



Estate Considerations for Families with Special Needs

By

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Agenda

- Why are estate considerations important?
 - So that a child with special needs does not lose public benefits, like SSI and Medicaid, because they fail a “means-based” test
- What should you consider in planning your family’s affairs?
 - Will, Power of Attorney, Health Care Directive, Special Needs Trust—including Pooled Special Needs Trusts like Development Disability Endowment Trust Fund, and ABLE Accounts
- How might you go about making your family’s plan?
 - Involve professional council
 - Decide what resources should be available for an heir with Intellectual and/or Developmental Disabilities and transferred in the right way



THERE IS NO SUBSTITUTE FOR QUALIFIED TAX AND LEGAL COUNSEL

FIND YOUR ATTORNEY AND TALK TO THEM

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Estate Considerations

An Estate

- Everything you own or owe when you pass away

Special Needs Considerations

- Maintaining eligibility for public benefits for people with Special Needs
 - Mean's based test
 - Social Security
 - Medicaid



LEGAL Words

Testamentary

Through an estate

Inter Vivos

During life



Estate Plan

Will

- What to do with your stuff
- Who's in charge of your estate
- Who's to control your money once it's out of your estate (trustee)
- Who's going to care for your children

Health Care Directive

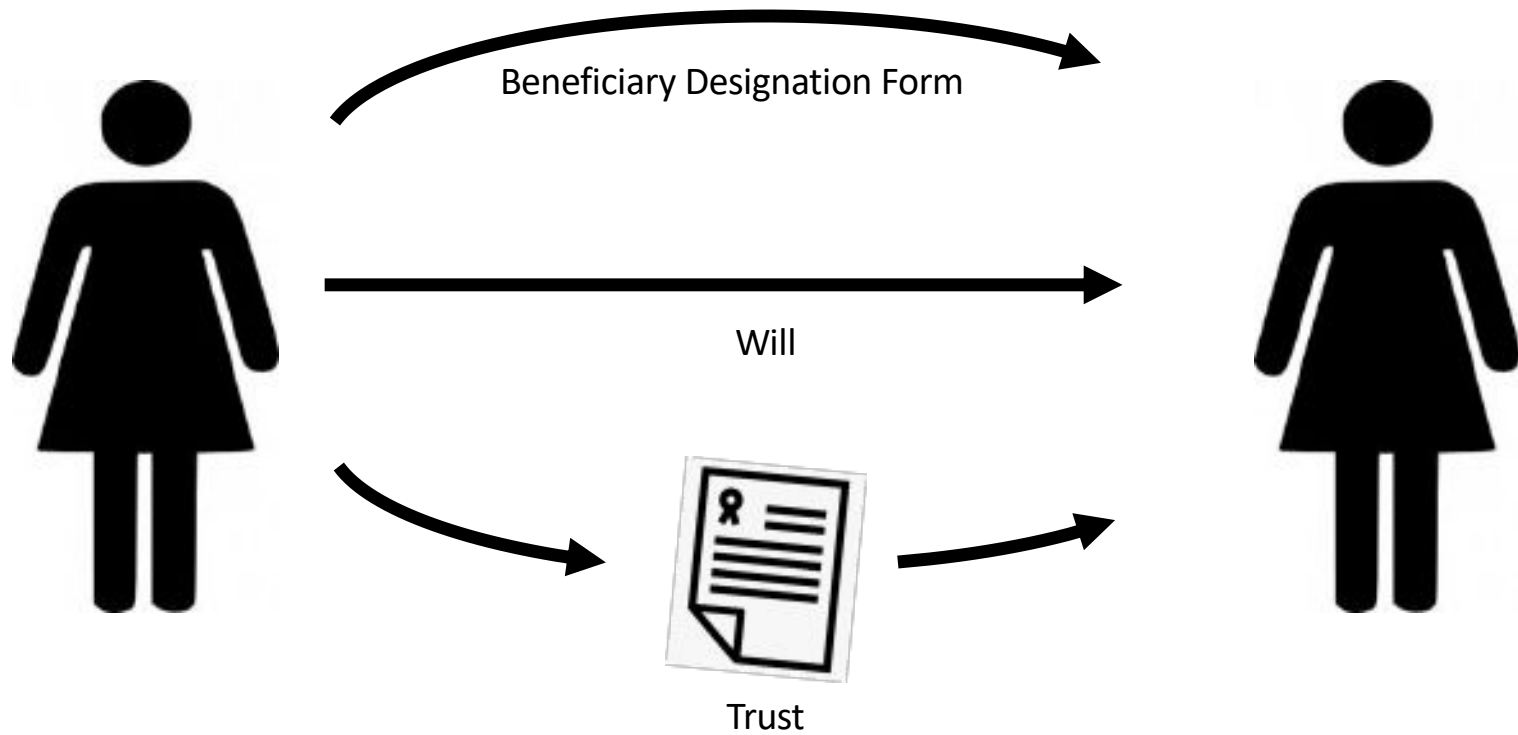
- Also called a Living Will
- Who can know about your health situation
- Who can make determinations about your treatment and care if you are not able to tell your care provider

