



WINTER 2016

HELPING HAND

An Update from the Special Needs Practice Group

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EARLY INTERVENTION

Special Needs Planning

Medical Malpractice

SCHOOL AGE

Special Education Advocacy

Transition to Adult Services

Special Needs Planning

Guardianship and Alternatives

ADULT

Special Needs Planning

Adult Service Advocacy

Special Needs Trust Admin.

Guardianship and Alternatives

EXTENDED FAMILY

Special Needs Planning

Elder Law

MassHealth Planning

PROBATE AND FAMILY COURT PRACTICE

Estate Planning Petitions

Adult Support Petitions

Guardianship/Conservatorship

PRACTICE GROUP MESSAGE

By Frederick M. Misilo, Jr., Esq.



Thirty years ago, I graduated from law school. As many readers know, I spent ten years prior to graduation from law school working in the disability field at various levels of responsibility – from direct support positions to agency leadership ones. Despite over forty years of professional experience, every day I am still growing and learning about how best my law practice can meet the legal needs of individuals with disabilities and their families.

I began doing “special needs planning” before it was called special needs planning. Now there are blogs, websites, products, “experts,” and a dizzying array of products and services dedicated to special needs planning of one sort or another. That is probably a good thing. There is value in the evolution and progress in any field of endeavor. An example of this evolution of thought is the recent establishment of the MassMutual Center for Special Needs at The American College of Financial Services. The mission of the center is to elevate the knowledge of financial professionals in the area of special needs, equipping them to advocate for the economic security of individuals with disabilities across all stages of life. Now financial professionals are able to take significant coursework in the area of special needs to earn a certification in special needs planning from The American College of Financial Services. Another example of a relatively new and promising effort in special needs planning is the Center for Future Planning, sponsored by The Arc of the United States. The Center for Future Planning seeks to provide reliable and practical information to assist individuals with intellectual and developmental disabilities and their families as they consider the future in such areas as person-centered planning, decision-making, housing options, estate planning, and financial planning. Individuals, siblings, parents, and others can obtain valuable assistance in developing a future plan through the website of the Center of Future Planning. I am very grateful to have had the opportunity to serve on the Advisory

Committee of the Center for Future Planning since its inception. These two examples are just part of the significant progress in the field of special needs planning, which will hopefully raise professional standards and awareness of special needs among financial planning professionals as well as make future planning more understandable and accessible for individuals with disabilities and their families.

I was recently asked by a longtime colleague what I thought the most challenging yet overlooked part of special needs planning is. This isn’t an easy question. There are many obvious challenges faced by families in developing a future-oriented special needs plan, including the need for a well-drafted supplemental needs trust, competent trustees, sufficient resources to last the lifetime of the beneficiary with special needs, and the uncertainty of important lifeline government benefits such as Supplemental Security Income, Social Security disability income, Medicaid and Medicaid waiver services, and Medicare, etc. But the most challenging yet often overlooked issue can be found in what Dr. David Braddock of the University of Colorado and the University of Chicago revealed in *The State of the States in Intellectual and Developmental Disabilities: Emerging from the Great Recession*, 10th Edition, distributed by the American Association on Intellectual and Developmental Disabilities. In his research, Dr. Braddock and his colleagues point out that merely 13% of individuals with intellectual and developmental disabilities live in formal, out-of-home residential placements; 71% of individuals reside with a family care provider; and 16% of individuals live alone or with a roommate. It is clear – and this doesn’t (or shouldn’t) come as a surprise to those who have familiarity with the disability community – that family members are the backbone of services and support to individuals with intellectual and developmental disabilities. Despite the large amount of government spending for ID/DD nationally (in FY 2013, the combined state and federal spending was \$61,458,718,366), family members shoulder the most responsibility

