other rights; it just includes you in medical procedures and decisions.
- Most POA’s are revocable.
- A Durable POA allows the agent in effect (you) to manage aspects of the principal’s life and are less costly than the proceedings to become a guardian.
- Durable POAs also spare the principal from the embarrassment of going through incapacitated proceedings in the court system, which is required with the guardianship process.

### What is the difference between POAs and Durable POAs?

Power of Attorney		Durable Power of Attorney
Principal- appoints an agent to do a specific function	→	Principal appoints an agent to do a specific function that does not expire until the principle's death
Agent is appointed for a general or specific task regarding an aspect of the principal's life. The agent's power ends once that task is complete.	→	Agent is appointed and remains agent for the rest of the principal's life

The power that a principal gives to an agent for POA's is specific to a function. For example if you were selling a house in a different state, you could appoint someone who is in that state to be your POA and function as you in the dealings regarding the sale of the property. As soon as the sale is final, the power of the agent is forfeited. For a Durable POA that agent would continue to be your agent even after the sale of the house is complete. They would be your agent until you passed away.

It is also worth mentioning that there can be multiple POA's with the same agent and principal. Each one would need to be filed, but those costs might still be cheaper than filing for guardianship. POA would still allow your adult child to maintain some rights and freedoms that guardianship would take away.

## **Guardianship**

A Guardian is an individual appointed by the Probate Court to handle the personal, custodial, and health care decisions for an incapacitated adult (the “Ward”).

### **The Guardianship Process:**

- A Guardian of an incapacitated adult has the same powers, rights, and duties respecting his or her Ward (your adult child) that a parent has with regard to his or her child. However, a Guardian is not liable to third persons for the acts of the Ward solely by reason of the Guardianship.
- A Guardian is responsible for the care, comfort, and maintenance of the Ward, and may give consent or approvals as necessary for the Ward to receive medical or other professional care, counsel, treatment, or services. If no Conservator has been appointed, a Guardian may assist with the Ward’s financial affairs (such as receiving SSI benefits).
- A person petitioning for Guardianship will need to submit to a SLED background check as well as a DSS Central Registry check (to confirm whether DSS has ever opened a case on the proposed Guardian).
- Once your adult child turns 18 years old, the Probate Court in the place where your adult child resides will have jurisdiction to hear your Guardianship petition. To familiarize yourself with the process and be ready to file the petition once your child turns 18, it is a good idea to contact an attorney to start the process 2-3 months in advance of your child’s 18th birthday. There is a \$150.00 filing fee for filing a Guardianship petition, so this early preparation will give you time to prepare for that cost as well. If you retain an attorney for a fee (and are unable to find an attorney to handle the matter pro bono), you will also need to prepare to pay attorney’s fees and costs.
- The process is started by filing a Summons and signed and notarized Petition with the Probate Court and serving the necessary relatives of the Ward with notice of the proceeding. In a Guardianship proceeding, the Ward must be served, as well as his or her spouse, parents, adult children, a person acting as his or her Guardian, Conservator, or Attorney in Fact under a Durable Power of Attorney, or someone who has his or her care and custody. If no relatives of the Ward can be notified, you will need to serve the Summons and Petition on the Ward’s closest adult relative, if one can be found. Your attorney will coordinate the service on these individuals, and will just need the Ward’s general family information from you.

- **Guardian ad Litem.**

- The Probate Code requires the Court to appoint an attorney to serve as Guardian ad Litem (“GAL”) for your adult child during the process. The GAL’s role in the proceedings is to represent your adult child and ensure that their best interest is being served and protected. The GAL serves the important role of conducting an independent investigation in order to recommend to the Court whether your Guardianship petition should be granted.
- The GAL will review all of your adult child’s relevant medical and mental health records, and may wish to speak with your child’s doctors, counselors, teachers, or other caretakers or providers.
- The GAL will also conduct a home visit of your residence to observe the general living conditions and to learn more about your daily routine with your adult child to assess whether your child in fact needs a Guardian and, if so, whether you are the appropriate person to serve that important role. The GAL will likely ask about the Ward’s ability to take care of him or herself (e.g., can your adult child dress, bathe, or clothe himself), the medications your adult child is on, who administers them, and when they are administered (is this something your adult child can help with, or do you have to help him or her take his or her medicine? ). The GAL will also want to know whether your adult child has any concept of physical safety (e.g., not touching a hot stove, running out in to a busy street, speaking to strangers, etc.) and money. In addition, the GAL will simply observe how your adult child interacts with you, and ask about what steps you take on a daily basis to care for and protect your child.
- The GAL will appear at the hearing before the Court.