Power of Attorney (POA)

- Who can know about your money and legal situation
- Who can take actions in your financial affairs
 - Durable
 - Springing



Transfers





Trust



- “Declared”
- Has it’s own legal standing – EIN
- Holds Property
- Watched by Trustee
- Files Taxes
- For Beneficiaries
 - USE not ownership



Public Benefits Eligibility

SSI/Medicaid

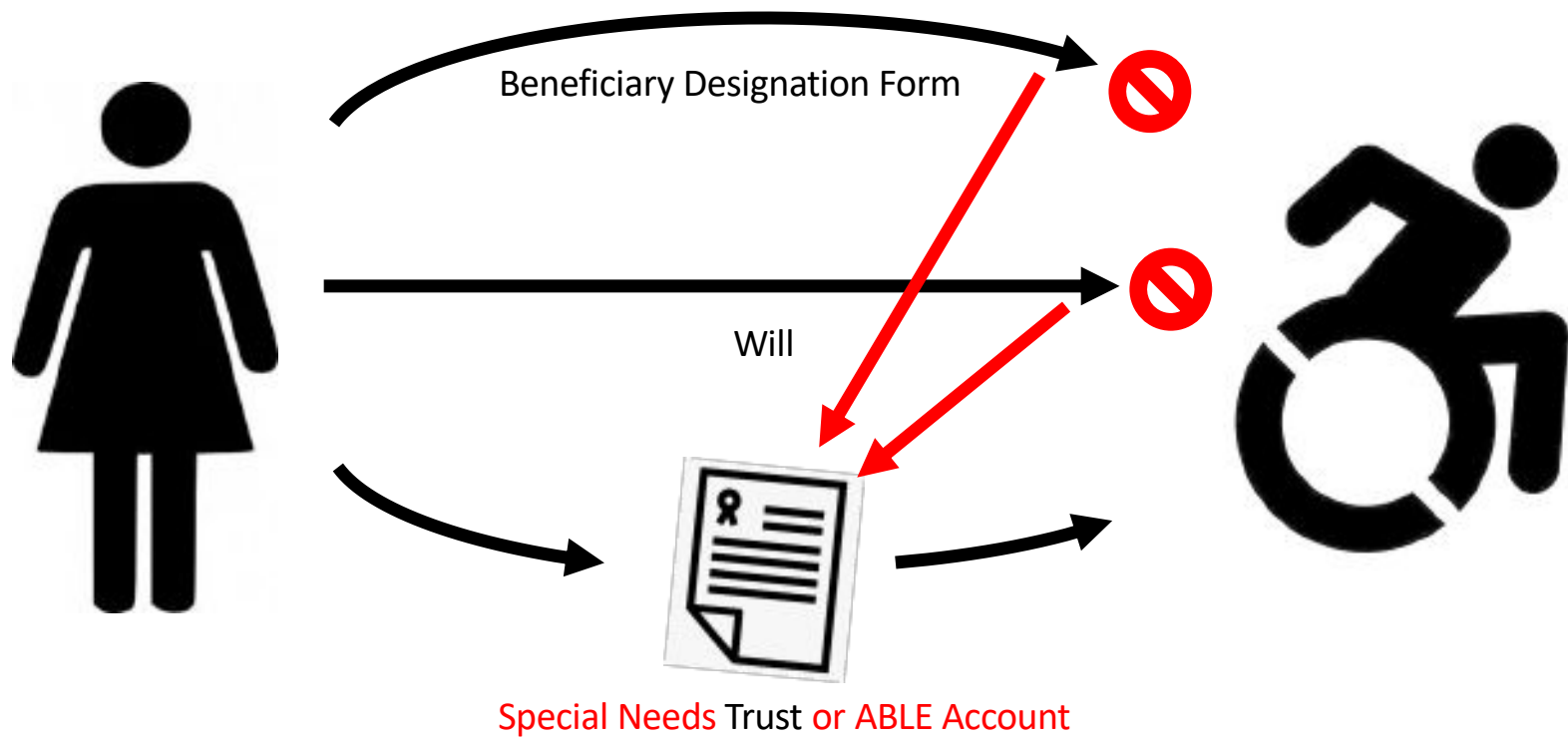
- Disabled, blind, >65
- Disabled = no SGA (\$1,260/month)
- SSI/Traditional Medicaid = “means tested”
 - Income
 - Earned (\$2:\$1)
 - Unearned (\$1:\$1)
 - ISM (up to 1/3)
 - **Assets < \$2,000 (individual)**
 - Exemptions include primary home (<\$585K), vehicle, personal property, SNT, [most of] ABLE Account
- Medicaid Expansion
 - Income below 138% of FPL (~\$1,342/month)
 - No Resource Limit

