

# QUESTIONS WITH CONTI

Estate Law &  
Other Important  
Legal Matters



## MICHELE P. CONTI

ESTATE PLANNING & ELDER LAW ATTORNEY

- **Can my spouse make decisions or act on my behalf if I do not have a power of attorney?**

No, without an executed power of attorney appointing your spouse as Agent, he/she cannot automatically act on your behalf which includes selling a joint asset like your house. It is important to have both a Financial and Medical Power of Attorney with a contingent Agent listed.

- **In Pennsylvania, if I die without a will, does everything automatically pass to my spouse?**

No, not unless your spouse is a joint owner and/or a beneficiary designated on a non-probate asset (retirement, life insurance, annuity). If you die without a will, Pennsylvania Intestacy Law dictates who inherits your assets which may mean that someone you did not intend to inherit will.

- **What trumps: my will or an account that has a beneficiary listed?**

If you have an account that has a beneficiary(ies) listed, when you die that beneficiary inherits that specific account. If you have assets that do not have a joint owner or beneficiary designation, then that account passes through your will, or if you die without a will, then the Pennsylvania specifies who inherits and how much they inherit.

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7880 Steubenville Pike // (724)784-0239

- Estate Planning
- Long Term Care Planning
- Guardianships
- Estate & Trust
- Special Needs Planning
- Asset Protection Plan

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- **What is the difference between a will and a trust?**

A will is a legal document that guarantees your probatable assets – those without beneficiary designations and joint owners – pass through the probate process upon your death. The will is not effective until death. Typically, real estate is the largest probatable asset that we have. Whereas, a trust, if funded properly, allows the assets in the trust to avoid probate when you die. A trust lives with you during your lifetime and can be either revocable (able to be amended) or irrevocable. There are many things to consider when deciding which is the best option for you.

- **Is it a good idea to put my child's name on my house deed?**

It depends. Normally we can structure the estate for a trust to hold the deed allowing your beneficiaries to receive a step-up in basis when you pass. This allows them to avoid capital gains tax. Additionally, we want your home protected should your child experience creditor issues, bankruptcy or a divorce in the future.

- **What happens if my Agent under my Power of Attorney becomes incapacitated?**

If your Agent becomes incapacitated you should revise your choice of Agent in your document. However, if you're unable to make the appropriate change, proof of the incapacity will be required for your successor Agent to act. If you do not have a successor Agent listed, your family will file a Petition for Guardianship with the court so that a guardian will be appointed to act on your behalf. We always recommend appointing a primary and successor Agent in your powers of attorney (financial and medical) to avoid this issue.

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### **Can I limit the power of attorney to specific situations?**

A power of attorney may limit the agent's authority at any time whether you do it initially or through an amendment. The powers of the Agent may be limited in scope but also in the specific tasks that they perform. You can allow your Agent the most advanced "hot" powers or limit the Agent to general powers.

### **Does the power-of-attorney expire upon the death of the grantor?**

Yes. A power of attorney (financial and medical) and the powers granted to the Agent ends upon the Principal's death. This is for a general power of attorney and a durable power of attorney.

### **When I buy a rental property, should I buy it in my individual name or in the name of an LLC?**

When purchasing a rental property, if you buy it in your individual name, you may be opening yourself up to personal liability in the event of a future judgment over the amount the property is insured for. However, if you create and take title in the name of the LLC, you'll avoid the necessity of paying any future realty transfer tax to obtain this liability protection, as well as personal liability should you be sued in the future.

### **What is the difference between an LLC and a trust?**

A trust has limited, if any, protection from creditors on a personal level. Whereas, the LLC offers personal liability protection which separates any and all liability from yourself. The liability will flow through the company first, and, if created correctly, won't flow through to you personally.

### **What happens when a member of an LLC dies?**

If the operating agreement is structured properly, the operating agreement will designate the member's interest and where it shall pass at his/her death. It's just like naming a beneficiary. Otherwise, if there isn't an operating agreement, or if the agreement is silent on the distribution at death, the interest will pass through the owner's estate.

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### SPECIAL NEEDS QUESTION

- **My child has autism and collects governmental benefits. Do I need to leave his share to my daughter when I die?**

It's concerning to think that leaving a loved one with special needs an inheritance may disqualify them from the benefits they rely upon; however, with proper estate planning your son can have the best of both worlds.

Utilizing a third party supplemental needs trust will allow your son to continue to receive his benefits and enjoy an inheritance after you pass. It's important to remember that you will also have to coordinate your direct beneficiary designations to reflect his third party supplemental needs trust.

However, one of the biggest mistakes we see is when a parent includes a child in their will who is collecting or may collect benefits down the road. If this happens and the beneficiary is under the age of 65, the beneficiary may create and fund a first party special needs trust with the inherited funds; nonetheless, if the beneficiary is over the age of 65 years old when they inherit, there may be many complications and a potential loss or repayment of benefits.

Planning for a loved one with special needs requires the expertise of a learned practitioner who understands the nuances of estate planning and the various rules surrounding governmental benefits.

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### • What Are Supplemental Needs Trusts (SNTs)?

SNTs are specialized trusts designed to help individuals with disabilities to manage their financial resources without jeopardizing eligibility for government benefits like Supplemental Security Income (SSI) and Medicaid. There are two primary types of SNTs:

1. **First-Party Trusts (Self-Settled Trusts):**
  - Funded using the beneficiary's own assets.
  - Must be established by a court, parent, guardian, or the beneficiary themselves.
  - Requires Medicaid payback upon the beneficiary's death.
  - Beneficiary must be under 65 years old when the trust is created.
  - Must be irrevocable.
2. **Third-Party Trusts:**
  - Funded using assets from someone other than the beneficiary (e.g., a parent or relative).
  - No Medicaid payback requirement.
  - No age restrictions.
  - Can be either revocable or irrevocable.

### • What Is a Pennsylvania ABLE Account?

Authorized by the PA ABLE Act in 2016 and operational since 2017, ABLE accounts are tax-advantaged savings accounts for individuals with disabilities. Modeled after 529 college savings plans, ABLE accounts offer a cost-effective alternative to SNTs, allowing beneficiaries to control their funds while maintaining eligibility for benefits.

#### Key Differences Between SNTs and ABLE Accounts

Feature	ABLE Account	Supplemental Needs Trust (SNT)
Onset of Disability	Must occur before age 26	No age requirement
Age of Beneficiary	No age requirement to open an account	First-Party Trusts: Must be under 65 when established
Establishment	One account per beneficiary	Can have multiple trusts for one beneficiary
Fees	Financial institution fees	Attorney and trustee fees
Contribution Limits	\$19,000 annually; subject to state caps	No contribution limits
Investment Options	Limited; can be adjusted twice a year	No restrictions
Medicaid Payback	Required upon death	Required for First-Party Trusts; not for Third-Party
Taxes	Income earned is tax-free for qualified expenses	Taxable depending on type and income generated

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"Conti Law Inc. is the best! We were so happy with Michele Conti! She answered all our inquiries and explained EVERYTHING to us! We couldn't be more pleased with Michele and her staff!  
Highly recommend!"

- BARBARA T.

**BE PREPARED.**  
**PLAN AHEAD.**  
**ALL WITH US.**

Make an appointment and come into our new location  
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