

Fiercely Loyal®

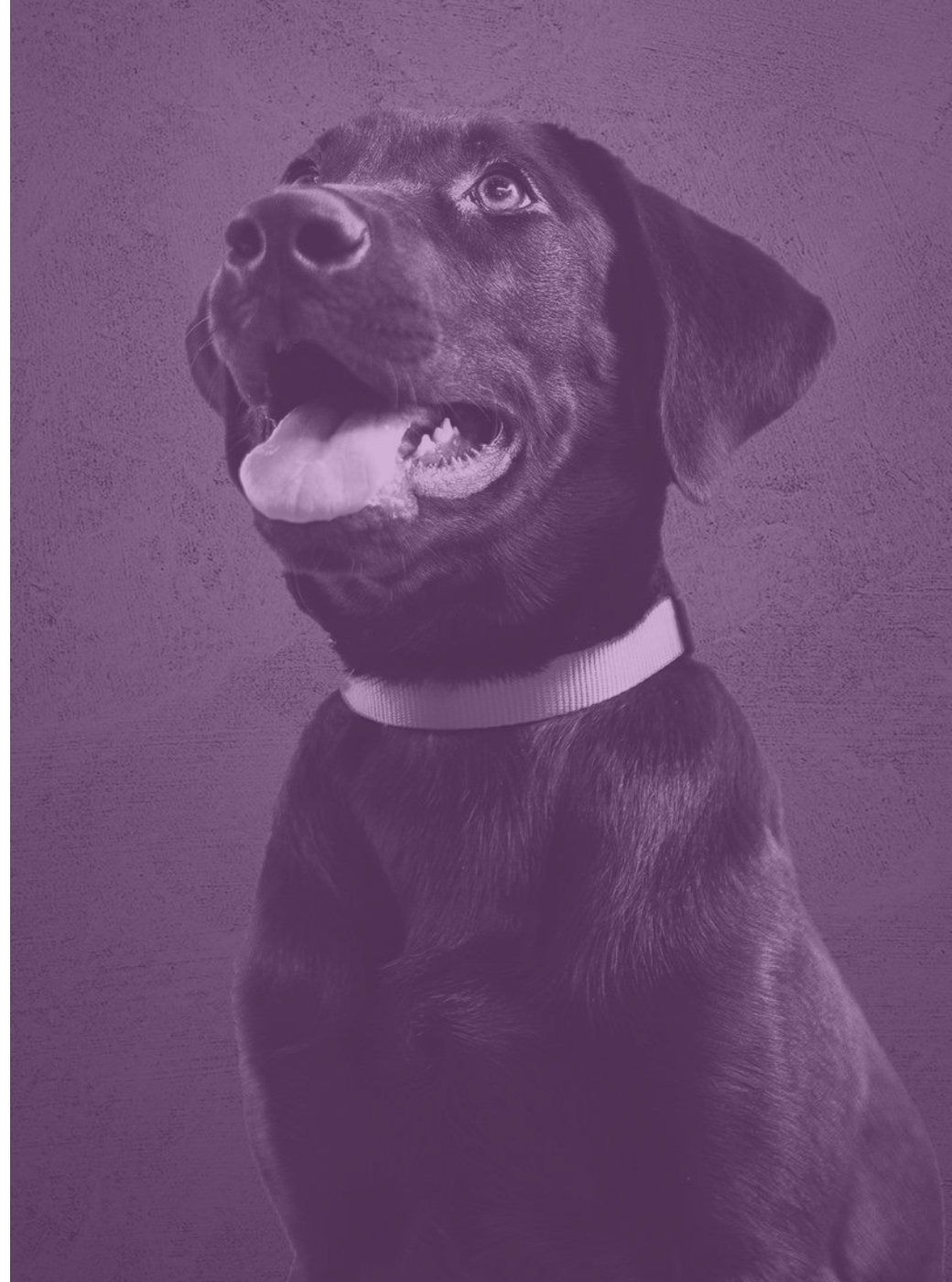


Planning a Road Trip in 2022?

