

Inter-relationship of Conservatorships Guardianships and Trusts

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Seminar Outline

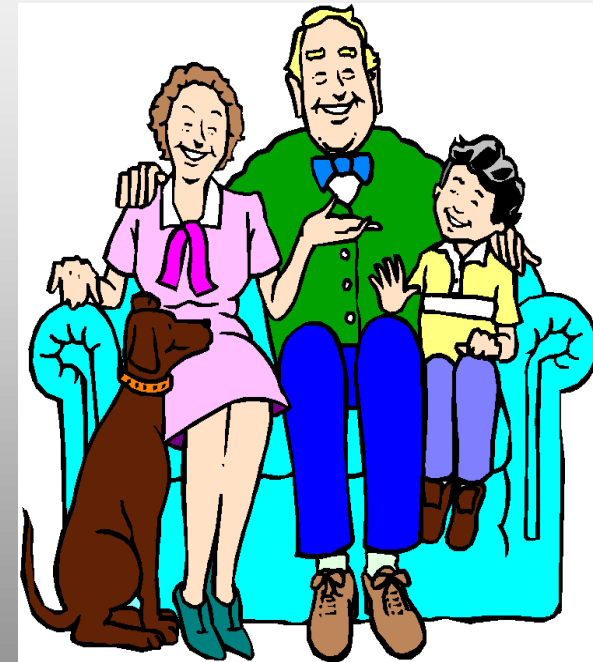
- **Similar legal proceedings**
- **All about
Conservatorship/Guardianship**
- **Use of Trusts**
- **Use of Special Needs Trusts**
- **Putting it all together**

Legal Proceedings

- **Mental Health Court**
- **Guardianship**
- **Substituted Medical Consent**
- **Sterilization**
- **General Conservatorship**
- **Limited Conservatorship**
- **Probate Court**

Guardianships

- **Legal Protective Proceeding**
- **For persons under age 18**
- **Parents are natural guardians**
- **To make decisions**
- **To supervise**
- **To provide personal needs**



Sterilization

- **Separate Procedure**
- **Difficult to Obtain**
- **Must first be appointed conservator**
- **No person who has ability to consent shall be sterilized**
- **Automatic appointment of counsel with presumption of opposition**
- **Court appointed facilitator**

Sterilization

Continued...

- **Court appointed facilitator**
- **Regional Center report**
- **Examined by surgeon and psychologist w/reports**
- **Least invasive contraceptive methods must be exhausted**
- **Beyond a reasonable doubt**
- **Automatic appeal**
- **Costs.**

Substituted Medical Consent

- **Individual not capable of giving informed consent**
- **Only to persons without a:**
 - **Limited conservator**
 - **Guardian**
 - **Parent**
 - **Statutory procedure**
 - **Client of Regional Center**

Representative Payee



- **Can receive and cash public assistance checks to pay necessary bills**
- **Can make the individuals major and minor financial management decisions**
- **May displace the need for establishment of a limited conservatorship**
- **Only entitled to receive and cash entitlement checks**

What is a Conservatorship?

- **Individual or an agency is appointed by a court to be responsible for a person who needs assistance in activities of daily living.**

What is a General Conservatorship

- **A General Conservatorship applies to all individuals who cannot provide for their own physical health, food clothing or shelter. A General Conservator is granted care custody and control. Other powers like medical powers must be specifically requested.**

What is a Limited Conservatorship?



- **Applies only to the Developmentally Disabled**
- **The person w/ disability retains the power to care for himself/herself commensurate with their ability to do so.**
- **He/She manages his/her own resources commensurate with ability.**

Limited Conservatorships

7 Powers

- **Records**
- **Education**
- **Contract**
- **Medical**
- **Housing**
- **Social & Sexual**
- **Marriage**

When should a Conservatorship be considered?

