



## Special Needs Planning

**Hickman  
& Lowder**  
Co. L.P.A.  
Attorneys at Law

Maybe you just discovered your child has disabilities, or maybe you've known for years. Whether your child is five, 25, or 50 years old, he is still your child. He's counting on you in ways other children don't have to depend on their parents. Your future always includes his future. How do you plan for his security and your peace of mind?

There's no doubt about it: extra money can help people with disabilities live a better life. Whether that money comes from a personal injury settlement or an inheritance, we can secure the government benefits your child deserves and protect private funds. There are many ways to preserve your financial support for your child, even after you're gone. But planning now, while you're healthy and clear-headed, is crucial.

The breadth of our counsel and community leadership on special education and developmental disabilities services, Social Security disabled adult child benefits, and Medicaid enable our team to draw on a variety of resources for your benefit. We know what works now and what is likely to work in the future to boost your child's standard of living. Our "Trustee School" is one of the innovative ways we teach clients how best to fulfill their responsibilities.

Your child knows they aren't alone; they have you. With us at your side, *you're* not alone, either.

*Your child needs all the energy and hope you have to share. Don't let worry about the future sap the strength you need now.*

[over for more info]

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## Your partners for Special Needs Planning



Janet L. Lowder, J.D., CELA. As a single mother of three, Janet intentionally joined a firm of Legal Aid alumni who were already committed to advocating for people with disabilities and the elderly. Now recognized as a pioneer in elder law and special needs planning in Ohio, she still most enjoys her time working directly with individuals and families.



Elena A. Lidrbauch, J.D., M.Ed. Elena formerly worked for a community mental health agency and saw the potential for doing more for her clients if she became a lawyer. Having experienced a disabling illness early in life, Elena identifies with people's struggles and wants to help people with disabilities of any age have the same opportunities as everyone else.



David S. Banas, J.D. David was raised in a small town in Ohio with a big family. He deeply appreciates and understands that families tend to endure obstacles together, and sought to become a lawyer who brought those familiar values into a system that is all too formulaic. As an attorney, he most enjoys being a small part of overcoming difficulties that families and individuals face, and sharing in the peace that comes from those achievements.

...for full biographical detail, visit [www.Hickman-Lowder.com](http://www.Hickman-Lowder.com)

*Turning Your Obstacles into Opportunities*



Hickman  
& Lowder  
Co. L.P.A.  
Attorneys at Law

Special Needs Planning  
&  
Guardianships

David S. Banas

Autism Society

January 13, 2015



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## Special Needs Planning & Guardianships



David S. Banas  
Autism Society  
January 13, 2015

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### The Goal

- To provide for a loved one with a disability when
  - We don't know what benefits will be like or the eligibility rules
  - We don't know what programs will be available
  - We don't know who will be there to administer the plan

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### OBJECTIVES

- Benefit basics
- Guardianship and alternatives
- Estate planning tools

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### DISABILITY DEFINITION

- Physical or mental impairment
- 12 months or result in death
- Prevents engaging in SGA
- \$1070 Rule

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### SSD/MEDICARE ELIGIBILITY

- Disability under SS
  - SSD 5 months after disability
  - Medicare 24 months after SSD
- Prior earnings and payment of SS taxes
- Parent's earning history if
  - Child disabled prior to age 22, and
  - Parent retired, disabled or deceased

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### SSI/MEDICAID ELIGIBILITY

- Disability under SS standards
- Needs based
- Countable resources < \$1,500 Medicaid, \$2,000 for SSI
- Income levels

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### SSI

- Federal income program for persons with a disability who do not have Social Security coverage
- SSI is intended to pay for the beneficiary's food, clothing, and shelter and nothing more

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### INCOME

- Disregard \$20 unearned income
- Disregard \$65 plus one-half earned income
- IRWEs
- Deeming
- In-kind support and maintenance (charge room & board)

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### EXAMPLE

- Earnings = \$585/month
- Less \$85 disregards = \$500
- Less  $\frac{1}{2}$  = \$250
- SSI reduced to \$471 (\$721 - 250)