- **Visitor.**

- In addition to a GAL, the Court will appoint an individual called a Visitor, who is a person trained in law, nursing, or social work. The Visitor completes a Probate Court form on whether a Guardianship is needed for your adult child, and whether you are an appropriate person for that role. The Visitor’s role is similar to the GAL’s, as the Visitor will also conduct a home visit, and will make a recommendation to the Court about your Guardianship petition. The Visitor is essentially another set of eyes in the case to make an objective recommendation to the judge.
- Unlike the GAL, the Visitor will not attend the Guardianship hearing.

- **Doctor’s Evaluations.**

- The Probate Code requires that the person alleged to be incapacitated shall be examined by two examiners, one of whom shall be a physician, appointed by the Court who shall submit their reports in writing to the Court. At least one of the examiners appointed must be a medical doctor. Another medical professional, such as a nurse, social worker, or psychologist may be appointed as the second examiner. An Order appointing examiners must be filed listing the names of the two designated

examiners. Each examiner must complete a Doctor's Affidavit Regarding Capacity and an Examiner's Report.

- **Hearing:**
  - Once the Summons and Petition are filed, the necessary parties are served, the GAL and Visitor conduct their investigations, and the Doctor's reports are filed, the Petitioner needs to schedule a Court hearing and give the interested parties 20 days' notice of the hearing date.
  - The hearing will begin with your attorney setting forth the Petition, Doctor's reports, and Visitor's Report, and answering any questions the Court may have about your child's alleged incapacity and how you are caring for and protecting your child.
  - Your adult child has a right to appear at the hearing, ask questions, and present testimony or evidence. As a practical matter, whether your adult child may wish to attend will depend on the nature and extent of his or her disability.
  - After hearing from the Petitioner, the Court will hear from the GAL, and may have additional questions for the GAL and Petitioner.
  - Usually at the end of the hearing, the Court will make a ruling regarding Guardianship.

#### **Important Things to Remember about Guardianship:**

The goal of a Guardianship proceeding is to ensure your adult child is properly cared for and protected, while maintaining his or her independence and autonomy to the extent possible based on the nature and extent of his or her disability.

- In that regard, it is possible for the Court to grant a limited Guardianship. In other words, the Court could place restrictions on your Guardianship upon determining that there are areas for which your child does not need a Guardian. Such restrictions will largely depend upon the opinions of the medical professionals involved, who will evaluate your adult child's capacity and abilities, and can report to the Court whether your child needs are severe.
- If your child needs constant adult supervision and cannot handle his or her personal affairs on any level, you may be seeking a Guardianship with no restrictions, so that you can continue to serve as your child's caretaker. If your child's disability is less severe, however, you may consider seeking a more limited Guardianship depending on your child's abilities. Oftentimes, a parents seeking Guardianship will request full guardianship over their child when it is not needed. If your child can function well on his or her own, and only needs limited assistance, consider Power of Attorney or Durable Power of Attorney rather than restricted or full Guardianship.
- It is important to note that unless the Court places language in the Order appointing a Guardian that the Ward retains the right to vote or marry, the



appointment of a Guardian will take away your adult child's right to vote and marry. Accordingly, if you would like your adult child to retain the right to vote, for example, you can request that the Court include language in the Order that the Ward desires to retain the right to vote and shall retain the right to vote. If the Ward desires to get married later, the court can be petitioned at a later date for the Order to contain that provision.