- **When child reaches age 18**
- **To legally protect and make decisions for the now emancipated adult**
- **With no limited conservatorship a parent may have no standing to appeal agency action which affects their son or daughter**

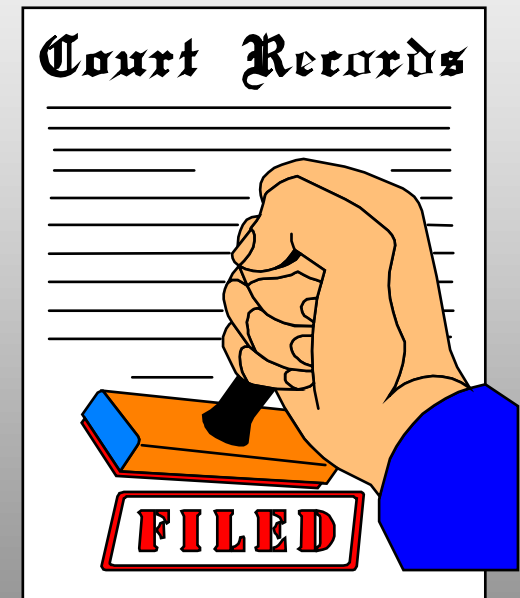
Upon attaining the age of 18, your child, regardless of the degree of disability gains all rights.

4502 WIC §4502: also 42 USC, §15002 section 102:

(15) Inclusion.--The term "inclusion", used with respect to individuals with developmental disabilities, means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enables individuals with developmental disabilities to-- (A) have friendships and relationships with individuals and families of their own choice; (B) live in homes close to community resources, with regular contact with individuals without disabilities in their communities; (C) enjoy full access to and active participation in the same community activities and types of employment as individuals without disabilities; and (D) take full advantage of their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.

Procedure

- **Petition**
- **Notice**
- **Citation**
- **Court Appointed Attorney**
- **Regional Center Report**
- **Hearing Order**
- **Letters**
- **Bi-Annual Review**



Who May Act as Conservator?

- **Spouse or Spouse's nominee**
- **Adult child**
- **Parent**
- **Sibling**
- **Any other eligible person**

Duties According to Powers

- **Granted power**
- **Care, custody, and control of that area of the conservatee's life**
- **Personal daily routine**
- **Duty to notify court of ANY changes**
- **May not place conservatee in an involuntary mental health treatment facility or developmental center**
- **Where conservatee:**
 - **Lives**
 - **Consulting doctor**
 - **Education pursued**

Joint Conservators

The court may appoint joint conservators for:

- **The person**
- **The estate, or**
- **The person and estate**
- **The rule is that a majority of co-conservators must consent to an action**

Jurisdiction

- **Proximity: Conservator should be close**
- **Transfer to different County or State**
- **May be transferred to different County**
- **Each State has its own laws and a Petition should be made in that State**

