



# East End Disability Associates. Planning Ahead: **Informed Consent vs. Guardianship**

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# Laws that govern Power of Attorney/ Guardianship

- New York General Obligations Law (GOL)
  - Article 5, Title 15
- New bill signed by Gov. David A. Patterson on Jan. 27, 2009 that takes effect September 1, 2009; then modified September 1, 2010
- EPTL & SCPA
- 17 A guardianship
- Mental Hygiene Law Art. 81



# Why plan at all?

- Protect your loved ones
- Safeguard Your Assets
- Advance your wishes
- Avoid time
- Avoid added costs
  - Legal fees
  - Court filing fees
- Avoid headaches



# Comparison At 18 (Considered An Adult)

## At 18 with “Capacity”

- Able to understand Risks & Benefits (financially, personally and medically)
- Able to work
- Able to attend college
- Able to vote
- Able to register for Draft
- Able to sign contract
- Financial Decisions
- Medical Decisions (including end of life)
- HIPAA Medical Privacy in person’s control

## At 18 without “Capacity”

- Not able to understand Risks & Benefits
- Able to work (Supported employment or independently)
- Able to attend college w/ or w/out assistance
- May be victim to fraud; taken advantage of
- Not able to make decisions for him/herself
  - Financially
  - Personally (including medical)

– Where/How to live

If you have Informed consent at 18 –you  
are an adult now so

- Will
- Durable Power of Attorney
- Health care proxy (agent)
- Living will  
(end of life decisions)



# Why Plan for Loved Ones with Special Needs who cannot

- Guardianship (17 A vs. Article 81)
  - Of Person
  - Of Property
- Preserving financial security and quality of life
- Need to understand the public benefits
- Make decisions for those who cannot
- Plan to protect assets and invest accordingly
- Which Court?

# Which One?



## 17 A Guardianship

- Surrogate Court
- Fees: \$20, \$6 per “letter”
- Self-directed (No need for attorney if straightforward)
- 2 MD’s or 1 MD and 1 licensed psychologist
- Proceeding by filing
- May have appointed guardian ad litem or hearing if questionable
- Powers are broad (inc. end of life)

## Article 81 Guardianship

- Supreme Court
- Fees: \$200 plus Court evaluator & other appointed individuals
- Training & annual reporting
- Appointed Court Evaluator; Attorney for AIP (Alleged Incapacitated Person)
- Must have attorney
- List of powers must be identified (if not go back to court)

# Complex Issues for Social Security



## Social Security Income (SSI)

- Means Test
- Limited Income and assets
- Do not need work history
- Must meet definition of disability
- Provides monthly income for food/shelter
- Access to Medicaid/in-home support

## Social Security (SS) and Social Security Disability (SSD)

- Not a means test
- Subject to work credits
- Parent's eligibility
- SS for individuals who are disabled before 22 and with parents eligibility who are retired, disabled or deceased
- Any benefits may reduce/eliminate SSI

# Medical Issues



- Medicaid:
  - SSI recipients receive automatically
  - Covers “medically necessary” services, equipment, hospitalization
  - In-home services needed to live at home, transportation to doctor,
- Medicare
  - Coverage for doctors, hospital, skilled nursing

## Case Study – See Impact (health care, financial, where does he live, medical expenses)

- Make no decisions
- Impacts benefits
- Who knows what happens – each scenario, family dynamic different????
- Leave \$
- Disinherit child ?
- Leave \$ to caregiver without protection
- Establish SNT
  - 3<sup>rd</sup> party
  - 1<sup>st</sup> party
  - Pooled



# Marriage – joint assets and maybe kids

- Protect assets that are individual and or joint
- Guardianship for children
- Testamentary trust for minors
- Special (supplemental)

Needs Trust to benefit child



# Other Points

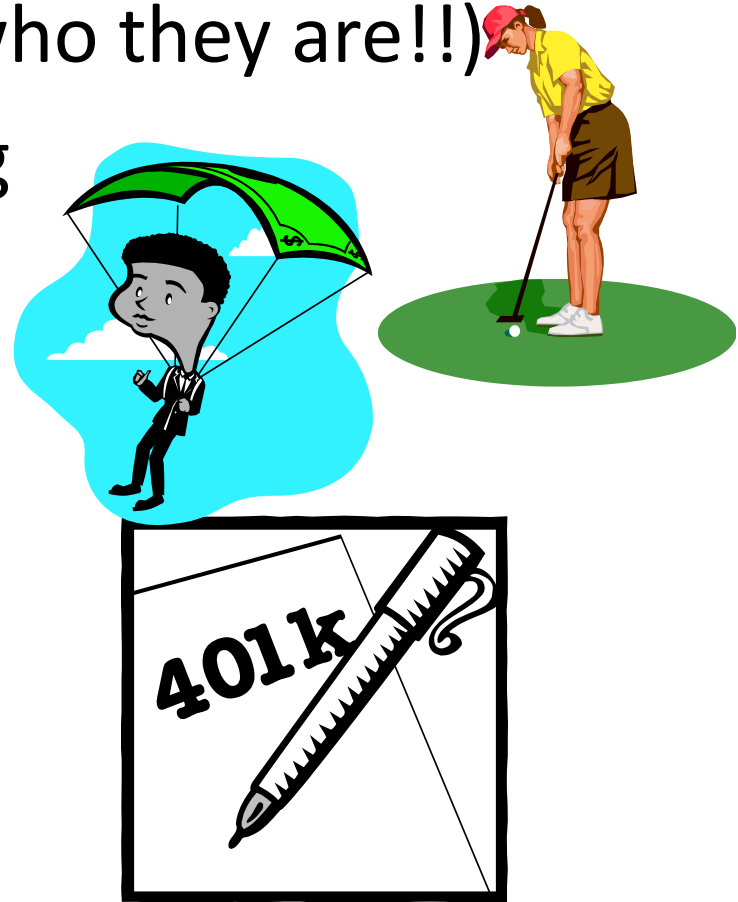
- Need to avoid probate and taxes.
- Plan properly for those individual retirement accounts.
- Insurance



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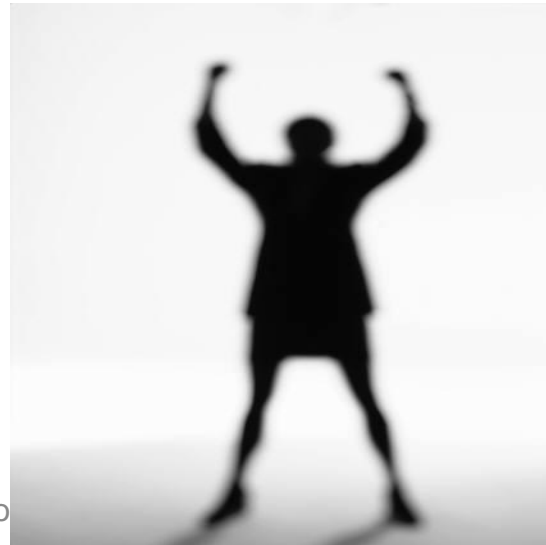
# Retirement – protect your income and your assets

- Beneficiaries (confirm who they are!!)
- Long term care planning
- Medicaid planning
- Trusts
  - Revocable
  - Irrevocable



# Federal Estate Taxation

- 2010 repealed/choice
- 2011 \$5 million
- 2012 repealed ???



Atto

Solicitation.

# How to start an appropriate plan for you?

- **Protect your Assets, advance your wishes**
- **IT'S EASY make an appointment**
- **It's YOUR Plan for you to DIRECT**
- **Information kept CONFIDENTIAL**

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