- Once the Guardian is appointed, he or she will account annually to the Court on the physical and mental condition of the Ward, any property under their control, any address or telephone number changes, etc. If there is no Conservator for the Ward, the Guardian must also report to the Court concerning any financial matters that he or she handled. If a Conservator has been appointed, all of the Ward's estate received by the Guardian in excess of those funds expended to meet the current expenses for the support, care, and education of the Ward must be turned over to the Conservator for management. It is helpful for the Guardian to keep a monthly ledger that itemizes expenses, as well as receipts and other documentation as appropriate.
- Serving as a Guardian is a serious legal appointment that carries important responsibilities to the Ward and to the Court. As a Court-appointed Guardian, you submit personally to the jurisdiction of the Court. It is important to follow the Court's instructions. It is also important to remember the Court is there to assist. Although Court staff cannot give you legal advice, they are happy to answer as many of your questions as possible and point you in the direction of further helpful resources.

## Conservatorships

The Probate Court has jurisdiction to appoint a Conservator to manage an incapacitated adult's assets and financial affairs. If your child is only on Supplemental Security Income or Social Security, you may not need to establish a Conservatorship. You should discuss with an estate or probate attorney whether your child has the type of assets or income, such as insurance proceeds, a personal injury settlement, a business, property, real estate, or other beneficiary-designated funds that would warrant the appointment of a Conservator. Consequently, a Conservatorship may not always be necessary. Your attorney can assist you with determining the best fit for your family.

The following steps outline the general process for obtaining a Conservatorship through the Probate Court:

- Importantly, Conservatorship and Guardianship proceedings can be consolidated.
- In order to petition the Court for Conservatorship, the proposed Conservator must submit to a SLED check, provide a credit report, and present his or her driver's license and social security card.
- **Summons and Petition.**
  - To initiate the Conservatorship process with the Probate Court, the proposed Conservator needs to submit a Summons and Petition along with the \$150.00 filing fee. Your attorney will be able to access the appropriate forms through the relevant Probate Court's website. The proper County in which to bring a Conservatorship proceeding is where the AIP (in legal terms section) resides or, if he or she is not a South Carolina resident, where he or she owns property.
  - The Probate Court requires that certain individuals must be given notice that you are petitioning for Conservatorship. In that regard, your Child (the person to be protected) must be personally served with the Summons and Petition. In addition, if the person to be protected has a spouse or adult children, they must be properly served. If the person to be protected does not have a spouse or adult children, his or her parents or, if there are no parents, his nearest adult relatives must be notified, and/or any other person that the Court requires receive notice.
- **Guardian ad Litem.**
  - Once the Summons and Petition are filed, the Court will appoint a GAL to represent and protect the best interests of the incapacitated adult during the proceedings.
- **Doctor Examinations and Reports.**
  - In addition, the Court will appoint at least one doctor to report to the Court as to the physical and mental condition of the incapacitated adult. In

many cases, two examiners are appointed, because there has also been a Guardianship action filed.

- The second examiner can be another physician, or another medical professional, such as a nurse, social worker, or psychologist. Each examiner will need to complete a Doctor's Affidavit Regarding Capacity and an Examiner's Report with his or her opinion on whether the person to be protected has sufficient insight, capacity, and ability to manage their estate, assets, property, and/or financial affairs.
- **Hearing.**
  - The Court will hold a hearing to determine whether the person to be protected has assets or financial affairs requiring a Conservator and if so, whether the proposed Conservator is the appropriate person to fill that important role.
- **Bond.**
  - Before the appointment of a Conservator can be completed, the Conservator must become bonded. Specifically, the Court determines whether a surety bond or Restricted Account Agreement must be filed in the amount of the total value of the incapacitated adult's personal assets (not real property) plus one year's estimated income. A bond is like an insurance policy that the bonding/insurance company agrees to reimburse the estate if the conservator steals from, loses, or mismanages assets of the protected person.