Selection of Others

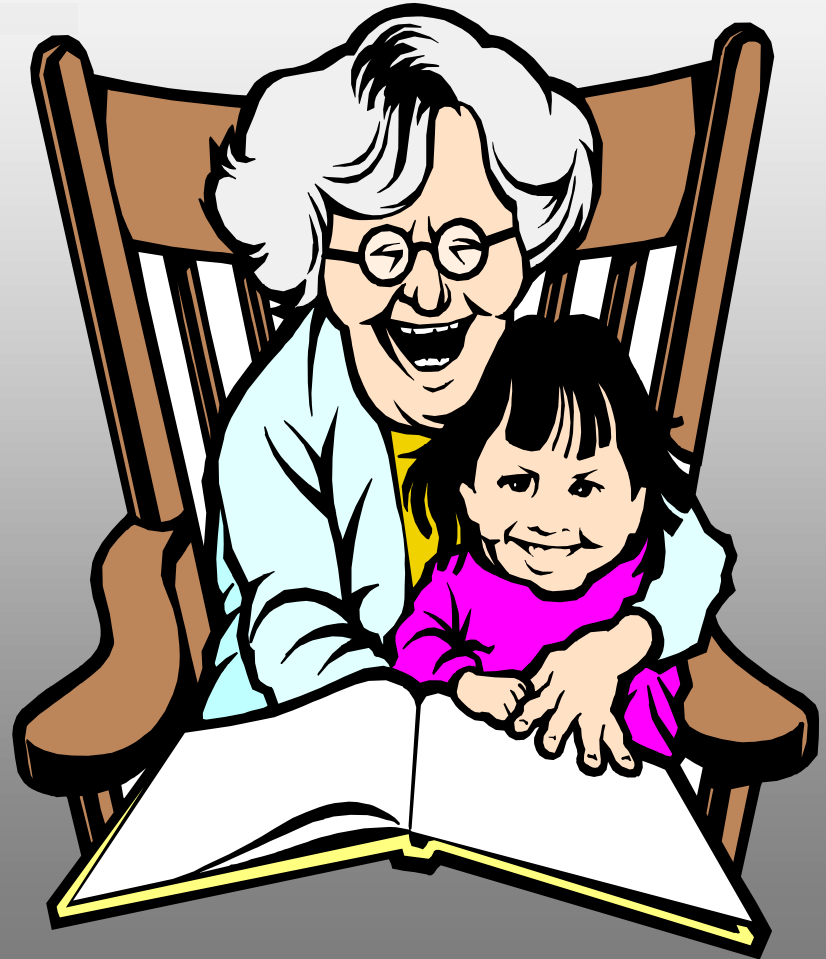
Successor Conservators

- **Personal Knowledge**
- **Knowledge of best interest of Conservatee**
- **Financial Management Skills**
- **Understanding of Programs Available**
- **Proximity**
- **Availability of time and energy**
- **Financial support, i.e., trust**



Family Philosophy

- **Protection**
- **Independence**
- **Personal Needs**
- **Abilities**



Reports

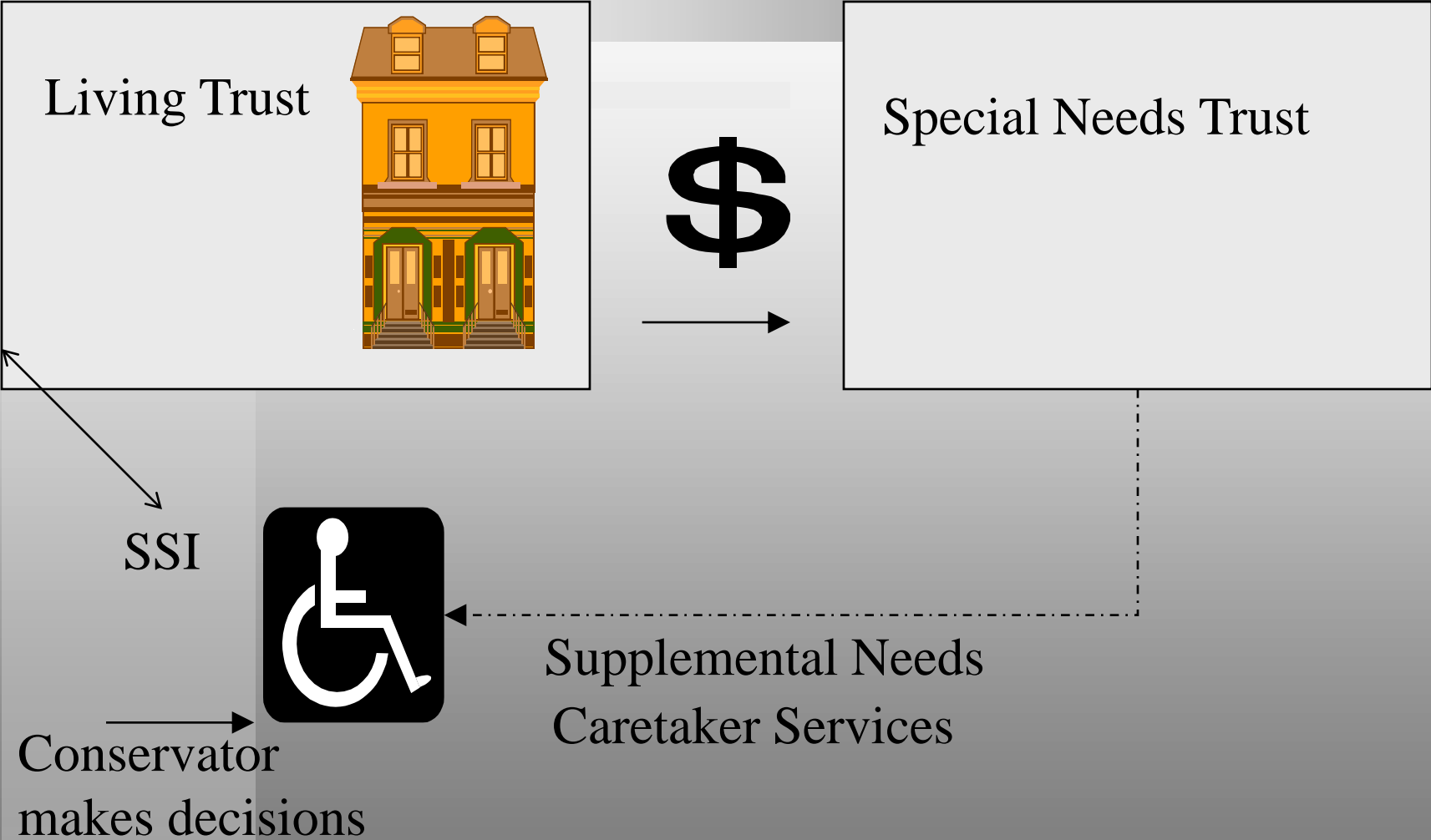
- **Psychological**
- **I.E.P.**
- **I.P.P.**
- **Doctors Reports**



