# LEGACY

*Centuries Strong* FUTURE FOCUSED

A NEWSLETTER FROM THE TRUST & ESTATE DEPARTMENT OF FLETCHER TILTON

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# MESSAGE FROM FRED MISILO

*Chair, Trust & Estate Department*

**FREDERICK M. MISILO, JR., ESQ.**
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As we take time to relax and enjoy the remainder of the summer, many of us find ourselves reflecting on what matters most—spending time with family and creating memories that will last a lifetime. It's during these quieter moments that we're reminded of our deepest responsibility: ensuring the people we love are protected, no matter what the future holds.

This edition of Legacy brings together insights that speak to the heart of family protection and planning. Whether you're young parents thinking about your children's future, or adults navigating the complex intersection of caring for aging parents while planning for your own retirement, the articles in this issue offer practical guidance for life's most important decisions.

We're also excited to launch a new series highlighting the origin stories of our Trust and Estates attorneys—the unique career journeys that brought each of them to this meaningful work of protecting families and preserving legacies.

As the summer months come to a close, I encourage you to consider whether your estate plan reflects your current wishes and family circumstances. Life changes quickly, and regular reviews ensure your plan continues to serve your family's needs and personal values.

Our team remains committed to providing not just legal solutions, but education and guidance that empowers you to make informed decisions about your family's future.

Wishing you and your families a wonderful and safe season.

Warmly,

Fred Misilo, Esq.
Chair, Trust and Estates Department



# THE INTERSECTION OF ELDER LAW PLANNING AND SPECIAL NEEDS LAW PLANNING

*by Michael T. Lahti, Esq. and Theresa M. Varnet, MSW, JD*

The parents or the grandparents of a special needs child, referring to a relationship as opposed to age, commonly fear what is going to happen to their child when they die. To address this concern, many parents and grandparents include a third-party special needs trust—also known as a supplemental needs trust (SNT)—as part of their estate plan. This trust can be funded with a gift during their lifetime or by an estate distribution upon their death. The only requirement is that no assets of the family member with special needs can fund this third-party SNT. A properly drafted and properly managed SNT preserves the child's eligibility for needs-based benefits while providing the child with a higher quality of care during his or her lifetime than he or she could otherwise afford on benefits alone. If parents or grandparents die with their estate intact, the share for the special needs child will be distributed to a third-party SNT.

However, this intention often falls victim to the Trust Grantor's own need for long-term nursing care. For many families, the high cost of potential long-term nursing home care presents a challenge in the face of the priority for providing a well-funded SNT for their child. Given the understandable need to protect assets from nursing home expenses, this article discusses strategies to protect assets, explains Medicaid planning and nursing home terminology, highlights the power of advance planning, and concludes with a discussion of how some protective trusts can be set up for children with disabilities and how these trusts can be woven into the estate plan when families are trying to protect assets from nursing home costs.

Generally, strategies can be distinguished by whether the planning was done ahead of the five-year look-back period. Elder law attorneys are familiar with a five-year look-back period, but often our clients are not. A simple explanation to help our clients better understand the look-back period is to explain that the look-back period applies when one needs Medicaid funding to pay for nursing home bills. At that time, an applicant files a Medicaid application and asks the state for help paying the nursing home costs. Up to five years' worth of financial statements may be reviewed when the Medicaid application is processed. If disqualifying transfers or gifts have been made within the five-year period, then the state will apply a "penalty period" measured by the amount given away. During the penalty period, the state will not help with medical costs, which is devastating. Simply put, the laws prevent a person from giving assets away one day and getting state help with a nursing home bill the next.

The most effective planning is done well before a crisis occurs. A typical strategy involves creating and funding

*(continued)*

an irrevocable trust five years before an application for Medicaid is filed. Although very useful, this strategy is not perfect. Some clients resist doing this because there is an inherent loss of control over one's assets once they are put inside the irrevocable trust. This reluctance to plan in advance can become an impediment to effective planning.

