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## Elder Law and Estate Planning / Administration

### PRACTICE LEADER

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**Robert Abrams**

Executive Partner

## Elder Law Estate Planning and Administration

Our Elder Law and Special Needs attorneys provide compassionate representation to clients navigating intricate estate and long-term care planning decisions. We are committed to helping you and your family protect your assets and secure and maximize governmental benefits. We focus our attention on your specific needs, values, and goals to develop and execute a strategy to assure that you can live with dignity, no matter your stage in life.

Our Elder Law and Special Needs attorneys provide legal advice in areas such as:

- Estate planning
- Estate tax planning
- Medicaid planning, Medicaid applications and Appeals
- Long Term Care Insurance Appeals
- Last Will and Testament
- Powers of Attorney
- Health Care Proxies
- Revocable and irrevocable trusts
- Special and Supplemental Needs Trust
- Trust and Estate Administration
- Fiduciary Representation

- Guardianships

## ESTATE PLANNING

Estate Planning is a broad term that refers to developing a strategy for the lifetime management and testamentary disposition of one's asset and personal affairs. Proper estate planning can ensure the protection of assets to qualify for benefits, appropriate business succession, and can avoid estate taxes. With the guidance of our experienced estate planning attorneys, you can maximize both your quality of life and your family's inheritance. We will explore with you your options utilizing the appropriate combination of Advance Directives, Revocable Trusts, Irrevocable Trusts, and Wills.

Nearly every Estate Plan calls for Advance Directives. "Advance Directives" is a general term for documents under which an individual appoints another to act on their behalf for a specified reason. Powers of Attorney and Health Care Proxies are two especially important Advance Directives.

- A Power of Attorney is a document under which an individual, known as the Principal, may appoint an individual(s) to carry out financial transactions on their behalf.
- The Power of Attorney may also allow specified agents the authority to gift the Principal's funds.
- A Durable Power of Attorney is effective upon execution.
- A "springing" Power of Attorney is effective only after a specified event, such as certification of incapacity.
- A Health Care Proxy is a document under which the Principal may appoint an agent to make health care decision on their behalf.
- Unlike the Power of Attorney, the Health Care Proxy only becomes effective if the Principal is unable to provide informed consent to a specific treatment or procedure.

**Trusts** are another important tool used in Estate Planning.

- A trust allows you to instruct how your assets are managed during your lifetime and after your death.
- A trust provides a private path for the disposition of your assets and avoids the need for public probate proceeding.
- There are several types of trusts to serve specific purposes.

Finally, a **Last Will and Testament** allows you to direct the disposition of assets after your death.

- Wills express a person's wishes regarding the post death distribution assets and the beneficiaries that should receive them. In general, they are beneficial for simple estates.

**Our Estate Planning attorneys can help explain options to meet your unique needs and goals**

## ELDER LAW

Elder law is a multidisciplinary field related to helping seniors and those with disabilities protect assets and preserve dignity. Depending on your unique needs, your elder law attorney may provide legal services related to:

- Estate planning related to Wills and trusts
- Asset protection planning
- Last will and testament creation
- Revocable trusts and irrevocable trusts
- Providing for family, including grandchildren
- Medicaid eligibility planning , Medicaid applications, Medicaid recertification and Fair Hearings
- Disability planning including advanced directives, such as a health care proxy, living will and powers of attorney
- Guardianships Special Needs Trusts and Supplemental Needs Trusts
- Nursing home issues Retirement living (nursing homes, assisted living facilities, independent living)  
Retirement planning, including planning for family with disabilities Veteran's benefits

## SPECIAL NEEDS

Our special needs attorneys guide the families of disabled individuals and those who suffer from mental health issues through the specific considerations that affect their loved one. Whether for estate planning, ongoing decision making, or accessing and maximizing governmental benefits, our experienced team understands the challenges families face providing for those with disabilities.

One common planning tool used is a supplemental needs trust ("SNT"). This type of trust is designed to manage the income and or assets of a disabled individual while still allowing him/her to access governmental benefits such as Supplemental Security Income and/or Medicaid. SNTs are broken into two broad categories: First Party Supplemental Needs Trusts and Third-Party Supplemental Needs Trusts.

A First Party Supplement Needs Trust ("First Party SNT"), also referred to as Special Needs Trust, is used to manage income and/or assets that belong to a disabled individual so that he/she may receive needs based governmental benefits.

- A First Party SNT may be created by the beneficiary, a parent, grandparent, or the Court.
- The funds in this First Party SNT may be used for the supplemental care and support of the trust beneficiary. Such expenditures can include electronics, subscriptions, household items, and vehicles, to name a few.
- Upon the beneficiary's death the remaining assets must be paid to the governmental entities that have aided the beneficiary.

It is important that the management of these SNTs be handled in conjunction with an overall plan that will serve the disabled beneficiary through their life. Our dedicated Special Needs Attorneys can help guide you through your options and counsel you with regard to creation and administration of a First Party SNT.

A Third-Party Supplemental Needs Trust ("Third Party SNT") is created by and funded with the assets of another individual, such as a parent or grandparent.

- The funds in the Third Party SNT can be used in similar ways as those in a First Party SNT, to supplement and not supplant governmental benefits.
- A Third Party SNT does not require that the government be paid back any funds remaining at the death of the beneficiary.

A 3rd Party SNT provides a valuable vehicle for families of disabled and mentally ill individuals to provide for their loved ones without interfering with any benefits to which they may be entitled.

In some instances, a disabled individual over the age of 18 requires a Court Appointed Guardian to manage his/her affairs. New York provides a specific plenary proceeding under Article 17a of the Surrogate Court's Proceeding Act to address the needs of disabled individuals. This plenary proceeding has developed for individuals who meet specific criteria. With expedited process and fewer reporting requirements, a 17a guardianship provides a good alternative to an Article 81 [Guardianship](#). To learn more about guardianships click [here](#).

Our team of Special Needs attorneys benefit from our ability to co-counsel with members of Abrams Fensterman, LLP. other practice groups. For example, we co-counsel with attorneys from our [Mental Health Law Practice](#) to assure at the appropriate provisions to address the specific concerns implicated in the management of assets on behalf of a mentally ill family member. Similarly, our Special Needs and [Family Law](#) attorneys work together to assure that the interests of disabled and mentally ill children are protected in a divorce proceeding.

## Contact Our Law Firm

For further information about our elder law and special needs practice, please [contact our law firm](#) on Long Island at [516-328-2300](#), in Brooklyn at [718-215-5300](#), White Plains at [914-607-7010](#), Rochester at [585-218-9999](#) or Albany at [518-535-9477](#) to schedule an initial consultation.