Inter-relationship of conservatorship and trusts

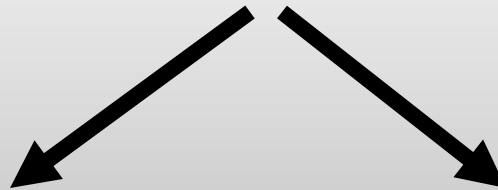
- Successor needs authority: to place, medical, records access
- Trusts distribution helps with court costs and attorney fees
- Trusts hold money instead of conservatorship estates
- Trusts or estate plan nominate successors
- Letter of Intent lays out housing plan.
Conservators execute the plan.

How it works



Intervivos Trusts

Testator's Estate



Revocable

Family

Support

Special Needs Sub Trust?

Irrevocable

Out of Testator's Estate

All Types

Special Needs Trust

Testamentary Trusts

Good Inexpensive to establish
 Claims can be cut off

Bad Intent may fail
 Subject to Probate
 Ongoing Court Supervision

Ugly May endanger benefits
 Costly to administer trust
 (trustee fees, attorney fees)

Irrevocable Trusts

Good

Assets out of Grantor's Estate
Government and Creditors cannot invade

Bad

Cannot amend, w/o Court Order
Circumstances can change

Ugly

Failed funding
may not be able to be changed even if petition court

Intervivos (Living) Trusts

Good

Assets out of Grantor's Estate

Government and Creditors cannot invade

Bad

Creditors still make claims

Family Disputes

Trustee Breach

Ugly

Failed funding

may not be changed after surviving settlor's death

Special Needs Sub Trust subject to

scrutiny and possible disqualification
www.specialneedsfirm.com

Special Needs Trusts

There are 3 basic types of Special Needs Trusts:

- ☺ Parent/Child
- ☺ Court Ordered
- ☺ OBRA

Special Needs Trusts

A Special Needs Trust is a specific type of discretionary trust, designed to protect government benefits, while providing Supplemental assistance to the person with a disability.