Upon being appointed, the Conservator must act in the best interests of the protected person in protecting and managing his or her financial affairs and property. A general outline of these duties and functions of a Conservator follows:

- **General Responsibilities of a Conservator.**
  - A Conservator must act as a fiduciary and observe the standards of care applicable to trustees. This means that Conservator must exercise the sound judgment and care that a prudent person acting as a fiduciary familiar with such matters would exercise under the circumstances. A Conservator may petition the Court for instructions on a fiduciary's responsibilities. A Conservator may also wish to contact his or her attorney for guidance.
- **Letters of Conservatorship.**
  - Letters of Conservatorship transfer all assets of a protected person to the Conservator. These letters must be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides (whether or not there is real estate in that county), and in the other counties where the protected person owns real estate. Upon termination of the Conservatorship, the Order terminating it must also be filed in those county offices. Recording the Letters of

Conservatorship will put others on notice that you are managing the protected person's property. This should prevent any unauthorized sale or mortgaging of the protected person's real property. There will of course be a filing fee for filing these documents. In some counties, the Probate Court may collect this fee and file the documents for you.

- **Inventory and Appraisalment.**
  - Within 30 days of appointment, the Conservator must file an Inventory and Appraisalment with the Clerk of Court itemizing all of the protected individual's property. Copies of the Inventory will need to be given to specific individuals such as any Court-appointed Guardian and the protected person.
  
- **Budget.**
  - The Court may require the Conservator to submit a budget of projected income and expenses. If the Court approves a budget, it may be necessary to get Court approval for expenditures outside of that budget.
  
- **Request for Expenditure.**
  - If the Conservator wishes to withdraw funds from the protected person's account, he or she will need to submit an Application for Expenditure detailing the reasons for the expenditure.
  
- **Accounting.**
  - Six months after the appointment, the Conservator will need to file an accounting. The Conservator will also file an annual accounting at the end of the first year of appointment. After the first year of appointment, the Conservator will submit only annual accountings each year of the Conservatorship. Accountings must show those assets that were received on behalf of the protected person and where such property came from, as well as what property left the estate and where it went. These accountings must be substantiated by receipts, cancelled checks, and any other proofs the Court may request. The Court may also require a physical check of the estate, which is why it is very important to keep accurate records.
  - The Conservator is required to keep well-documented records and must show them upon request of any interested person. These documents include receipts, transfers, withdrawals, expenditures, investments, cancelled checks, etc.
  - There are also strict rules about the Conservator only using accounts set up with the protected person's social security number. All deposits and transfers in the Conservator's capacity as Conservator must only be made through this account; the Conservator cannot commingle funds of his or her own (or anyone else's) with those of the protected person under any circumstances.

- **Property and Income Management.**
  - The statute also provides instruction on maintaining property depending on the type of property. For example, Conservators must maintain insurance on all property including vehicles and homes. It may also be advisable to place valuables in a safety deposit box or other secure location.
  - Furthermore, Conservators may not acquire, dispose of, or change the character of an estate asset without Court approval. For example, real estate cannot be sold without prior notice, a hearing before the Court, and Court Order.
  
- Additionally, the Conservator must notify the Court of any address or health changes of the protected person. Furthermore, upon the death of the protected person, the Conservator is required to present the will of the protected person to the Court.
  
- The Court may remove a Conservator for good cause, upon notice and hearing, or accept the resignation of a Conservator. After his or her death, resignation, or removal, the Court may appoint another Conservator if needed.

## Worksheet

This worksheet was created to help the parents of the transitioning child realistically come up with the best strategies for their family and their child. After this is completed, your attorney should be able to help you make the right decision for your child.

1. What does my child do well on his/her own?
  - Can your child cook his or her own meals?
  - Can your child do his or her own laundry?
  - Can your child identify when he or she is sick or not feeling well and make an appointment with the doctor if necessary?
  - Can your child manage money? Small amounts? Or large amounts?
  - Can your child hold a job, or attend school regularly?
  - If your child has a job, or attends school, how will he or she get there? Can they drive themselves, or take public transportation?
  
2. What does my child struggle doing?
  - Is my child struggling to remember to take his or her medicine?
  - Is my child struggling to understand money concepts?
  - Is my child capable of saving money?
  - Is my child struggling to recognize that he or she do not feel well?
  - Is my child having problems with grocery shopping?
  