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## RESOURCES

- Owned by the individual
- Available to the individual
- Not "exempt"
- Deeming

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## EXEMPT RESOURCES

- Household goods
- Residence
- Vehicle
- Irrevocable funeral contract
- Burial plots
- Whole life insurance w/ total face value < \$1500
- Back payments of SS (for 9 months)
- Special needs or pooled trusts

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## INCOME v. RESOURCES

- Receipt of assets is income in the month received
- 10 day reporting requirement
- If still owned next month, counted as resource

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### VALUE OF BENEFITS

- SSI - \$721/month
- Medicaid
  - medical/hospital care
  - prescriptions
  - rudimentary dental/vision
  - residential/institutional
  - Waiver - up to \$14,000/month

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### TYPICAL TIMELINE FOR CHILD WITH A DISABILITY

- Birth – 18
- Accepting disability
- Learning the system
  - IEPs, ISPs, IHPs
  - Mainstreaming
  - Access
  - Advocacy
  - Support systems

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### TYPICAL TIMELINE – AGE 18

- Parents' income & assets no longer deem to child
- SSI and Medicaid eligibility if meet disability test and income and resource requirements
- Parents are no longer legal decision-makers for child

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## **GUARDIANSHIP**

- Appointed through probate court
- Ward must be determined to be incompetent
- Person/estate
- May be limited to certain areas

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### **Avoid Crises with Advance Planning Documents**

- So simple and low-tech that most people miss this step
- If the SNT beneficiary is high functioning, has trusted individuals in his or her life and wants to stay out of guardianship court, consider basic documents

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### **Basic Guardianship Avoidance Documents**

- Financial Powers of Attorney
- Medical Power of Attorney
- Advance Directive for end-of-life care
- Mental Health Directives

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### TYPICAL TIMELINE – ADULT

- Parent retires
  - Child eligible for DAC benefits
  - Child receives ½ of parent's benefit
- Parent dies
  - Child receives ¾ of parent's benefit
- Medicare eligibility

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### PLANNING

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### PLANNING GOALS

- Assure quality of life
  - Guardian/advocate
  - Residential/Employment/Social/Medical
  - Final arrangements
- Determine how to fund the plan
- Provide appropriate management of funds
- Preserve government benefits

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**COMMON PITFALLS OF PLANNING**

- Uniform Transfer to Minors Act (UTMA) accounts
- Unstructured Beneficiary Designations
- Disinheriting child with disability
- No planning at all

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**TOOLS FOR ESTATE PLANNING**

- Will
- Durable Power of Attorney
- Trust
- Letter of Intent
- Advance Medical Directives
  - Living will
  - Durable power of attorney for health care

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**WILL**

- Disposition of property upon death
- Personal representative
- Guardian for children
- No legal effect prior to death
- Governs disposition of probate assets only

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## TRUST

- Contract for management of assets
- Grantor/Settlor
- Trustee
- Beneficiary

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## TYPES OF EXEMPT TRUSTS

- There are two broad types of trusts which do not count as assets for benefit eligibility. They are distinguished by whose money is funding the trust
  - Third-party discretionary trust
  - Self-settled trusts - special needs trust (d4A) or pooled trust (d4C)
- For the most part, administration issues are the same for both

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## THIRD PARTY TRUSTS

- Discretionary Trusts
- Supplemental Services Trust
- CFMF Master Trust

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## DISCRETIONARY TRUSTS

- Funded with 3<sup>rd</sup> party assets
- Available if trustee may spend for medical care, care, comfort, maintenance, health, welfare, or general well-being
- No payback at death
- Class of beneficiaries
- Spendthrift provision
- "Poison pill"

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## SELF-SETTLED TRUSTS

- Special needs trust
- Pooled trust
  - CFMF
  - Dayton Foundation

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## SPECIAL NEEDS TRUST

- Established by
  - parent
  - grandparent
  - guardian
  - court
- Beneficiary - disabled, under 65
- Payback provision

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### POOLED TRUST

- LIKE SNT EXCEPT:
- can be established by disabled person
- can be over 65
- managed by non-profit association
- assets pooled for investment
- individual accounts maintained
- no payback if assets remain in the trust

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### TYPES OF DISTRIBUTION STANDARDS