Why a Special Needs Trust should be Irrevocable

1. Creditors cannot Invade
2. Encourages others to give to trust
3. Can avoid Pitfall of destroyed estates
4. Tax I.D. #
5. Complies with Federal Regulations
6. Avoids SSI attacks

Miracle that Makes it Work

- 1. Trust is irrevocable and assets are owned by the trust and not the person with a disability.**
- 2. Trust is discretionary, and person with disability does not have access to income or principal.**
- 3. Trust does not replace benefits, only supplements and provides other special needs.**

Examples of Special Needs

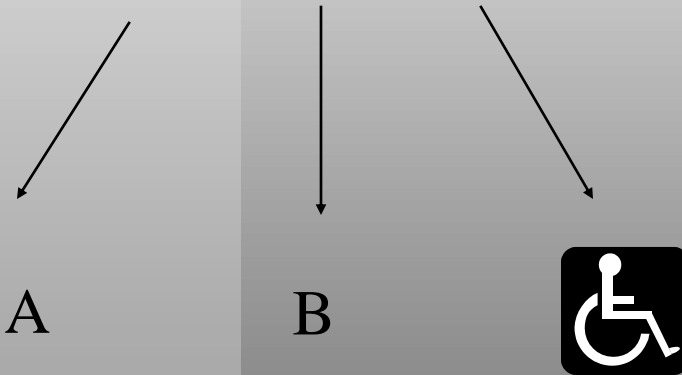
Therapies, TV's, satellite, DVD players, musical equipment, videos, computer equipment, Vehicles, wheelchairs, furniture, trips, Self esteem items, advocacy, caretakers, conferences, camping, sporting events and equipment, pets, conservator fees, trustee Fees, attorney fees, dietary needs, etc., etc.,....

Typical Estate Plan



Will or No Will, Estate to be Probated. After Creditors, and Probate Costs \$270,000 passes to heirs.

House + cash = \$300,000



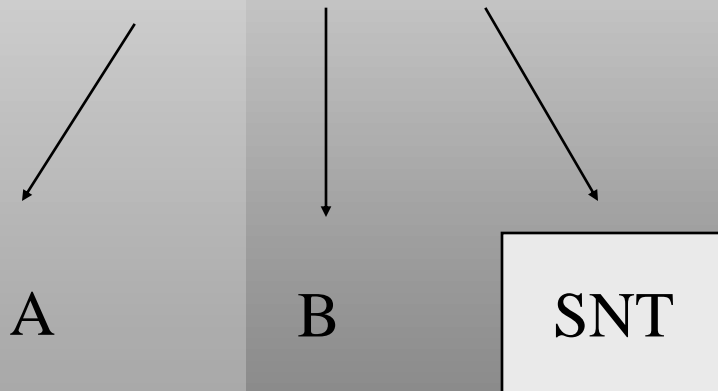
Child w/ Disability receives share and loses benefits.

Good Plan



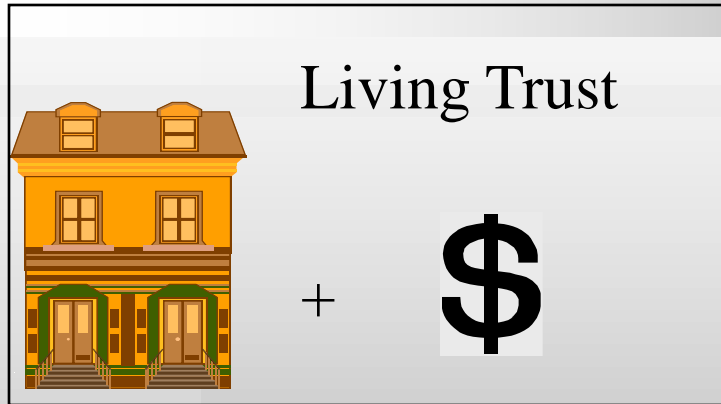
Client left a Will with either disinheritance or leaves share to a special needs trust.

