

DEFINITIONS

Microboard

A microboard is a formalized (legal) and self-sustaining circle of support that provides oversight and guidance for an individual with a disability over the course of his or her life. A microboard is a non-stock corporation, duly organized and existing under the laws of the state of Virginia. It supports only the individual with a disability (hence "micro"). No two microboards are the same: each one is unique to the individual it's designed for and is focused on identifying the needs and wishes of the individual. The microboard is a not-for-profit corporation that can be named as Representative Payee, Authorized Representative or Guardian for a person with a disability, thus eliminating the need for changing legal documents when the individual agents become unavailable. The Board of Directors of the microboard may change over time but the microboard itself has perpetual existence so that the person with a disability receives continuous support and advocacy for his or her entire lifetime.

Non-stock entity

A non-stock entity (such as a microboard) is a corporate entity that it is NOT owned by anyone. It is not owned by board members, not owned by shareholders, not owned by officers, etc.

Entitlement program

The kind of government program that provides individuals with personal financial benefits (or sometimes special government-provided goods or services) to which an indefinite (but usually rather large) number of potential beneficiaries have a legal right (enforceable in court, if necessary) whenever they meet eligibility conditions that are specified by the standing law that authorizes the program. The beneficiaries of entitlement programs are normally individual citizens or residents, but sometimes organizations such as business corporations, local governments, or even political parties may have similar special "entitlements" under certain programs. The most important examples of entitlement programs at the federal level in the United States would include Social Security, Medicare, and Medicaid, most Veterans' Administration programs, federal employee and military retirement plans, unemployment compensation, food stamps, and agricultural price support programs

Trusts

1) Special Needs Trusts (SNT) are set up to benefit a person with special needs by holding and dispensing funds designated solely for his/her benefit. The SNT preserves the beneficiary's eligibility for needs-based government benefits such as Medicaid and Supplemental Security Income (SSI). Because the beneficiary does not own the assets in the trust, he or she can remain eligible for benefit programs that have an asset limit. As a general rule the trustee will supplement

the beneficiary's government benefits but not replace them. Examples of supplemental needs are costs for sitters, companions, and dental or medical expenses not covered by Medicare or Medicaid. (Definition provided by Special Needs Alliance)

2) First Party Special Needs Trust, also referred to as a "self-settled trust" or "(d)(4)(A) trust," is funded with assets or income that belong to an individual with a disability and who is the beneficiary of the trust. In order for the assets of this type of trust not to count for Medicaid or SSI purposes, federal law requires that the beneficiary must be under the age of 65 when the trust is created and funded; the trust must be irrevocable and provide that Medicaid will be reimbursed upon the beneficiary's death or upon termination of the trust, whichever occurs first; and the trust must be administered for the sole benefit of the beneficiary. Typically the funding comes from a personal injury settlement or inheritance the beneficiary receives directly. (Definition provided by Special Needs Alliance)

3) Third Party Special Needs Trust, frequently referred to as a supplemental needs trust, is funded with assets belonging to a person other than the beneficiary. In fact, no funds belonging to the beneficiary may be used to fund the trust. Typical funding comes from gifts, an inheritance from parents or grandparents, and proceeds of life insurance policies. This trust has no provisions to pay back Medicaid upon the trust's termination; rather, the person creating the trust decides how the trust estate is distributed when the beneficiary dies. (Definition provided by Special Needs Alliance)

It is imperative you have an attorney with knowledge/experience in these types of trusts. You will also have to decide who will be trustee and who will invest the money held in the SNT. Keep in mind that family members may, or may not, be qualified to do either task (and may not live long enough). Many families might choose a bank as trustee; however bank trustees typically have a minimum fee of \$2,000/year and this could seriously deplete the individual's assets since their trust will (at least at first) be relatively small.

4) Pooled Trust involves pooling together resources of multiple individuals with disabilities and then using the combined resources to reap benefits. Pooled trusts gather and merge resources from the individual trust accounts of all the trust beneficiaries into a single, larger amount of available capital to invest. Non-profit organizations establish and manage pooled trusts and also may serve as a trustee or co-trustee. They are in charge of combining and investing individual pooled trust funds. The organization maintains a separate trust "sub-account." . (Definition provided by Special Needs Alliance)

Many states have non-profits who manage pooled SNT. Virginia has several options including the Virginia Beach Community Trust, the Commonwealth

Community Trust (each with different fee schedules), ARC of Northern Virginia Personal Support Trust and Norfolk Community Trust. **Trustee**

A Trustee is an individual person, bank, or other company, which administers property in accordance with a written trust agreement. The Trustee has a legal obligation to administer the property solely for the purposes specified in the trust document.

Will

A Will is a legal document containing instructions as to what should be done with one's money and property after one's death. A Trust can be part of a Will.

Guardianship

The Guardian is a person appointed by a court to look after, and be legally responsible for, someone who is unable to manage his or her own affairs. They are held accountable to a court. Guardianship can be inclusive or specific to meet the individual's needs (medical, financial, etc.). A guardian shall not be liable for the acts of the incapacitated person unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person. Responsibilities can include (but not limited to):

- 1) They shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.
- 2) A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.
- 3) A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.
- 4) A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the

incapacitated person's best interest and exercise reasonable care, diligence, and prudence.

5) A guardian shall have authority to make arrangements for the funeral and disposition of remains, including cremation, interment, entombment, memorialization, internment, or scattering of the cremains, or some combination thereof, if the guardian is not aware of any person that has been otherwise designated to make such arrangements. A guardian shall have authority to make arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.

Power of Attorney

Power of Attorney (P/A) is a written document signed by a competent person granting to another person authority to conduct the signer's business affairs.

Durable Power of Attorney is P/A authorization that does not terminate if the signer later becomes incapacitated.

Conservator

A Conservator is basically the same as a Guardian. The process for designating a Conservator is very similar to guardianship with the courts determining eligibility after review of supporting documentation. A Conservator of the estate would be someone managing the financial aspects whereas a Conservator of the person would focus on medical or personal needs.

Authorized Representative

The Authorized Representative (AR or Authorized Rep) is a substitute decision maker for a person with a disability. The designation is agency-specific and each agency might have different criteria for its Authorized Representative. The designation cannot transfer to other venues in his or her service delivery system.

Representative Payee

The Representative Payee (Rep Payee) is a person who acts as the receiver of United States Social Security Disability or Supplemental Security Income for a person who is not fully capable of managing their own benefits (i.e. cannot be their own payee).

Circle of Support

A “circle of support” or “circle of friends” is intentionally built, pulled together, around a person – often a person with a disability, but the focus person might be someone else who’s vulnerable (someone who is elderly, for example). If you’re the focus person, a circle of support is a group of people who care about you and who you can trust, who like you and believe in you -on “good days” and “bad days”, and who support you and treat you as an equal.