3. What do I worry about regarding my child becoming an adult?
  - Do you worry about your child's ability to pay bills on time?
  - Do you worry about your child's decision making regarding friends? Does your child make good choices while interacting with friends?
  - Do you worry about caregivers taking advantage of him/her?
  - Will my child be able to live on his or her own in an apartment? With or without roommates?

4. In what ways can I realistically help my child?
  - Do I need to help him or her manage money?
  - Do I need to help him or her manage medicine and doctor care?
  - Do I need to help with daily living skills?
  - Can I give financial support?
  - Will I need to take him or her to work or school?
  
5. Can your child take medications on his or her own?
  - Can your child take medicine from a prescription bottle in the correct dosage?
  - Does your child need someone to dose out his or her medicine in a medicine keeper?
  - If alone, will he or she take medicine daily, without reminders? If reminders are needed, can he or she still give themselves their medicine?
  - Can your child give himself or herself the correct amounts of over the counter medications, such as Tylenol, or Nyquil?
  
6. Am I prepared to go through these proceedings?
  - Do you know what legal procedure you want to pursue?
  - Do you know what the cost is going to be?
  - Is your family in agreement?
  - Have you discussed your options with an attorney?
  
7. What implications will my legal actions have on my child?
  - If my child is declared incapacitated, how will that change my child? My family?
  - Will you be able to report to court on a yearly basis about the wellbeing of the child?

8. What consequences will court proceedings have?
  - Do I have the finances to apply for guardianship?
  - What do other family members think?
  
9. How does my child feel about his/her future?
  - Does my child have things he or she wants to do? Are these goals realistic? Is my child capable of doing those things?
  - Does my child want to live on his or her own?
  - Is my child scared to be on his/her own? What is the reasoning?
  
10. Are there individuals in the family, or providers, that I fear will take advantage of my child if he or she were to live alone?
  
  
11. Will I be able to care for my adult child financially and physically?
  - If there is a time when I will not be able to care for my child (either before or after guardianship is established), have I chosen and spoken with someone whom I wish to take care of my child?
  
  
12. What legal option do I feel is most appropriate for my child and me?



## Resources for Families' Use

*SCAS does not intend for these resources to replace the advice of counsel or be an endorsement of specific attorneys. These resources are intended to give you basic starting information to start your search for the correct attorney for your family and needs.*

