

Planning for Individuals with Special Needs:

Demystifying One of the Most Important Things You Will Ever Do

Virtual Seminar Presented by:
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THANK YOU!

Thank you all for taking the time to participate today!


A special thank you to the Essex County Surrogate's Office for putting together this virtual event!

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What We Will Cover

- Important reasons to do estate planning to protect those with Special Needs
 - Special Needs Trusts
- Guardianships for those with Special Needs

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Michelle A. Ferrer, Esq. MBA
 Founding Member
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Michelle's practice includes creating estate planning documents such as wills, trusts, and other ancillary documents. The estate plans range from outright wills to more complex tax-minimization trusts.

She is experienced in advising high net worth individuals on sophisticated estate planning techniques, as well as gift tax analysis and planning. Michelle has assisted families, business owners, executives, and closely-held family businesses, in conserving, managing and transferring wealth, while minimizing transfer taxes.

Ms. Ferrer's practice also includes a full range of services related to Special Needs Planning and Guardianships. Promoting a strategy that focuses on early planning, she assists clients in developing a strategy to protect assets, plan for incapacity, and protect those with special needs.

Michelle is fluent in Spanish.

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Sandip Pandya, Esq.
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Sandip R. Pandya's legal experience, before opening Pandya Law Firm, LLC includes working as an associate attorney at The Law Office of Sharon Riverson Mark, P.C., focusing on elder and estate law. Following law school, Sandip was a law clerk in the Superior Court of New Jersey, Hudson County Vicinage.

Sandip's experience in guardianship matters includes serving as counsel for Plaintiff's seeking guardianship over loved ones, as well as serving in the capacity of court-appointed attorney and temporary guardian for alleged incapacitated persons. Sandip has experience in complex matters involving financial exploitation of vulnerable adults.

Sandip is fluent in Gujarati and his current practice focuses on serving the needs of individuals and families in the areas of guardianship, elder and estate law, as other areas of civil practice.

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Benefits and Decision-Making for Those with Special Needs

- o Planning for those with Special Needs
 - Did you know that if you gift or bequeath assets to someone who qualifies for needs-based governmental benefits (such as Medicaid or SSI), they may be disqualified as a result?
 - Did you know that once your child turns 18, you lose the ability to make decisions for a child (even if that child has special needs preventing them from making their own decisions)?

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What is a Special Need?

Any physical, emotional, behavioral, or learning disability or impairment that requires additional or specialized services or accommodations (such as in education or recreation)

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Public Benefits

- o Statistics show that individuals with disabilities are living longer
- o Public benefits are often necessary for these individuals
- o Public benefits are often needs-based, meaning that the resources of the person with disabilities are considered in determining whether needs-based assistance will be given
- o There is no guarantee that an individual will be eligible for public benefits, or that those benefits will be sufficient, or that they will be available (once they are eligible) for the person's lifetime

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Available Resources:

- o When a child is a minor, typically the parents' income is considered in determining needs-based assistance, BUT
- o Once a child turns 18, the parents' income and resources are typically not considered in determining needs-based public assistance
- o The individual may be eligible for needs-based assistance upon evidence of disability and evidence of low income and resources of the child (not the parents).

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Available Resources Continued:

- o Available resources – any accounts in the child's name, even UGMA (Uniform Gifts to Minors Act) Accounts, naming an SSI or Medicaid recipient as the beneficiary of a retirement account or life insurance policy, having an account with a POD or TOD naming the recipient as a beneficiary
- o What about inheritance from third parties such as grandparents, siblings, etc. – leaving a recipient an inheritance outside of a trust, may have the inadvertent consequence of making that person ineligible for needs-based benefits

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Special Needs Trusts

- o Protects eligibility for governmental benefits
- o Provides for a higher quality of life
- o Provides framework for care and management of assets
- o Allows parents/guardians to express their desires
- o Protects assets from creditors and predators
- o Extends life of assets

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SNTs Help Preserve Eligibility

- o Purpose of SNT is to preserve eligibility for needs-based governmental assistance, and provide additional assets that supplement the public benefits in order to enhance the person's quality of life
- o Basically the Trustee will have full discretion as to the distributions to the beneficiary; the beneficiary may not have any discretion over distributions (if they do, then it may be counted as a resource in determining eligibility for needs-based assistance)

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Two Main Types of SNTs:

- 1st Party – AKA self-settled; funded with assets of the individual (usually the proceeds of a personal injury award or inheritance received prior to establishing a 3rd party SNT); beneficiary must be under 65; must be established by a parent/guardian, grandparent or court; disabled person can be the only beneficiary; Medicare and Medicaid liens must be paid before funding; a "pay-back" provision is required.
- 3rd Party – Established with assets from a third party for the benefit of the disabled person (usually funded by parents, or other family members to gift assets to the beneficiary); you can name other children or beneficiaries as remainder beneficiaries after the death of the special-needs beneficiary; no requirement to be irrevocable, to pay liens, no "pay-back" provision, and no age limit for the beneficiary.

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Third Party SNT

- May be established by:
 - Will – testamentary
 - Inter vivos – during your life
- Depending on your circumstances and attorney may recommend one or the other.

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Choosing a Trustee:

- o VERY IMPORTANT CHOICE.
- o Must ensure that the Trustee is someone who has good record-keeping skills; they must pay things on behalf of the individual (not to the beneficiary for the beneficiary to then make payments on their own)
- o Consider professional or corporate trustee when appropriate
- o Could choose an individual (who really knows the needs of your child) and a professional to serve as co-Trustees; good balance

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Avoiding Mistakes

- o Avoid costly mistake of
 - Disinheriting the child
 - Relying on siblings of the child to provide for the child with special needs
 - Failing to provide privacy for the child with special needs
- o Update beneficiary designations on all accounts that have one

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Guardianships

- o What is a guardian and how should they act?
 - A guardian is a surrogate decision-maker who is entrusted with protecting the ward (the person with special needs adjudicated incapacitated) and acting on behalf of the ward (attempting to act in such a way as they believe the ward would act), while also attempting to act in the ward's best interest.
 - If a ward can express his/her wishes, then the guardian should try to fulfill those wishes; if a ward cannot express his/her wishes, then the guardian should act in the ward's best interest.

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Guardianship Process

- Formal process
 - Filing Requirements
- Should I hire an attorney?

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Requirements for Guardians

- New rules effective May of 2021
 - New requirements
 - Background checks
- Annual reporting

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Court-appointed Counsel

- The role of Court-appointed Counsel
- The role of Temporary Guardian, *pendente lite*, if necessary

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Key Take AWAYS

- Parents and Grandparents should update their estate planning documents to ensure that they are not leaving assets outright to a special needs beneficiary
- Act early so that there is no lapse in decision-making authority; once a special needs child is close to turning 18, consider commencing the guardianship process

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Questions?



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