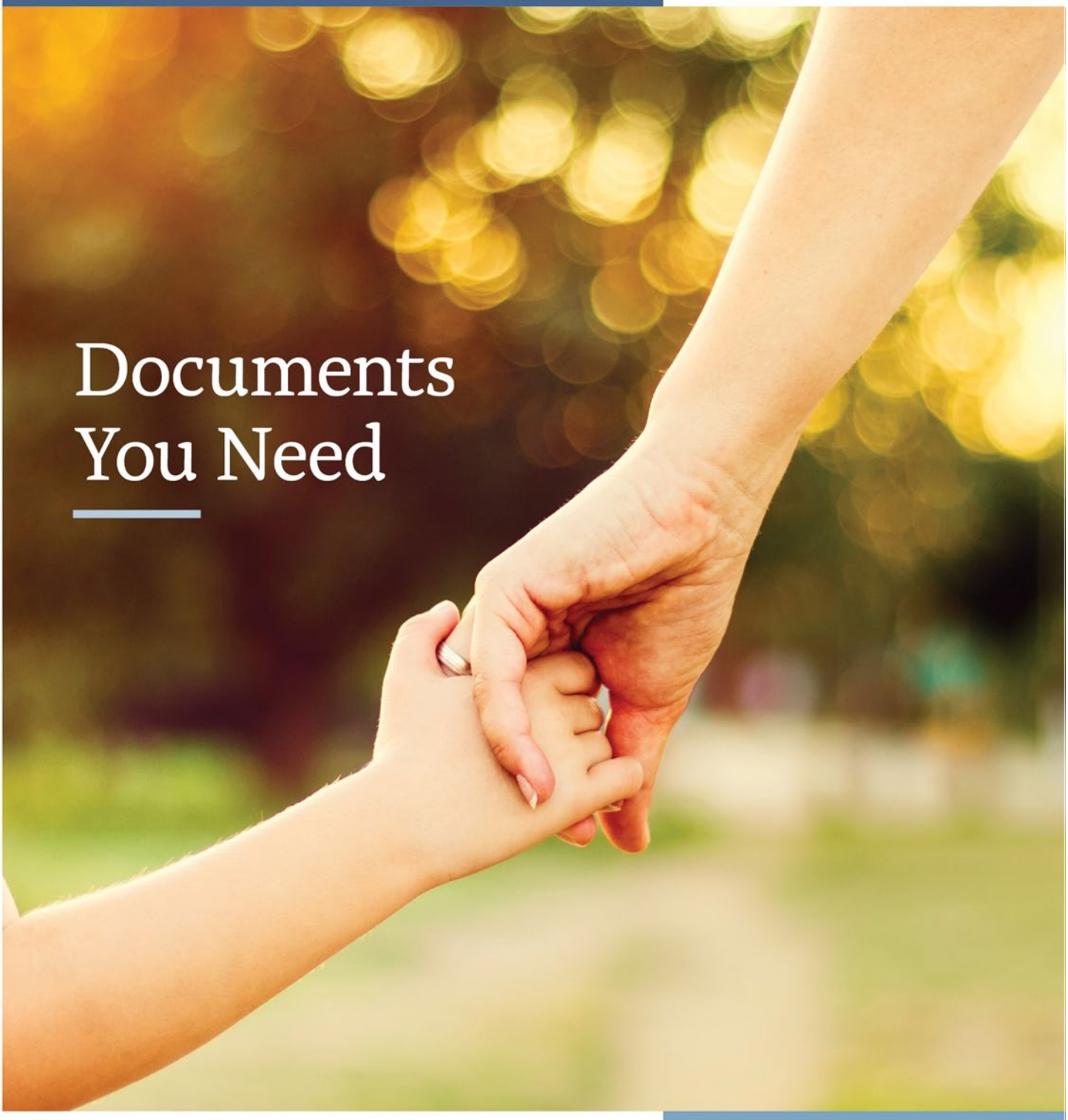
THE NAUTILUS GROUP®

Documents You Need



Documents You Need

Estate planning is a structured process in which individuals engage qualified professionals and advisors to assess their personal, financial, and family circumstances in order to develop a coordinated strategy for protecting loved ones and preserving assets. A well-crafted estate plan typically includes the execution of key legal documents designed to:

- Ensure that assets are distributed in accordance with the client's wishes.
- Minimize exposure to transfer taxes (including estate, gift, and generation-skipping transfer taxes).
- Safeguard assets from creditors, misuse, or poor financial management.
- Reduce the administrative burden and cost associated with probate and other legal proceedings

For families that include a loved one with special needs, estate planning takes on increased importance. Individuals with special needs frequently require lifelong support, and their eligibility for essential means-tested government benefits, such as Supplemental Security Income (SSI) or Medicaid, may be adversely affected if planning is not handled with care. Without proper legal and financial structures in place, the individual's access to necessary services and future care may be placed at risk.