- Abbeville: <http://www.abbevillecountysc.com/probate.aspx>  
 Aiken: <http://www.aikencountysc.gov/DspDept.cfm? qDeptID=PBC>  
 Allendale: <http://www.sccourts.org/probate/index.cfm? countyno=3>  
 Anderson: [http://www.andersoncountysc.org/web/probate\\_00.asp](http://www.andersoncountysc.org/web/probate_00.asp)  
 Bamberg: [http://www.bambergcountysc.gov/index.php?option=com\\_content&task=view&id=20&Itemid=48](http://www.bambergcountysc.gov/index.php?option=com_content&task=view&id=20&Itemid=48)  
 Barnwell: <http://www.sccourts.org/probate/index.cfm? countyno=6>  
 Beaufort: <http://www.sccourts.org/probate/index.cfm? countyno=7>  
 Berkeley: <http://www.berkeleycountysc.gov/dept/probate/>  
 Calhoun: <http://www.sccourts.org/probate/index.cfm? countyno=9>  
 Charleston: <http://www3.charlestoncounty.org/docs/Probate/guardianships.html>  
 Cherokee: <http://www.cherokeecountyprobate.com/>  
 Chester: <http://www.chestercounty.org/Government/Probate-Court.aspx>  
 Chesterfield: <http://www.chesterfieldcountysc.com/secondary.aspx? pageID=121>  
 Clarendon: <http://www.sccourts.org/probate/index.cfm? countyno=14>  
 Colleton: <http://www.sccourts.org/countyLookup.cfm? countyNo=15>  
 Darlington: <http://www.darcosc.com/ProbateCourt/>  
 Dillon: <http://dilloncounty.sc.gov/Departments/probatejudge/Pages/default.aspx>  
 Dorchester: <http://www.dorchestercounty.net/index.aspx? page=82>  
 Edgefield: <http://www.judicial.state.sc.us/countyLookup.cfm? countyNo=19>  
 Fairfield: <http://www.fairfieldcountyprobate.com/>  
 Florence: <http://florenceco.org/elected-offices/probate/>  
 Georgetown: <http://www.georgetowncountysc.org/probate/>  
 Greenville: [http://www.greenvillecounty.org/probate/protected\\_persons.asp](http://www.greenvillecounty.org/probate/protected_persons.asp)  
 Greenwood: <http://www.greenwoodsc.gov/countywebsite/index.aspx? page=150>  
 Hampton: <http://www.hamptoncountysc.org/index.aspx? nid=25>  
 Horry: <http://probatecourt.horrycounty.org/>  
 Jasper: <http://www.jaspercountysc.org/secondary.aspx? pageID=43>  
 Kershaw: <http://www.sccourts.org/probate/index.cfm? countyno=28>  
 Lancaster: [http://www.mylancastersc.org/index.asp?Type=B\\_BASIC&SEC=%7BF4A61D8E-CB85-47FA-B6AE-17922E58BB04%7D](http://www.mylancastersc.org/index.asp?Type=B_BASIC&SEC=%7BF4A61D8E-CB85-47FA-B6AE-17922E58BB04%7D)  
 Laurens: <http://www.sccourts.org/countyLookup.cfm? countyNo=30>  
 Lee: <http://www.sccourts.org/probate/index.cfm? countyno=31>  
 Lexington: <http://www.lexco.sc.gov/departments/DeptIQ/ProbateCourt/Pages/NeGuardianshipandConservatorshipProcedures.aspx>  
 Marion: <http://www.marionsc.org/probatejudge>  
 Malboro: <http://www.marlbocounty.sc.gov/ElectedOfficials/probate%20judge/Pages/default.aspx>

McCormick: [http://mccormickcountysc.org/mccormick\\_county\\_probate.php](http://mccormickcountysc.org/mccormick_county_probate.php)

Newberry: [http://www.sccourts.org/probate/index.cfm?\\_countyno=36](http://www.sccourts.org/probate/index.cfm?_countyno=36)

Oconee: <http://www.oconeesc.com/Departments/KZ/ProbateCourt.aspx>

Orangeburg: <http://www.orangeburgcounty.org/probate/>

Pickens: <http://www.co.pickens.sc.us/probate/default.aspx>

Richland County:

<http://www.richlandonline.com/departments/probate/guardianship.asp>

Saluda: <http://www.saludacountysc.com/probate-court.aspx>

Spartanburg: <http://www.co.spartanburg.sc.us/govt/depts/procrt/index.htm>

Sumter: [http://www.sumtercountysc.org/?\\_q=department/probate-court-0](http://www.sumtercountysc.org/?_q=department/probate-court-0)

Union: <http://www.countyofunion.org/site/cpage.asp?>

[cpage\\_id=180008516&sec\\_id=180003405](http://www.countyofunion.org/site/cpage.asp?cpage_id=180008516&sec_id=180003405)

Williamsburg: [http://www.williamsburgcounty.sc.gov/index.aspx?\\_page=81](http://www.williamsburgcounty.sc.gov/index.aspx?_page=81)

York: <http://www.yorkcountygov.com/departments/ProbateCourt>

Estate Lawyers- *Not all Estate Lawyers practice Special Needs law you will need to call around to find one in your area that can best help your family*

<http://lawyers.findlaw.com/lawyer/practicestate/estate-planning/south-carolina>

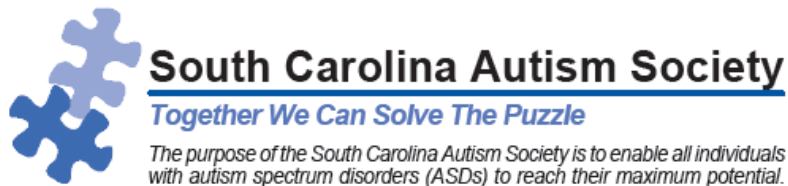
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