

As you go through this process, expect to have feelings of:

- frustration
- anxiety
- anger
- resentment
- happiness
- gratitude
- joy

Hopefully this guide will make your journey through the probate process an easier one. If this information sparks questions for you, your probate lawyer, trust officer or case manager should be able to address them for you. We extend our best wishes for “your journey”.

Sincerely,

Buddy Brennan, MS, SLP, CCM, CLCP, NCG  
Thomas J. Kleinhenz, RN, CCM, NCG  
Executive Directors  
Rehab Assist, Inc.

Rehab Assist, Inc. is owned and operated by licensed clinicians and certified case managers.

Buddy Brennan is a licensed speech pathologist and Thomas Kleinhenz, a registered nurse. They have co-owned and operated Rehab Assist since 1994.

Rehab Assist, Inc. serves clients on a local and national level.

You have endured a long, difficult journey through litigation to secure

funds for your disabled loved one. A settlement has been reached after years of waiting. Finally, your dreams of new equipment, therapies, and a modified van or even an accessible home can come true!!

Now that money has been secured for your family member, it's as easy as calling people and buying what is necessary. Right?

Wrong!!

You now begin the probate process. Can all your wishes for your loved one come true? For the most part yes, but knowing and being aware of the unique nuances of the probate system and its twists and turns can save you much frustration, anger and money.

This guide is meant to serve as a basic tool to make you aware of the probate system, and hopefully help you understand your journey through it. It is based on the experiences of many families and their unique experiences with the probate system.

#### **Litigation ends ... the probate process begins!**

A settlement has been reached for the future needs of your family member. You will have this money placed in a **trust** fund through a bank.

#### **The Trust Officer**

A person called a **trust officer** will oversee the trust money and how it is spent. This person should be very aware of your loved one's unique situation and the future needs he/she will encounter. The people who oversee the trust fund are called **trustees**. Remember, you have the right to choose the professionals who will best serve your loved one's needs.

#### **The Probate Lawyer**

A probate lawyer is a legal specialist who goes before a judge to gain approval for release of funds for services for the disabled individual. These requests for services from the court are called **petitions**. Once

again, your probate lawyer should be acutely aware of all your loved one's needs and be able to have access to the court system on a regular basis. This is very important in the event or need of an emergency procedure or therapies or services.

The probate lawyer may also suggest use of a "Special Needs Trust" for certain situations.

### **The Probate Judge**

Frequently, trust officers and probate lawyers appear before a probate judge who is assigned to your case. The judge's duty is to oversee and **protect the rights** of the disabled person. He/she will take the person's needs and desires into consideration first and foremost. This is their primary role. They oversee all expenditures and services for the disabled individual. The trust officer and probate lawyer are accountable to the judge.

### **Guardian Ad Litum (GAL)**

For complex or very involved cases, a guardian ad litum may be appointed by the court to protect the interests of the disabled. This professional will oversee the development of the case and monitor the probate lawyer, trust officer, case manager, etc.

### **Case Manager / Rehabilitation Consultant**

A case manager can be very useful in the process of evaluating the individual's needs, creating budgets and coordinating special services for the disabled individual. The case manager can offer expertise in the areas of special education, therapy services, creating annual budgets for disability related services, negotiating for services and assessing care giving or facility performance.

**Accessible Housing:** A home purchased for the disabled individual should enhance and maximize their ability to have the highest quality of life. The home should provide access to all areas and contain any special modifications (ramps, modified bathrooms, showers, etc.) that enhance the individual's life. The court looks at the disabled person's needs first and foremost. In most instances, limitations will be set by the court, and a

petition will need to be submitted for the court's review. Any property that is purchased or constructed would be expected to grow in value for use as a future asset for the disabled individual.

**Special Equipment:** All equipment will need to be validated by the court. Special pieces of equipment which are costly may require multiple estimates to be submitted. Items such as modified vans, physical therapy equipment or specialized wheelchairs will require a petition from the probate lawyer along with the estimates for the item from multiple dealers.

**Medical Supplies / Daily Needs:** Other items such as additional caregivers, therapies, diapers, doctor's visits, etc. will need to be planned for. Creating an **annual budget** for these necessary items allows the court to be aware and pre-approve them for the disabled individual.

Other duties might include acquiring products, supplies, attendant coverage and even assisting in the purchase of an appropriate home. They offer expertise in disability management that legal or financial experts do not have.

### **A Map for the Journey....**

A basic plan for establishing an estate for the disabled individual would be as follows:

Step 1: A petition is filed with the client requesting the appointment of a guardian of the person (GOP) and guardian of the estate (GOE or trustee).

The GOP is responsible for making decisions affecting the physical and mental well being of the loved one. The GOE is responsible to manage, invest and disburse the finances of the disabled individual's estate.

The judge will conduct a hearing to determine who the proper parties are to act as GOP and GOE. Once the judge makes this decision, an order to that effect is entered and "Letters of Office" are issued.

Step 2: After the guardians are appointed, a hearing to determine a budget is held. The budget provides for expenditures for the benefit of the disabled on a regular basis.

Step 3: Any extraordinary expenditures for the disabled person must be approved by the court. **Remember, the GOE may not disburse any funds without a court order authorizing it to do so.**

Step 4: Once a year, the GOE (trustee) must file an annual accounting with the court, and must appear before the judge for approval of that accounting. The GOE must report in detail all expenditures and receipts over the last year.

### **Important Things to Remember**

- Whenever possible, be involved in the process. Your input is valuable. Be sure to develop a good working relationship with the trustee (or trust officer), case manager, guardian ad litem and judge.
  - Realistically evaluate your loved one's needs, not only today but in the future. A sensible budget of expenditures will ensure their financial security in the future.
- Be open to the advice of the trust officer, lawyer, judge and case manager. They are professionals and are held to high standards to protect your loved one's interests. Although family and friends may give you well meaning advice, they are not in the business of financial planning for disabled individuals.
- Be as concise as possible when requesting additional funds for your loved one. Remember, every trip into court costs money. Legal fees,

trustee fees, GAL fees and case manager fees are all paid for by the disabled person's estate.

### **Things you will encounter**

Your loved one has unique needs because of his/her disability. How are they addressed in the process?

Special Education: If your loved one has a physical, mental, communicative or psychological deficit, special education is most likely necessary. If you have not already, you should consider the following:

- Determine your loved one's needs through a comprehensive assessment.
- Search for the most reputable school districts specialized in handling various types of special education. Ask your trust officer to acquire a case manager or rehabilitation consultant to assist you in your search.
- If a residence change is being considered, special education needs should be the critical factor in your choice of location.