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in providing residential support for individuals with intellectual and developmental disabilities in the United States. So, in my mind, the biggest challenge that is often overlooked in special needs planning is ensuring that there is sufficient support for family care providers in a special needs plan. Accomplishing this requires allocating as many resources as possible to a well-drafted and competently managed supplemental needs trust. For those families who contemplate that a brother or sister will provide residential support in the future, consider what would happen if that sibling predeceases the brother or sister with a special need. Creating a backup plan such as a life insurance policy on the life of the future caregiver sibling or identifying another sibling who is ready, willing, and able to step in is often overlooked. Of course, if there are no family members able or willing to provide residential support, there is the potential for residential support in a formal, out-of-family setting. These placements are increasingly in shared living or adult family support settings. While often appropriate, it

is wise to have a well-funded supplemental needs trust to pay for advocacy and additional support services to ensure that the needs of the individual served are being met.

The feature article of this edition focuses on the importance of reviewing your estate plan on a regular basis. If you haven't done so, I hope you will consider having your estate plan reviewed for all the reasons described in the article. Consider the words of one my clients, who hadn't revised his estate plan since his now-adult children were minors, when he read the will he had signed fifteen years earlier. He exclaimed, "Oh, my God!! I am so glad I didn't die – I can't believe I named HIM as guardian and trustee!" Make sure you haven't named an inappropriate person or haven't allowed your estate plan to become outdated in some other fashion. It is best to do this by making an appointment for a review meeting. **FT**

To contact me on these or any other related issues, my direct line is 508-459-8059 and my email address is fmisilo@fletcherilton.com.

NEWS & ANNOUNCEMENTS

- Congratulations to Fred Misilo who was recently named Co-Chair of the Public Policy and Position Committee of the Arc of the United States.
- Attorney Misilo was also named Chair of the Audit and Compliance Committee of Fallon Health.
- Watch for upcoming news on the implementation of the ABLE Act in Massachusetts as well as the Disabled Child Military Pension Act in an upcoming edition of the Helping Hand.

GROUP PRESENTATIONS

Fletcher Tilton attorneys are available for group presentations on a variety of topics pertaining to special needs planning and transition planning. There is no charge for parent advisory boards, parent organizations and nonprofit organizations. We prefer groups to be no smaller than 20 people.

For more information on group presentations or to set one up for your school or organization, contact Christina Lamb at clamb@fletcherilton.com.

HAS YOUR ESTATE PLAN KEPT UP WITH YOUR LIFE?

by Frederick M. Misilo, Jr., Esq.

In our daily lives, regular checkups are (or should be) routine. Whether it is a visit to the doctor or dentist, an oil change on your car, or service on your furnace, we all gain peace of mind when things seem to be "in working order."

But what about your estate plan? When was the last time it got a checkup? Most estate plans should be reviewed every three to five years. Here are some key reasons to update your estate plan so it reflects developments in your life.

Named fiduciaries are no longer appropriate. Within your estate planning documents, you have appointed individuals who have been nominated to serve important and trusted functions either on behalf of yourself, your children, your estate, or a trust. It is common to name siblings, friends, or professional advisors in these roles. If any of these individuals have become disabled, have died, or are no longer appropriate, it's time to replace them in your documents. Also, if your children were too young to be nominated for these roles when you created your estate plan, you may want to consider whether they are sufficiently mature and capable to be nominated now.

You have acquired assets that have not been incorporated into your estate plan. A critical function of your estate plan is to ensure

that your assets are managed and distributed according to how your estate plan has been structured. For example, if you have purchased life insurance, acquired a second home, received an inheritance, or changed jobs and have a new group life insurance policy since you created your estate plan, it is important to review whether these newly acquired assets are properly incorporated into your estate plan. Failure to do so could have negative consequences such as increased estate taxes, potential loss of government benefits for a family member with special needs, or unnecessary probate administration and/or litigation costs.

