



HELPING HAND

A Monthly Update from the
Special Needs Planning Practice Group

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How to Administer a Special Needs Trust Saturday, October 18, 2008

JULY/AUGUST 2008

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JULY/AUGUST 2008

A MESSAGE FROM THE PRACTICE GROUP CHAIR

By Frederick M. Misilo, Jr., Esq.



This is the summer edition of Helping Hand – the newsletter of the Special Needs Planning Practice Group of Fletcher, Tilton & Whipple, P.C. I hope this newsletter finds you enjoying the height of summer activities!

The lead article in this edition is about bank accounts known as Uniform Transfers to Minor Act accounts. These accounts can create SSI and Mass Health eligibility problems as described in the article. Many times we find that these accounts were created by well-meaning grandparents or other relatives when a child with special needs is quite young. We encourage our clients to be aware of the potential problems that exist with UTMA accounts. I hope you find the article helpful.

The assets which fund the estate plans, including supplemental, special needs trusts can be classified as either probate assets or non-probate assets. For most of the readers who have completed their estate plans with me or who have attended one of our special needs seminars, you may remember the distinction. Probate assets are those assets which are distributed at the time of our death directly through our last will and testament. Those probate assets pass “through” the probate estate via an inventory and accounting filed with the Probate Court.

Examples of probate assets are tangible personal property and individually owned assets. On the other hand, non-probate assets pass “outside of” the probate estate and pass directly to another party or entity. Said another way, non-probate assets are unaffected by the terms of the last will and testament.

Examples of non-probate assets include assets held in a living trust, jointly held assets which have a right of survivorship in the remaining joint tenant, life insurance policies with named beneficiaries and retirement plans with specified remainder beneficiaries.

It is very common for the vast majority of a decedent’s assets to be non-probate assets. The consequence of this is very significant. If one completes an estate plan with the intention of funding a family trust or a supplemental needs trust at death, one must take care to ensure that the beneficiary designations contained in the non-probate assets are properly directed to the appropriate trust.

Let me stress this again in a different way – a beneficiary designation in a non-probate asset operates as a will substitute. The mere fact that your last will and testament directs your assets to a particular trust does NOT automatically alter the beneficiary designation of your various non-probate assets. Those non-probate assets go to whomever is designated

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MESSAGE

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in the beneficiary designation and not to the beneficiaries of your last will and testament.

So, here's the take-away point – if you purchase a life insurance policy, create a new account containing a paid-on-death beneficiary designation or acquire an asset which is owned jointly, you must make sure that the non-probate asset will be directed, at the time of your death, to the appropriate beneficiary in light of your estate plan. You should take care to inform your insurance representative, financial advisor or human resource representative of the existence of your estate planning documents. Most beneficiary designation forms are fairly easy to complete, but errors can be costly down the road, so you must take care to ensure that they are completed accurately. Of course, you can consult a member of the Special Needs Plannin Practice Group if you feel you need assistance in this regard.

One of the reasons I recommend that estate plans be reviewed every three to five years is to make sure that beneficiary designations in newly purchased or acquired assets conform to the overall asset distribution plan of your estate plan. A regular review of your estate plan is an economical and efficient way to avoid costly mistakes by having an incorrect beneficiary designation in one of your non-probate assets.

Have an enjoyable rest of the summer.

If you would like to communicate with me on any special needs planning issue, please feel free to contact me at (508) 459-8059 or fmisilo@ftwlaw.com.



THERE'S STILL TIME TO BE A SPONSOR!

WHAT/WHEN: On Sunday, August 10, Attorney Fred Misilo ran **all seven miles** of the 36th CIGNA Falmouth Road Race to benefit Children's Hospital in Boston.

HOW TO HELP: Log on to www.childrenshospital.org/falmouth08 and follow the "give online" link.

WHO BENEFITS: As one of the largest pediatric medical centers in the United States, Children's Hospital offers a complete range of health care services for children from birth through 21 years of age.



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BE WARY OF UTMA ACCOUNTS FOR YOUR CHILD OR GRANDCHILD WITH A DISABILITY

By Katherine Bohan Finnerty, Esq.



UTMA accounts are custodial accounts controlled by state law with limited tax advantages that are used for gifting to a child under age 21. UTMA is an acronym for the Uniform Transfers to Minors Act. They were formerly known as UGMA, an acronym for the Uniform Gifts to Minors Act, which was repealed by the Massachusetts legislature in 1987. An UTMA account allows a person to gift cash, bank accounts, insurance, or securities to a child without setting up a trust. The transfers made to an account of this type are considered an irrevocable gift to the child and are considered to be legally owned by the child despite the funds being controlled by a custodian.

Herein lies the problem with eligibility for Social Security Income (SSI). While the Social Security Administration does not count an UTMA account as an available resource until Massachusetts state law terminates the account at age 21, parents may be unaware that this account could create a problem because it existed when the child became eligible for benefits at age 18. Moreover, several months or years could go by before Social Security discovers the eligibility problem which could result in recovery of SSI

already paid to an individual and the possibility of future eligibility problems.

Parents and grandparents need to heed the warning about these one-size-fits-all children's accounts that financial planners may propose as a part of their overall financial plan, and know that planning opportunities exist that can limit the damage of already established

The transfers made to an account of this type are considered an irrevocable gift to the child and are considered to be legally owned by the child despite the funds being controlled by a custodian.

accounts on their child's or grandchild's eligibility for public benefits. Before the child turns 21 these accounts may be able to be transferred into a special needs trust for the benefit of the SSI recipient, or alternatively, a plan may established to spend the UTMA account down in a way that will not jeopardize eligibility for public benefits.

To contact Katherine Bohan Finnerty for more information on UTMA accounts and SSI eligibility call 508-459-8057.



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- Will I have enough income to maintain my lifestyle throughout my retirement?
- Am I prepared to care for my family member?
- What will be my legacy?
- When is *really* the best time to start taking Social Security benefits?
- Am I reaching my maximum financial potential?

Guest Speakers:
Phyllis Kramer & Joanne Geary



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Wednesday, October 15, 2008
6:00PM – 8:00PM
Law Offices of Fletcher, Tilton & Whipple, PC
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SAVE THE DATE!

Annual Special Needs Trust Training October 18

Essential information for those who will be called upon to handle a trust for a person with a disability.

Mark your calendar now for the Special Needs Planning Practice Group's annual Special Needs Trust Training on Saturday, October 18 at the Courtyard Marriott in Marlboro, MA.

PRESENTERS:

- Frederick Misilo, Jr., Esq.
- Theresa M. Varnet, Esq.
- Carol Lawrence, Director of Trust Services
- Andrea Stolberg, Tax Manager

REGISTRATION FEE:

1 or 2 family members, \$75.00. Additional family members, \$20.00 each.

Program flyers and registration forms will be mailed at the end of August.

To be added to the mailing list, contact Sara at smurphy@ftwlaw.com or (508) 459-8021.