



THE LAW OFFICES OF
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FAMILY WEALTH & LEGACY COUNSELLORS

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Are You Ready for Your Child with Special Needs Eighteenth Birthday?

As a parent, you provide and care for your child from the moment of his or her birth. You know your child's likes, dislikes, learning ability and medical history. However, the day your child turns eighteen, you, as the parent, do not retain the same legal authority to make decisions for your child as you had the day before. Pursuant to the laws of Florida, when your child turns eighteen he or she is considered an adult. This is true for neuro-typical children as well as for children with special needs. So, in the case of a child with special needs, even though your child may be entirely dependent on you, when your child turns eighteen, he or she is legally independent.

With this legal independence comes a host of new rights for your child and the termination of many rights you previously had as a parent. At eighteen, in the eyes of the law, your child is capable of making all of his or her own personal and legal decisions - this includes the right to vote, marry, and enter into binding contracts. Practically speaking, most children with special needs are not equipped or prepared to make these decisions upon turning eighteen. In fact, having these legal rights can often lead to administrative hurdles, legal issues, and even exploitation of the child. In order to retain the personal and legal authority you had as parent prior to your child's eighteenth birthday you will need to petition the court to be appointed as the guardian advocate of your child.

There are a number of misconceptions surrounding guardianships. Many parents believe because they are the parent of a child, and therefore the natural guardian, they do not need to be appointed legal guardian in order to make decisions for their child who is now legally an adult. Others believe a guardianship may increase or impose an obligation to pay for the needs and expenses of their child or that the State may gain some control or advantage and be able to move the child to another living arrangement or interrupt benefits. These beliefs are not true.

In Florida there is a process called Guardian Advocacy which may be appropriate for many families with child with special needs who are turning eighteen. A Guardian Advocate is appointed when a child with a developmental disability turns eighteen years old. To qualify for Guardian Advocacy, the child with the developmental disability must have a disorder or syndrome that is attributable to and defined by Florida Statutes as: retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of eighteen; and constitutes a substantial handicap which can reasonably be expected to continue indefinitely.

The appointment of a Guardian Advocate allows the person appointed to make personal and legal decisions for the child with special needs who is now legally an adult. The Guardian Advocacy process is a way for the parent of a child with a developmental

disability to obtain guardianship over the child when he or she turns eighteen without having the individual declared incompetent. Further, the Guardian Advocacy process can be less expensive and less invasive than a full guardianship proceeding.

The Law Offices of Hoyt & Bryan assists families in the protection of their loved ones by focusing their practice in the areas of Estate Planning, Probate and Trust Administration, Elder Law including Medicaid and VA Planning and Special Needs Planning, Pet Planning, Business Succession Planning and Real Estate. The founders, Peggy Hoyt and Randy Bryan, are both dual board certified by the Florida Bar in Wills, Trusts and Estates as well as Elder Law. Hoyt & Bryan is the only law firm in Florida with the distinction of two attorneys with these certifications. We offer many complimentary educational workshops each week in our Learning Center at The Law Offices of Hoyt & Bryan and monthly workshops in the Auditorium of One Senior Place in Altamonte Springs. For more information please contact our office at 407-977-8080 or visit our website HoytBryan.com.