Special Needs Estate Planning and Decision Making

Rebecca Miller

March 7, 2022



Mile Markers of a Plan

- Benefits Attainment
- Preservation of Resources
- Guardianship/Conservatorship
- Incapacity Documents
- Care Coordination



Paving a New Road in Disability Planning

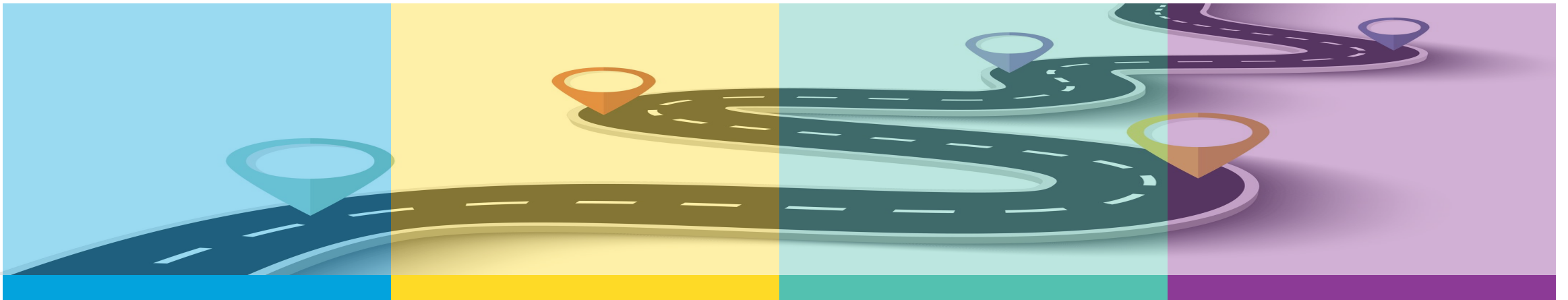


PAST: Focus **only** on government benefits.

NOW:

- Focus on **quality of life** and **preserving resources**;
- Focus on **specialized estate planning** with SNT
- **Tailored and adjustable**

BENEFITS ATTAINMENT



Supplemental Security Income (SSI)

QUALIFIED? Elderly (65+), Blind, or **Disabled*

* Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.



Unpacking SSI

- Maximum payment of \$794
- In-kind support reduces award up to \$265
- Benefits are denied if the individual's income exceeds \$1310 monthly, because they are engaging in substantial gainful activity (SGA)



Social Security Disability Insurance (SSDI)

Childhood Disability Benefits (CDB), based upon the parent's work record.

It is possible for people with disabilities to qualify for SSDI based on their own work record.

- No income limit; HOWEVER, more than \$1310 per month is SGA.

The Breakdown



SSI/MEDICAID

- Keep assets below \$2000

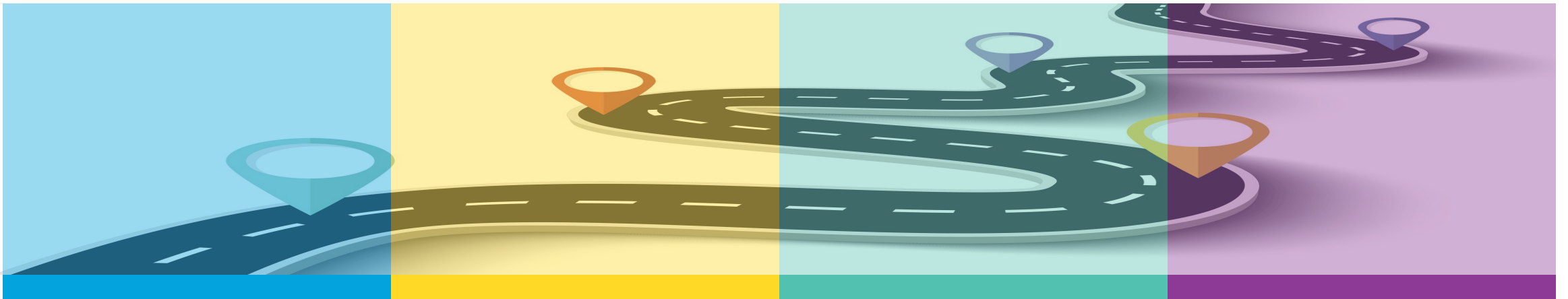
SSDI/MEDICARE

- Awareness of and planning for CDB benefits by parents

Be very aware of substantial gainful activity

Establish disability as early as possible

PRESERVATION OF RESOURCES



The Road We Are On

(d)(4)(A)

Beneficiary must be under age 65

Established by the beneficiary, parent, court, guardian

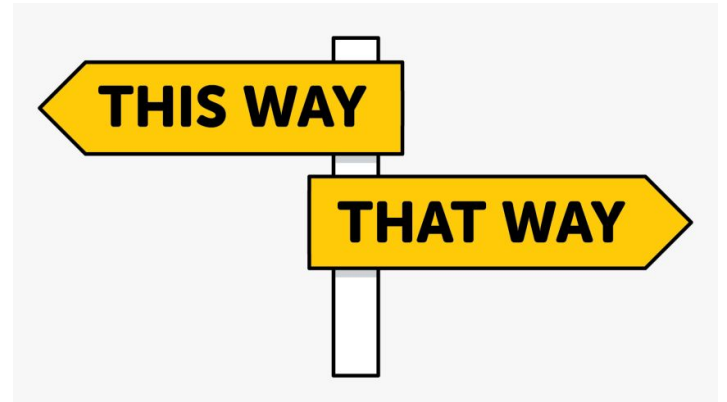
Funded by individuals assets

(d)(4)(C)

