

# SPECIAL NEEDS AND LONG-TERM CARE PLANNING CHECKLIST FOR GEORGIA

This Checklist is designed to illustrate various important issues. It also indicates where planning for special needs and long-term care may vary from traditional estate planning. It is designed as a starting point and does not substitute for seeking counsel from a qualified estate planning or elder law attorney. This Checklist does not constitute the creation of a legal relationship nor the rendering of legal advice.

## DURABLE POWER OF ATTORNEY

- Utilized Georgia's Statutory Form under the Uniform Power of Attorney (implemented beginning July 1, 2017) that allows for greater ability to force acceptance by third parties, particularly banks and other financial institutions?
- Avoided initialling "*All Preceding Subjects*" under the Grant of General Authority Section unless understand and agree with all General Authority Powers that are being incorporated by reference?
- Avoided initialling any Power under the Grant of Specific Authority Section unless fully aware of the positive and negative implications for the ability of that power to alter the estate plan?
- Initialled the "*Create, amend, revoke, or terminate an inter vivos trust*" if have the desire to allow to create or amend an irrevocable trust ("first party" Special Needs Trust, Pooled Special Needs Trust, "third party" Special Needs Trust, "Sole Benefit" Special Needs Trust) for either yourself or another person?
- Initialled the "*Create, amend, revoke, or terminate an inter vivos trust*" if have the desire to create or amend a revocable trust for another person (that is not your spouse) that may need to qualify for government benefits?
- Initialled the "*Make a gift, subject to the limitations of O.C.G.A. § 10-6B-56 and any Special Instructions in this power of attorney*" power to allow the principal to make gifts at all?
- If initialled to allow gifts, then added details in the Special Instructions section to allow gifts to exceed the annual exclusion limit (currently \$15,000 in 2019)? Gifts in excess of that amount would be critical to fund any Special Needs Trusts created.
- Initialled the "*Create or change rights of survivorship*" power to allow for the revision of any deed by community spouse to avoid principal residence going to Medicaid recipient spouse upon community's spouse's death? That could risk exposing property to Medicaid Estate Recovery unnecessarily.
- Initialled the "*Create or change a beneficiary designation*" power to allow a Special Needs Trust to be on the beneficiary designation form rather than the individual directly? This could avoid disqualification of benefits and/or lack of management over funds.
- Initialled the "*Exercise fiduciary powers that the principal has authority to delegate*" power to accept the risk for the potential redirection of property under an inter-vivos general or limited power of appointment?
- Initialled the "*Disclaim or refuse an interest in property, including a power of appointment*" power with the understanding that doing actions under this power could result in a transfer penalty under Veterans Benefits or State Medicaid?

## ADVANCED DIRECTIVE FOR HEALTH CARE

- Utilized Georgia's Advance Directive for Health Care statutory form (implemented beginning July 1, 2007) that replaces utilizing separate Health Care Proxy and Living Will documents?
- Advance Directive contains HIPAA release (or there is a standalone HIPAA release document)?

## QUALIFYING FOR GOVERNMENT BENEFITS

- Contact an estate planning or elder law attorney that is familiar with Medicaid or Veterans Benefits?
- Created a balance sheet of all assets (both spouses if married)?
- Reviewed with an elder law attorney which resources (assets) are countable versus non-countable (exempt) for the state where the application will be submitted?
- Reviewed with an elder law attorney what the spousal impoverishment rules affecting the community spouse are for the state where the application will be submitted?
- Reviewed with an elder law attorney whether the state is an "income cap" state that may need the utilization of a *Qualified Income Trust* or "*Miller Trust*" to qualify?
- Reviewed with an elder law attorney the "spend down" strategies that may be available to qualify under the asset limits of the means tested government benefits program?
- Reviewed with an elder law attorney the bank account statements for the prior 60 months (5 years) for Medicaid or prior 36 months (3 years) for Veterans Benefits to assess the risk of transfer penalties?

## WILL

- Reviewed all accounts, retirement savings, life insurance policies, annuities, pensions and other financial information?
- Reviewed family structure to clarify bloodline, adoptive and marital relationships?
- Determined what passes by will versus what passes directly by beneficiary designation or trust?
- Have community spouse create a testamentary trust (i.e. under the will rather than a standalone revocable trust) to pass along property to the spouse receiving means-tested government benefits?
- Utilized Credit Shelter/Bypass Trusts rather than QTIPs to avoid mandatory income distributions?

## TRUSTS

- Confirmed that any existing trusts are irrevocable if the grantor is attempting to qualify for means based government benefits?
- Confirmed any Special Needs Trusts that are "first party" include a payback provision?
- Confirmed any Special Needs Trusts that are "third party" do not include a payback provision?
- Checked whether any Special Needs Trusts have a completely discretionary distribution standard?
- Checked whether any Special Needs Trusts do not have a "HEMS" support standard or a "5 and 5" power giving access to income and/or principal?