It is therefore critical to work with advisors who have specialized expertise in special needs planning. These professionals can help families navigate complex issues and avoid common pitfalls, while also identifying opportunities to maximize protection and support.

In addition, once a plan is implemented, it should be reviewed regularly to ensure continued alignment with the family's evolving needs, changes in laws or regulations, and any shifts in financial or personal circumstances.

Following is a list of documents that should be considered as part of an estate plan for families with an individual who has special needs.

Last will and testament/revocable living trust (RLT)

Without wills/RLTs, the assets of a deceased individual (excluding assets that pass by a beneficiary designation) will pass according to a state's intestacy statutes. Generally, at the death of a surviving spouse, state intestacy statutes result in assets passing to children outright (if over the age of majority). Accordingly, relying on state intestacy laws could cause an individual with special needs to receive a substantial sum of assets outright, disqualifying the individual from certain government benefits. For this reason, it is imperative that families with a beneficiary who has special needs execute a will/RLT that provides for the individual in a manner that will not disqualify him/her from government benefits. (Usually, this involves leaving assets to a special needs trust for his/her benefit.) If a RLT is utilized, a "pour over" will is necessary to fund the RLT with any assets remaining in the testator's estate at death. The benefit of utilizing RLTs include reduced probate expenses and increased privacy (if assets are funded to the trust during the grantor's lifetime). The increased privacy provided by a RLT may reduce the opportunity for a family member or another individual to interfere, in hope of a financial gain, with the trust's distribution structure. Additionally, a RLT created by a caregiver provides a mechanism that maintains availability to the caregiver's assets and access for a beneficiary with special needs if that caregiver becomes disabled or incapacitated.

Financial power of attorney

A financial power of attorney gives the designated agent the right to manage and control the assets of the principal (the person who executes the document). This power can become effective upon the execution of the document or upon the principal's incapacity. A financial power of attorney can give the designated agent the power to continue to manage assets in a manner that benefits an individual with special needs, including the power to fund a trust for his/her benefit. To validly create a power of attorney, the principal must have capacity and understand the powers he or she is granting to the agent at the time of signing the document.

Medical power of attorney

A medical power of attorney designates an agent to make healthcare decisions for the principal if he/she is unable to do so. Having a document in place detailing the principal's wishes upon his/her incapacity can alleviate some of the stress and burden that may exist for family members who would otherwise be forced to make decisions without direction as to the principal's wishes. As discussed above, to validly create a power of attorney, the principal must have capacity and understand the powers he or she is granting to the agent at the time of signing the document.

Medical power of attorney for an individual with special needs

For parents of minors with special needs, it is also prudent to consider executing a medical power of attorney to ensure that a successor caregiver can make healthcare decisions on the child's behalf. It will be necessary to ensure that the medical power of attorney complies with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) so that the successor caregiver of a minor with special needs has access to his/her health information.

Special needs trust (third party and/or first party)

Special needs trusts are used to provide for the supplemental needs of a trust beneficiary in a manner that does not disqualify an individual with special needs from government benefits. Assets of a special needs trust are generally available to provide for the beneficiary's needs that are not otherwise provided by government programs (such as education, entertainment, and vacations). Third-party special needs trusts are created by someone other than the individual with special needs and are funded with assets not belonging to him/her. There are several types of first-party special needs trusts, but generally they are funded with the assets of the individual with special needs and may require that "payback" provisions be included to reimburse, at death, the public benefit programs that provided support and services to the beneficiary during his or her life.

Letter of intent

Though not a legally binding document, a letter of intent may be one of the most important components of an estate plan as it provides fiduciaries and other caregivers with specific instructions regarding the day-to-day care of a person with special needs and allows the caregivers to communicate their hopes and goals for him/her. Trustees and guardians of an individual with special needs can refer to the letter of intent when making daily decisions regarding asset management and care. The medical history of the individual can be included in the letter of intent to ensure that all fiduciaries and representatives have a clear understanding of his or her healthcare needs and required maintenance. The letter of intent can also provide a detailed background as to the type of government benefits available or provided in the past, including prior forms and contact information for case workers or other officials involved in providing for his or her care.

These materials are prepared by The Nautilus Group®, a service of New York Life Insurance Company, and are made available to all Nautilus Group member agents, and as a courtesy, to select agents of New York Life Insurance Company. This tax-related discussion reflects an understanding of generally applicable rules and was prepared to assist in the promotion or marketing of the transactions or matters addressed. It is not intended (and cannot be used by any taxpayer) for the purpose of avoiding any IRS penalties that may be imposed upon the taxpayer. New York Life Insurance Company, its agents and employees may not provide legal, tax or accounting advice. Individuals should consult their own professional advisors before implementing any planning strategies. SMRU 5018580 Exp. 7/31/2028