Individual with a disability age 65+

Established by the beneficiary, parent, court, guardian

"Pooled Trust" – pooling of funds for management



The Road We Are On

(c)(2)(B)

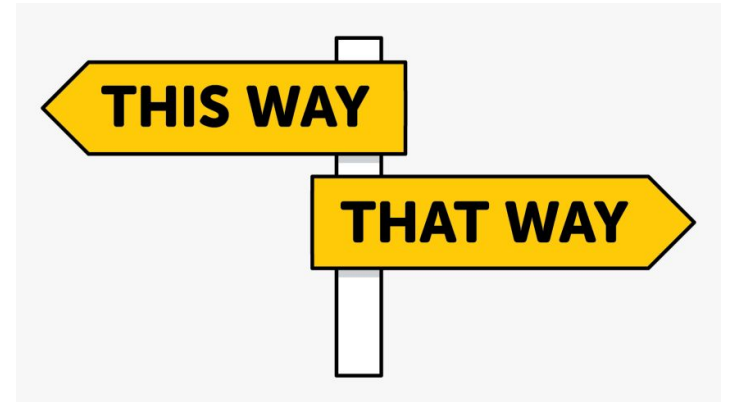
Grantor transferring assets to the trust gets the benefit of having assets without a transfer penalty / 5 year lookback

Third Party

Established by someone other than the beneficiary

Standalone trust or trust under will

**NO PAYBACK REQUIRED FOR
MEDICAID BENEFITS AT DEATH**



The Better Path

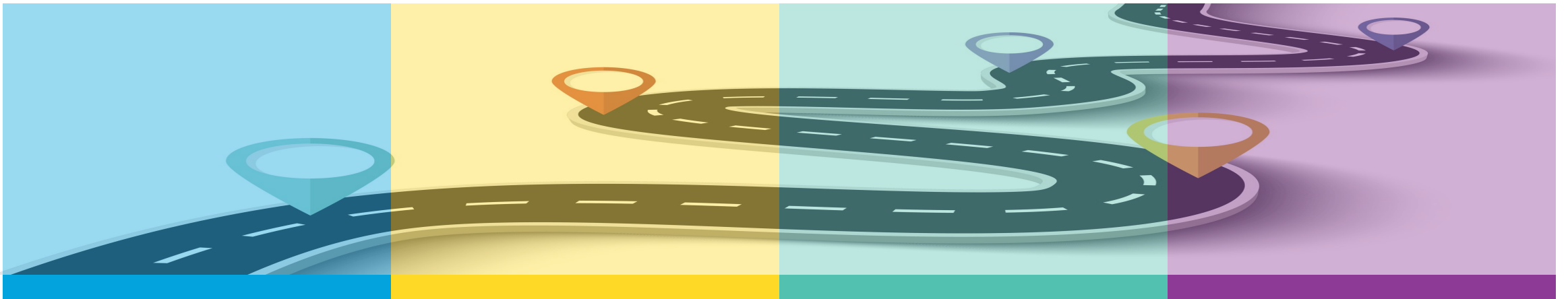
In 2015, Tennessee created the “achieving a better life experience” Program!

The program...

- Allows individuals with disabilities to work or earn income without losing benefits
- Acts as a savings program to put aside money for qualified expenses
- Provides an opportunity to invest with tax-free earnings to help participants maintain independence



GUARDIANSHIP/CONSERVATORSHIP OR INCAPACITY DOCUMENTS



**MENTAL CAPACITY
PHYSICAL ABILITY
INDIVIDUAL
PERSONALITY
WISHES**



**Guardianship /
Conservatorship**



**Incapacity
Documents**

Guardianship/Conservatorship Journey



FILE A PETITION: filing fee varies depending on county/state

MEDICAL EXAM: physician/psychologist's sworn statement (within 90 days of petition filing)

NOTIFICATION OF HEARING: Ward is served legal documents

APPOINTMENT OF GUARDIAN AD LITEM (GAL): impartial party to investigate facts and report to the court to determine Ward's welfare