- Supplemental only (sometimes called "bubblegum" trusts)
  - Narrow standard, allows supplementation only
  - Prohibits any distributions which will cause loss or reduction in benefits
- Complete discretion
  - Gives more flexibility but adds administrative complexity
  - Trustee may determine loss or reduction of benefits is in beneficiary's best interest

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### USING SNTs IN THE ESTATE PLAN

- In combination with discretionary trust
  - Two trusts
  - Giving trustee power to amend
- As Medicaid planning tool for parent

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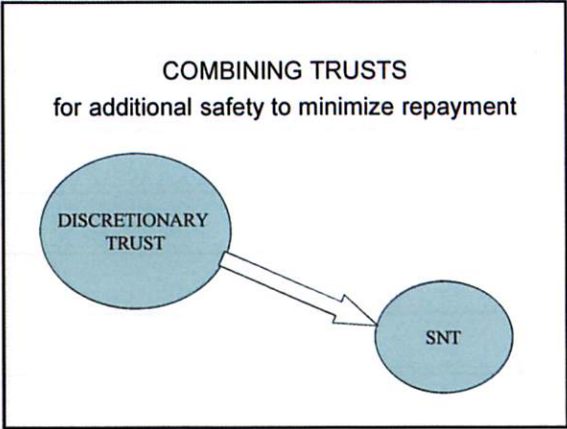
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**FUNDING THE TRUST**

- The trust is your vehicle for reaching your objectives
  
- The trustee is the driver
  
- The funding is the gas that powers the vehicle

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**COMMON SOURCES OF FUNDING THE TRUST**

- Pourover from the estate
- Gifts from others
- Life insurance
- Real estate
- Cash or investments
- 529 Plans
- Retirement plans including 401Ks and IRAs

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## TRUST ADMINISTRATION

- Supplement benefits
- Food, clothing & shelter will be in-kind support & maintenance
- Payments made to providers of goods or services
- Payments directly to beneficiary are income

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## THE IDEAL TRUSTEE

- Understands public benefits
- Will use discretion in the best interest of the disabled beneficiary
- Can wisely invest and conform to all statutory fiduciary requirements
- Understands taxes
- Keeps perfect books
- Carries insurance, is bondable or has deep pockets
- Can identify second rate services or abuse
- Is immortal

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## Selection of Trustees

- Corporate trustees
  - Useful for a large trust
  - Final successor trustee
- Family members
  - Individual or co-trustees
- Advocates
- Trust advisors/protectors
- Succession

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## HOW DO YOU CHOOSE?

The choice of which trustee is right for your situation will depend upon

- The beneficiary's disability and unique needs
- The amount of funds in the trust
- The need for advocacy and care managers
- The proximity of the Trustees or advocates

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## LETTER OF INTENT

- Residential
  - Stay in family home
  - How maintained
- Family
  - Gifts
  - Travel
- Medical
- Social

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## PERIODIC UPDATE & REVIEW

The Estate Plan should be periodically reviewed

- To ensure all assets are titled correctly and beneficiary designations are correct
- To update trustees and advisors, advocates, guardians
- If there are changes in the beneficiary's condition or eligibility for benefits
- If there are changes in your economic situation
- If there are changes in the law

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## RESOURCES

- Community Fund Management Foundation (CFMF) pooled trust  
[www.cfmf.org](http://www.cfmf.org)
- Special Needs Alliance 877/572-8472  
[www.specialneedsalliance.com](http://www.specialneedsalliance.com)
- Ohio DD Council publications on guardianship and estate planning  
<http://ddc.ohio.gov/Pub/index.htm>
- Social Security Administration [www.ssa.gov](http://www.ssa.gov)
- Medicaid [www.ifs.ohio.gov/Ohp](http://www.ifs.ohio.gov/Ohp)

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- **This presentation is intended to provide general information and should not be interpreted as specific legal advice.**

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meeting today's needs · preserving your safety and dignity · securing your future

## CHILDREN WITH SPECIAL NEEDS

Raising a child with special needs is a life-long commitment. You need good information and a staunch advocate. Our innovative team empowers you to make choices that support your child's well-being and ease future challenges. We also represent organizations that support parents of children with mental and physical disabilities.