Your net worth has increased, resulting in the possibility of increased estate tax liability. Increased wealth creates the possibility of increased estate taxes. This is particularly relevant to married persons who did not plan for the potential of estate taxes when they created their estate plan. This is a trap for the unwary. In Massachusetts, an estate in excess of \$1 million in gross assets is subject to the Massachusetts estate tax. Many people are surprised to learn that their estates face potential estate tax liability when they add up all the assets that are includable in a taxable estate. Any asset that the decedent owned or controlled at the time of his or her death is includable, including the death benefit of life insurance policies,

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Estate Plan, continued from pg. 2

including term policies, owned or controlled by the decedent. By adding credit shelter trusts to your estate plan, your spouse and you can save your estate potentially thousands of dollars in estate taxes.

Your spouse or you have been diagnosed with a significant or progressive disability. A typical estate plan includes a durable power of attorney and health care proxy in which you name one or more persons to act on your behalf. These documents are particularly important, since they empower these persons to make significant decisions for you in case you can't make decisions due to a physical or mental impairment, or can't communicate your decisions due to lost capacity. A spouse is often named as the initial agent, and a successor is also named in case a spouse dies or becomes unable to

perform these duties. If the initial agent has been diagnosed with a serious or progressive disability, it is prudent to revisit whom you have designated as a successor and perhaps consider adding successors as a precaution. Also, asset management and protection options should be considered whenever a significant diagnosis occurs.

So, if you haven't had your estate plan reviewed in the past three to five years, you should – no excuses! A review of your estate plan is easy. An office, phone, or video conference with your estate planning expert is a useful first step to review existing documents and to discuss changes. Make that call today. As we all know – if you put off what you ought to do, you will end up not having enough time to do it properly. **FT**

UPCOMING SEMINARS

ABLE ACT ACCOUNTS & MILITARY SURVIVOR BENEFIT PLANS

February 10, 2016

Speakers: Theresa M. Varnet, MSW, JD

Location: Live webinar sponsored by the Academy of Special Needs Planners

RIVERVIEW SCHOOL TRANSITION WEEKEND

February 12-14, 2016

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Doubletree Hotel, Hyannis, MA

FCSN - VISIONS OF COMMUNITY 2016

March 5, 2016

Speaker: Theresa M. Varnet, MSW, JD

Location: Seaport World Trade Center, Boston, MA

ACADEMY OF SPECIAL NEEDS PLANNERS 10TH ANNUAL MEETING

March 10-12, 2016

Speaker: Theresa M. Varnet, MSW, JD

Location: Ventana Canyon Resort, Tuscon, AZ

MDSC ANNUAL CONFERENCE

March 19, 2016

Speaker: Special Needs Practice Group Attorneys

Location: DCU Center, Worcester, MA

GUARDIANSHIP & ALTERNATIVES

March 24, 2016

Speaker: Geoffrey M. Misilo, Esq.

Location: Seven Hills Family Services Worcester, MA

AN OVERVIEW OF GOVERNMENT BENEFITS

March 29, 2016

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Live webinar sponsored by The Arc of Massachusetts

MINUTEMAN ARC TRANSITION CONFERENCE

April 2, 2016

Speaker: Special Needs Practice Group Attorney

Location: Minuteman Arc, Concord, MA

KENNEDY DONOVAN CENTER TRANSITION CONFERENCE

April 2, 2016

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Kennedy Donovan Center, S. Yarmouth, MA

WILLS AND TRUSTS FOR FAMILIES WITH SPECIAL NEEDS

April 21, 2016

Speaker: Geoffrey M. Misilo, Esq.

Location: Seven Hills Family Services, Worcester, MA

AUTONOMY, DECISION MAKING SUPPORTS, AND GUARDIANSHIP

April 26, 2016

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Live webinar sponsored by The Arc of Massachusetts

For the most current list of events and more details on our events, visit our website fletcherilton.com.

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The Fletcher Tilton Special Needs Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable, trusted advisor committed to providing excellent service to our clients throughout their lifetime. We recognize the importance of treating our clients with respect and dignity.

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