HEARING: generally 7 – 60 days from service or appointment of GAL

APPOINTMENT OF CONSERVATOR

Incapacity Documents

FINANCIAL POWER OF ATTORNEY

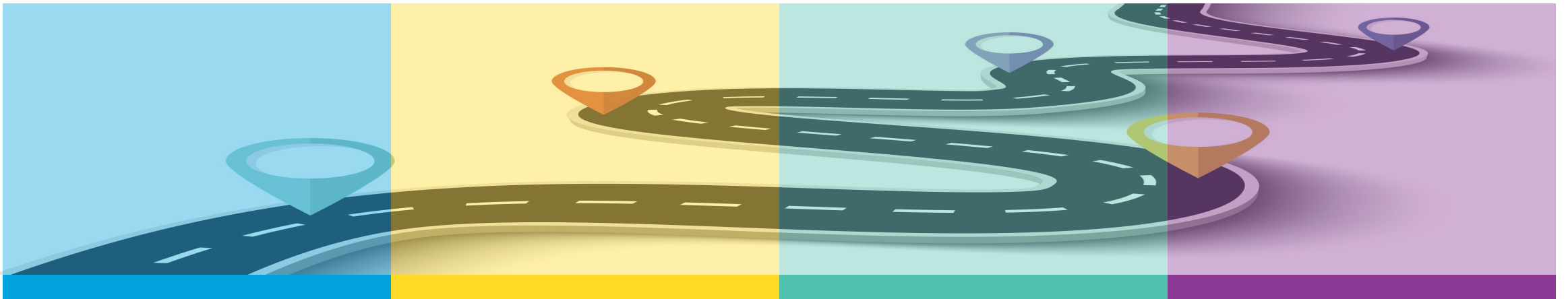
- Appoints agent to manage financial or business affairs for another person

ADVANCE DIRECTIVE FOR HEALTH CARE

- Appoints agent for health care; may indicate treatment preferences; may provide end of life choices



CARE COORDINATION



Tips from the Road Warriors

- You may face roadblocks with housing and long term care
- Diagnosis and medical records are vital
- Apply and appeal
- Let your political representative hear from you



Circle of Support



chamblisslaw.com

PERSONAL:

Family & Friends
Religions Family
Coaches
Advocates

PROFESSIONAL:

Teachers
Care Managers
Paid Caregivers
Trustees

Fiercely Loyal.

Tennessee's Supported Decision Making Legislation

April 2, 2018, Governor Bill Haslam signed Tennessee's Supported Decision Making legislation.

Old Statement: "The court has an affirmative duty to ascertain and impose **the least restrictive alternatives** upon the person with a disability that are consistent with adequate protection of the person with a disability and the property of the person with a disability [emphasis added]." *TN Code 34-1-127.*

New Legislation: "Least restrictive alternatives" means techniques and processes that preserve as many decision-making rights as possible for the person with a disability." *TN Code 34-1-101*

The New Law DOES...

- Clarify that “least restrictive alternative”, required by current law before conservatorship is imposed, means using techniques that protect decision-making rights. This is important to ensure that people with disabilities are supported to make as many of their own decisions as possible, rather than by techniques that allow others to make decisions FOR them.
- Build upon what is already in law, reinforcing the goals of maximizing independence for people with disabilities and minimizing the risk of abuse, neglect, and exploitation.

The New Law DOES NOT...

- Create a new form or agreement for people to use for implementing Supported Decision Making.
- Impose any new restrictions on courts or change the way the conservatorship process is supposed to be working currently.

Your Loyal Team

Rebecca Miller

Of Counsel

D. 423.757.0292

[E. rmiller@chamblisslaw.com](mailto:R.miller@chamblisslaw.com)

Rebecca works with clients in both Tennessee and Georgia on elder law and special needs planning and care coordination, as well as solving disputes involving large estates and complicated assets. Clients count on Rebecca to guide them through conservatorships, both contested and uncontested, sometimes advising on whether a conservatorship is even necessary and who might be ideal to appoint. She is also routinely appointed by courts to serve as guardian ad litem or attorney ad litem and has served as conservator and guardian as well. Rebecca seeks cost-effective solutions and also strives to offer strategic alternatives to best meet her client's goals. Rebecca's strong understanding of family dynamics plays a crucial role, especially when she's serving as a Rule 31 Listed General Civil and Family Mediator.



Chambliss, Bahner & Stophel, P.C.

Liberty Tower

605 Chestnut Street, Suite 1700

Chattanooga, TN 37450

423.756.3000

chamblisslaw.com**Fetch More****Fiercely Loyal®**

Disclaimer

This presentation is provided with the understanding that the presenter is not rendering legal advice or services. Laws are constantly changing, and each federal law, state law, and regulation should be checked by legal counsel for the most current version. We make no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the information contained in this presentation. Do not act upon this information without seeking the advice of an attorney.

This outline is intended to be informational. It does not provide legal advice. Neither your attendance nor the presenter answering a specific audience member question creates an attorney-client relationship.

Chambliss, Bahner & Stophel, P.C.

Liberty Tower
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450
423.756.3000

chamblisslaw.com