SSDI/Medicare

- Disabled, blind, >65
- Disabled = no SGA (\$1,260/month)
- Work History
 - Available to individuals who have paid FICA taxes in the 20 of 40 quarters prior to disability
 - Not “means tested”
- Medicare available when . . .
 - . . . Over age 65
 - . . . Or meets SSA disability definition, 29 months post injury



Transfers in cases of Special Needs





Self-Settled or First Party SNT

- Beneficiary's OWN assets
- Restrictions
 - Irrevocable
 - Sole benefit
 - Disabled
 - Under 65 years of age
 - Established by parents, grandparents, guardian or court
 - Medicaid reimbursement
- Court-ordered (d)(4)(A) SNT, additional requirements
- Alternative includes (d)(4)(C) SNT, such as Developmental Disabilities Endowment Trust Fund, DDEF





ABLE Account - www.washingtonstateable.com



- FEDERAL Statute
 - Stephen Beck Jr. Achieving a Better Life Experience Act of 2014
- STATE Administered
- Eligibility
 - Disability onset before age 26
 - “Functional Limitations” certified by letter from physician
- Money IN
 - \$15,000 per year
 - \$100,000 exempt from SSI benefit reduction
- Money OUT
 - QDE
 - Pre-loaded Debit up to \$500
- Cost
 - Annual fee of \$35.00
 - Annual investment fee of 0.30-0.38 % depending on the investment portfolio



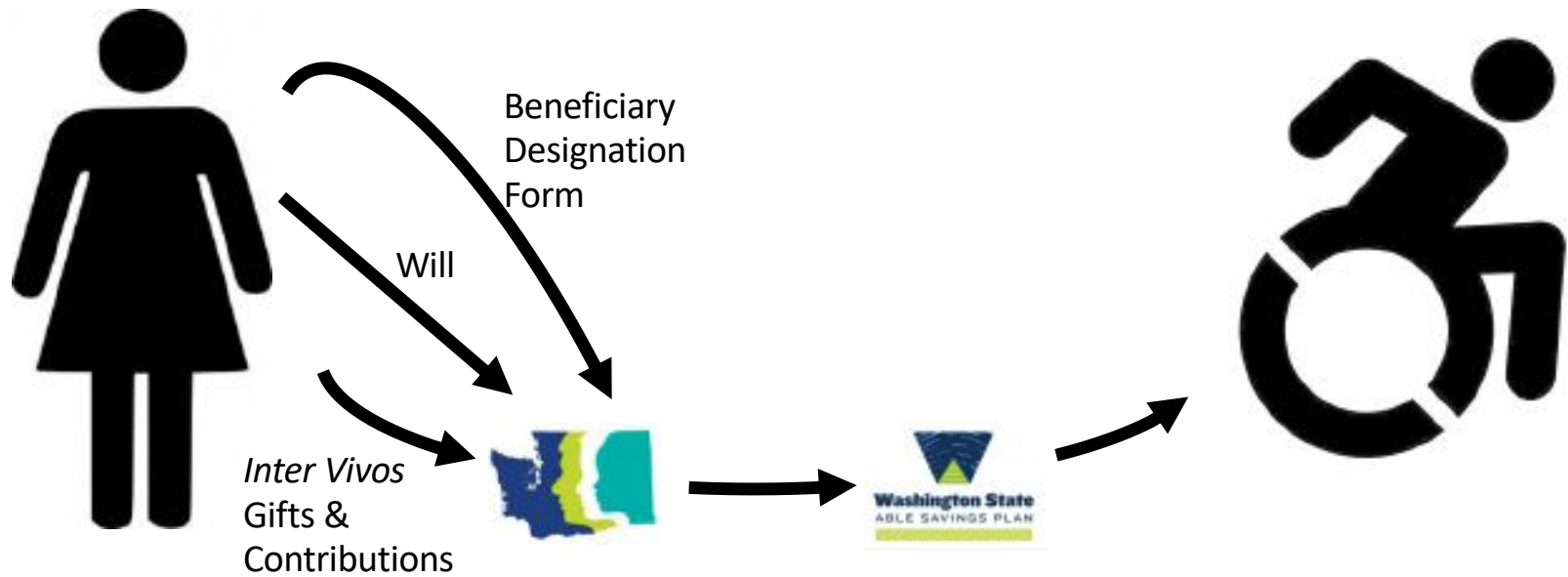
Developmental Disability Endowment Trust Fund - ddetf.wa.gov