House + cash = \$300,000

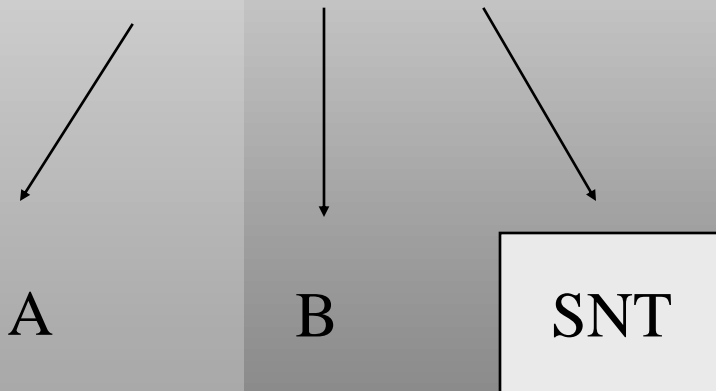


Child w/ Disability does not lose share and more importantly does not lose benefits.

Solid Plan



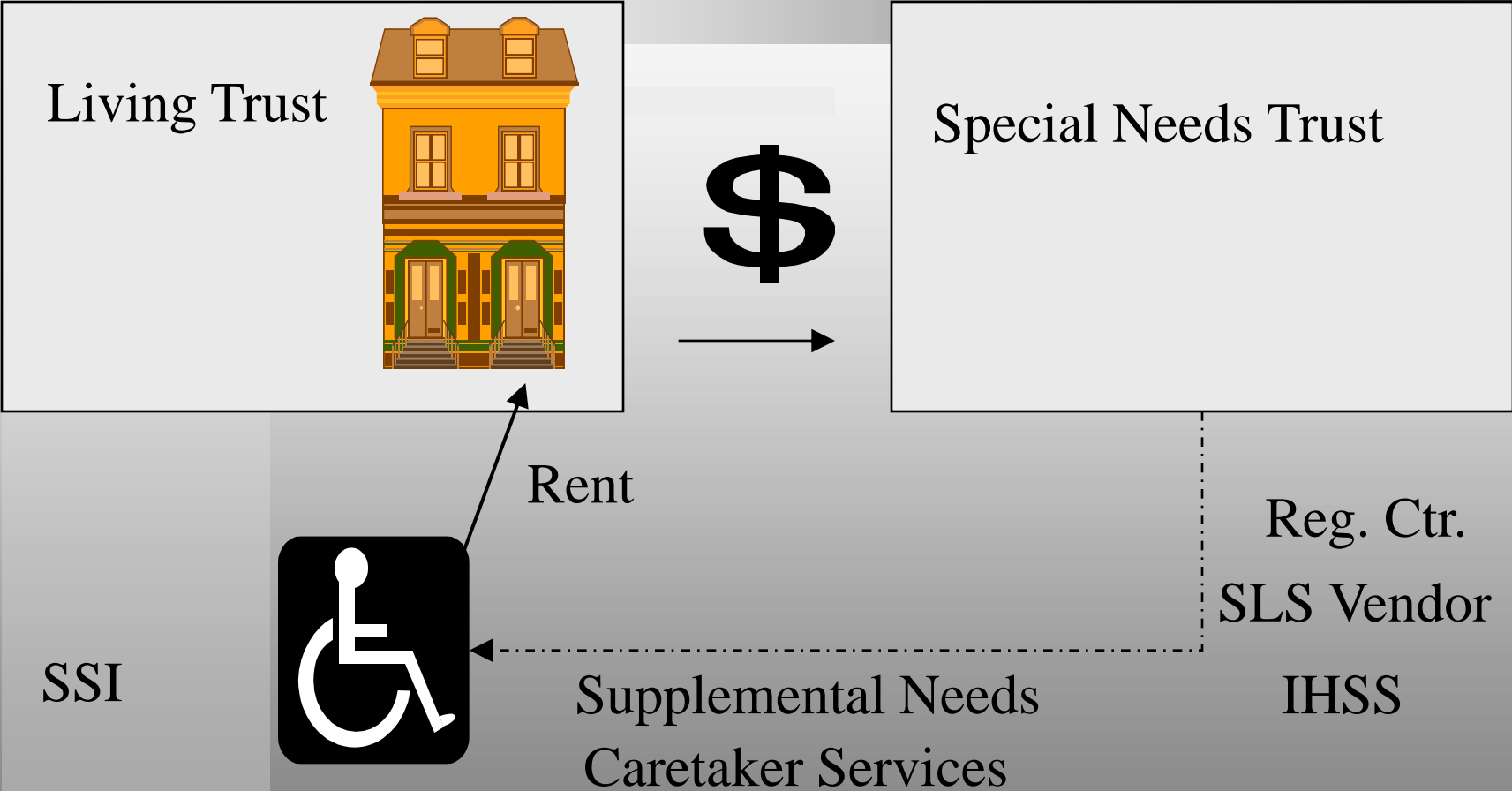
House + cash = \$300,000



Client avoids probate and leaves a share to a special needs trust.

Child w/ Disability does not lose share and more importantly does not lose benefits.

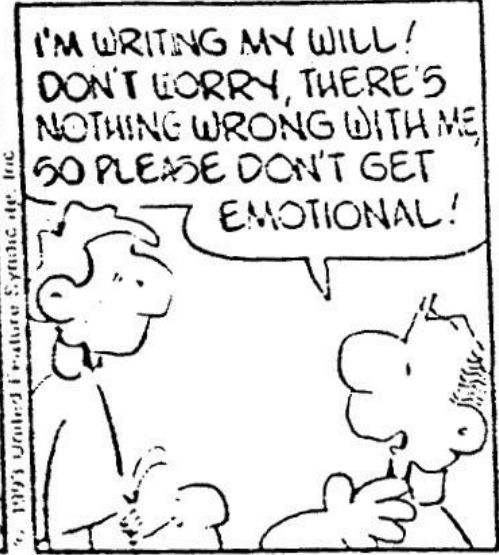
Housing Plan



Funding

- ☺ **Pour Over/equal share**
- ☺ **Lifetime Funding**
- ☺ **Inheritances**
- ☺ **Life Insurance**
- ☺ **Combination**
- ☺ **Lotto**

DRABBLE By Kevin Fagan



Funding Formula

Basic Monthly needs

Future Needs

Inflation x .03%

Add one time needs

= X

**Principal must produce enough income to
equal x**

Family Care Plan

- ☺ **Wills**
- ☺ **Family Living Trust**
- ☺ **Special Needs Trust**
- ☺ **Letter of Intent**
- ☺ **Powers of Attorney**
- ☺ **Medical Directive**
- ☺ **Guardian/Conservator nomination**
- ☺ **Adequate Funds**
- ☺ **Copies of Important papers (birth Certificate, Social Security)**
- ☺ **Life Insurance**
- ☺ **Records**
- ☺ **Deeds**
- ☺ **Tax ID Number**

Letter of Intent

- ☺ **History Medical/Education**
- ☺ **Likes/Dislikes**
- ☺ **Future Housing**
- ☺ **Work Environment**
- ☺ **Social Activities**
- ☺ **Family Activities**
- ☺ **Religious preferences**
- ☺ **Behavior Management**
- ☺ **Caretaker**
- ☺ **Disinheritances**
- ☺ **Other**

Summary of Steps

- 1. Determine your desires**
- 2. Meet with attorney/financial planner**
- 3. Prepare legal documents**
- 4. Review documents with players**
- 5. Prepare letter of intent**
- 6. Review plan periodically**

The End.