



LLC

Parent forms a limited liability company (LLC) to own the property for use by the family member with a disability



What is this?

Parents can set up a [Limited Liability Company \(LLC\)](#) to own the property (home) for a family member with a disability. This could be a property purchased specifically for the family member with a disability or the current home of the parent(s) and family member with a disability.

There are a variety of LLCs that can be set up. Parent(s) should seek qualified legal and tax counsel to determine which variety of LLC will work best for their situation. In addition to the property (home), the LLC should have sufficient, readily available funds to provide for the upkeep of the home.

LLCs are created by the [Founding Member/s](#). The parent(s) can act as the Founding Member(s) and can maintain control during their lifetime if they so choose. The Founding Member(s) determines who benefits from the home. The Founding Member(s) maintains control over the LLC. One or more members (sometimes called [Managing Members](#)) manages the company's day-to-day business and has authority to contract on behalf of the company.

The LLC should include an [Operating Agreement](#) that designates who benefits from the home and funds held by the LLC upon the death of the founder or when the home/funds are no longer needed by the person with the disability. If a Trust has been set up, a Transfer on Death Designation Affidavit can place the LLC into the trust.

Forming an LLC to own the property will allow for the preservation of the property (home) for the benefit of the family member with a disability until the family member with a disability passes away or can no longer live in the property. It will also allow for the protection of the home after the death of owner. Without a well-written Operating Agreement, any informal agreement about how the property will be used can be ignored, or subject to creditor risks. As families undertake this process, they need to seek qualified legal and tax counsel.

View a story of a family who has set up an LLC to hold the property:

- [The Hurst Family](#)
- [The Molloy Family](#)

What Circumstances Make this a Possible Fit?

- ✓ The parent(s) has sufficient, readily available funds to provide for the upkeep of the home.
- ✓ The parent(s) wants to maintain a measure of control over the property (home)
- ✓ The parent(s) wishes to transfer the property to other heir's if/when the property (home) is no longer in use by a family member with a disability

What Does This Mean to My Family Member with a Disability?

This option provides for continuity of the home for the use of the family member with a disability. An operating agreement can stipulate what will happen with the property if it can no longer meet the needs of the family





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member with a disability due to deteriorating health or changes in the neighborhood. The family member with a disability must pay fair market rent to the LLC if they are receiving SSI.

What Does this Mean to My Estate?

The parent(s) will and/or the Operating Agreement must clearly address the LLC, or assets in general, to avoid the family member with a disability directly inheriting the LLC. If qualified counsel legal and tax is involved, an LLC is an effective way to easily transfer property for estate planning purposes.

Where Do I Get More Information?

- ✓ Contact the National Academy of Elder Law Attorneys to locate Medicaid planning attorneys: <https://www.naela.org/>
- ✓ Contact the local bar association and ask for a referral to an attorney who specializes in LLC formation. Any [Operating Agreements](#) should be written working in conjunction with an attorney with experience with Medicaid. See Information and Resources: [Legal Services](#).



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	Pros	Cons
Extent of Control	<ul style="list-style-type: none"> ✓ An LLC provides the ability to set parameters under which the property (home) is maintained for the family member with a disability. ✓ An LLC makes it relatively easy to transition between service providers who provide day-to-day support. 	<p>The LLC holds responsibility for day to day property management. Any Member can fulfil this responsibility directly or the Member can hire a property management company for this purpose.</p>
Effects on Public Benefits	<p>If properly set up, it will not impact benefits, but the family member with a disability must pay rent.</p>	<p>If not set up properly, the property (home) may be deemed an asset of the family member with a disability and impact their access to benefits.</p>
Longevity	<ul style="list-style-type: none"> ✓ An operating agreement can stipulate what will happen with the property if it can no longer meet the needs of the family member with a disability. ✓ An LLC allows for the property (home) to be preserved as an asset within the family. 	<ul style="list-style-type: none"> ✓ If there is no Operating Agreement, the Managing Member can use or dispose of the property in any way that they see fit. ✓ If the Operating Agreement is not properly worded, it could be very easy for heirs to sell the property, without following the' intent of the parent(s). ✓ If there are changes requiring a need to transition out of home (i.e. health, deterioration of neighborhood) it may be more difficult to sell the home if the Operating Agreement is not properly structured. ✓ If the parents' beneficiary (sibling without a disability) is also the Managing Member, there may be a conflict of interest and the sibling may evict the family member with a disability and/or not honor the intent of the parent(s).
Property Management Responsibility	<p>Becomes the responsibility of the Member(s) or their designee.</p>	<p>If the final beneficiary (sibling without disabilities) is also a Member there is a conflict of interest, and this may impact the quality of property management and capital improvements they provide.</p>
Financial Considerations	<p>Neither the property (home) nor the LLC funds are subject to Medicaid Estate Recovery.</p>	<ul style="list-style-type: none"> ✓ The LLC should include sufficient funds to ensure capital improvements and upkeep. ✓ Funds are subject to liability. Insurance can mitigate this risk.
Long Term Flexibility	<p>A properly worded operating agreement can stipulate what will happen with the property if it can no longer meet the needs of the family member with a disability.</p>	<p>The Operating Agreement must be correctly worded or it could be construed that the home is an asset, or make it very difficult to sell.</p>
Tax Issue	<ul style="list-style-type: none"> ✓ The cost of the home can be depreciated by the LLC. ✓ Generally, LLCs are a very easy tax process if a single family or married couple are the sole owners/members of the LLC. ✓ The expenses of the LLC may be deducted within certain limits. 	<ul style="list-style-type: none"> ✓ The LLC may be required to file tax returns. ✓ The net income of the LLC is taxed at the individual members' tax rate.