- STATE Statute
- NONPROFIT Administered
- Eligibility
 - Reside in the State of Washington.
 - Meet the state definition of developmental disability, as determined by a representative of the Washington State Developmental Disabilities Administration.
 - Be under the age of 65 at the time of enrollment.
- Money IN
 - Any amount
 - No Limit
- Money OUT
 - Distribution request approved by Trustee, the ARC of Washington
 - Cannot be used for room and board for those on SSI
- Cost
 - Enrollment fee of \$600
 - minimum annual management fee \$75.00
 - \$75 tax prep fee
 - Fees are offset by a state match



Putting it all together







Bonus Slides





WA ABLE vs. DDETf

	
<p align="center">Washington State DD Endowment Trust Fund RCW 43.330.431</p>	<p align="center">Washington State ABLE Savings Plan RCW 43.330.460</p>
<p>Who is it for?</p> <ul style="list-style-type: none"> • A person with a developmental disability, under age 65, who has been determined eligible for state DDA services • The condition happened at the age 18 or before • Lives in the state of Washington at the time of enrollment 	<p>Who is it for?</p> <ul style="list-style-type: none"> • A Washington resident eligible for SSI benefits or the Social Security Disability, Retirement, and Survivor’s program or who submits certification that meets the criteria for a disability certification • Condition happened before age 26
<p>What is it?</p> <ul style="list-style-type: none"> • Special Needs Trust • Trust 1 Third Party Trust • Trust 2 Self-Settled Trust 	<p>What is it?</p> <ul style="list-style-type: none"> • A savings plan • A form of 529 Account Tax Favored Qualified ABLE program in IRS code





WA ABLE vs. DDET

	
<p>Are there limits in contributions and spending?</p> <ul style="list-style-type: none"> • No limits on contributions • No limits on spending, except room and board for those on SSI • Does not affect SSI or Medicaid eligibility 	<p>Are there limits in contributions and spending?</p> <ul style="list-style-type: none"> • \$15,000 a year • \$500,000 overall limit • Spending is approved for qualified disability related expenses • First \$ 100,000 does not affect SSI eligibility
<p>Are taxes involved?</p> <ul style="list-style-type: none"> • Earnings from investments are taxed when spent, if the person has taxable income • Qualified Disability Trust 	<p>Are taxes involved?</p> <ul style="list-style-type: none"> • ABLE earnings and withdrawals are not taxed • Distributions not used for qualified disability expenses must pay federal taxes and a 10% tax penalty



WA ABLE vs. DDETf

	
<p>What occurs if the beneficiary passes away?</p> <ul style="list-style-type: none"> Trust 1 Third Party: no pay back required; Distributed according to Trust documents Trust 2 Self-Settled: Medicaid/Medical Assistance Recovery before distribution according to trust documents 	<p>What occurs if the beneficiary passes away?</p> <ul style="list-style-type: none"> Assets transferred to beneficiary's estate and can pay off ABLE expenses Medicaid/Medical Assistance Recovery (regardless of contributor) before distribution of assets to remainder beneficiaries
<p>What does it cost?</p> <ul style="list-style-type: none"> Enrollment fee of \$600; minimum annual management fee \$75.00; and a \$75 tax prep fee. Fees are offset by a state match 	<p>What does it cost?</p> <ul style="list-style-type: none"> Annual fee of \$35.00 Annual investment fee of 0.30-0.38 % depending on the investment portfolio



Healthcare Directive

1. Go to *Caringinfo.org*

2. Click



3. Click



4. Click





ABLE Accounts vs. SNT

	ABLE Account	d4A SNT	3 rd Party SNT
Age (established)	Any	Under 65	Any
Age (disabled)	Under 26	Any	Any
Contribution Limit	\$15,000/year	None prior to 65	None
Account Limit	\$100,000	None	None
Distributions	QDE	Extra & Supplemental	Extra & Supplemental
Control	Beneficiary	Trustee	Trustee
Medicaid Reimbursement	Yes	Yes	Yes