**SPECIAL EDUCATION.** Your child has the right to a "Free Appropriate Public Education." We recognize and appreciate your child's potential and know how to get results on his or her behalf.

Consultation · IEP Team Meetings · Mediation · Due Process Hearings · Federal Court Litigation

**CHILD'S SSI.** We take the worry out of the benefit appeals process and fight for your child to get the government benefits he or she deserves.

**SPECIAL NEEDS ESTATE PLANNING.** We can secure valuable government benefits for your minor or adult child and protect the assets you leave for him or her after you're gone. Special Needs Trusts · Pooled Trusts

**MEDICAID WAIVER APPEALS FOR CHILDREN.** Children with disabilities enjoy broad eligibility for Medicaid waivers and services that parents may have never heard of, or thought were only for low-income families without resources. With our Medicaid expertise, we can help you navigate the system and get Medicaid coverage for your child so that he can receive the medical care he needs.

## ADULTS WITH DISABILITIES

With all its legal and governmental details, protecting the safety and comfort of an adult with disabilities can feel like an uphill battle. We can help turn your obstacles into opportunities.

**SOCIAL SECURITY DISABILITY AND VETERANS BENEFITS.** Persistent, committed advocacy throughout the appeals process. Social Security Disability · SSI · Childhood Disability Benefits for Adults · Veterans Benefits

**GUARDIANSHIP.** Because safety and dignity are important, we represent people seeking guardianship of family members with age-related or other disabilities who cannot manage their own affairs. We also defend people who are still competent to manage on their own and wish to retain the freedom to do so.

**SETTLEMENT SERVICES FOR ATTORNEYS.** At settlement or after trial, injured plaintiffs and their lawyers must evaluate the impact of recovered funds on government benefits. We can shepherd those funds and manage the process effectively. Medicaid Payback Trusts · Workers' Comp Medicare Set-Asides · Lien Resolution · 468B Qualified Settlement Funds

**PUBLIC AND PRIVATE AGENCY REPRESENTATION.** Meeting your needs is a community affair. We are proud to represent organizations that serve and advocate for people with disabilities and special needs. DD Boards · Mental Health/Alcohol & Drug Abuse Boards · Private Agencies and Non-Profits

## ELDERS AND THEIR CAREGIVERS

Aging brings on many changes and concerns. Likewise, the laws governing finance and health care for older people are constantly changing. You may be overwhelmed by the details of creating security for yourself or your loved ones.

At Hickman & Lowder, forward thinking is second nature. Our attorneys are among Ohio's Elder Law pioneers. We're here to listen, and creatively and realistically plan for your security.

**ELDER LAW.** Thoughtful counsel on: Life Care Planning · Medicaid / Public Assistance Planning · Long-Term Care Options · Care Coordination

**MEDICAID PLANNING.** Compassionate guidance to help you navigate the complex rules to access community services and plan for long-term care. Consultations · Applications · Appeals

**ESTATE PLANNING.** Putting you and your family on solid ground: Wills · Trusts, including Administration · Powers of Attorney · Health Care Directives · Tax Planning · Probate Avoidance

**PROBATE.** We manage the paperwork and handle your probate proceeding from beginning to end. Trusts · Guardianships · Decedent's Estates · Fiduciary Tax Returns · Wrongful Death Trusts · Minor's Settlements



# Looking for the ease a trusted partner can bring?

Helping secure your desired way of life is our way of life. Let's get started together.

Cleveland: 216-861-0360 · Sheffield Village: 440-323-1111 · [Info@Hickman-Lowder.com](mailto:Info@Hickman-Lowder.com) · [www.Hickman-Lowder.com](http://www.Hickman-Lowder.com)



**WE BELIEVE** in the value of each human being, and that everyone, regardless of age, health, or capacity, deserves the best life possible.

We chose to practice law because it allows us a meaningful way to advocate for people whose lives are complicated by special concerns and frustrated by an impersonal, imperfect system.

**WE KNOW** it can be scary and stressful to manage the challenges of securing a good life for people with disabilities, special needs, and the elderly. Our unwavering dedication to transforming access to guidance and care gives you a new vantage on those challenges. We empower you and your circle of support to understand options and make decisions that bring long-lasting relief. Our work also enables the community as a whole to support and respect your needs.

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