If one's health declines precipitously and assets are at risk of being spent down on long-term care, there are still options. For instance, married couples may consider wills that contain "testamentary" trusts. These are specialized wills used for married couples. When the "first" spouse dies, assets passing under the deceased spouse's will flow into a trust for the surviving spouse. This trust protects assets within the trust without the five-year look-back constraints. Of course, this strategy has limits because (1) a spouse must pass away for the plan to work, and (2) in most instances, it is tough to predict which spouse will pass away so the plan can work. Other crisis strategies include spend downs, last-minute gifts combined with promissory notes to save some of but not all the assets. These crisis strategies are beneficial, yet they are not perfect.

Federal and state laws provide protections for children with disabilities. One of the most important strategies is a SNT to maximize the assets for a child's care. Without such trusts, assets left directly to a child who is on a means-tested public benefits program (like Supplemental Security Income or Medicaid) cause the child to lose benefits. Those lost benefits remain unavailable until the child has spent down the assets to a pittance, at which point the child can reapply for benefits. The result is nothing short of a disaster, as the assets help the state instead of the child. This problem can be avoided with an SNT.

There are two categories of SNTs: one that must, upon the child's death, reimburse the state for care provided during the child's lifetime, and one that does not have to reimburse the state (so assets go back to the family). Trusts that have the payback requirement can be further categorized as "first-party" SNTs or sometimes as OBRA'93 SNTs, named after the federal law that allowed transfers to a payback trust. Trusts that do not have the payback requirement are called "third-party" SNTs.

Understanding this, one may ask why anyone would ever want to establish a trust that pays assets to the state upon the child's death. The answer is that sometimes it is the only option. The first situation would be when assets belong to the child or the child has a legal right to the funds (such as child support). When the child has a legal right to or ownership rights to the funds, a payback SNT is required. So instead of requiring the child to spend down all of his or her assets and then forcing the child to live entirely off of his or her government benefits, the first-party SNT allows the beneficiary to receive the needs-based benefits and enjoy a higher quality of life by supplementing his or her benefit with the assets that have been placed in the first-party (payback) SNT.

The second situation when a payback SNT might be used is when a parent or grandparent requires medical care with nursing home or in-home supports and cannot wait out the five-year look-back period. When one transfers his or her own assets to a first-party SNT for the sole benefit of a child or grandchild with a disability, the trust is not subject to the five-year look-back period and the assets will be preserved for the

disabled child's benefit. In other words, a parent or a grandparent can give his or her money today to a first-party SNT and qualify for Medicaid tomorrow to pay for his or her long-term care medical needs. In some cases, a Sole Benefit Trust can be used without adding a payback clause. In this case, the trust must make actuarially sound distributions, as no one else can benefit from the trust. Depending on the age, amount transferred to the trust, and the annual needs of the beneficiary, the Sole Benefit Trust may work. When in doubt about whether it is practical for the trust distributions to be made on an actuarially sound basis, it is recommended to use a d4A or d4C SNT, which trusts include payback language.

It is recommended that the parent or grandparent sign a durable power of attorney (POA) for property that authorizes one's agent to transfer their assets to a first-party SNT for the benefit of a child or grandchild who is disabled in the event it is ever in the parent's or grandparent's best interest to qualify for Medicaid-funded medical or nursing home care. A POA is recommended because if a senior has a stroke or other serious illness, he or she may no longer have the capacity to complete a transfer of assets to a first-party SNT. A signed Durable POA with a specific gifting power to transfer assets to an SNT will enable the transfer to occur and the application made to Medicaid without delay. It may also be recommended to create a "standby" first-party SNT, as the law allows a parent, grandparent, legal guardian, court of law or the individual with a disability (if competent to do so) to create a first-party SNT. If a standby first-party SNT is created, the agent under the POA can simply make the transfer to the SNT. Otherwise, valuable time may be lost petitioning a court of law to create the first-party SNT if the disabled individual is incapable of creating the trust. **FT**

# TIPS TO PREVENT FAMILY DISPUTES DURING ESTATE PLANNING AND PROBATE ADMINISTRATION

*by Kelly A. Akana, Esq. | 508-459-8070 | kakana@fletchertilton.com*

Estate planning and probate administration can be emotionally charged processes. These processes can become lengthy and expensive when conflicts arise between family members over the distribution of estate assets, including items of sentimental value. These tensions are undoubtedly influenced by the grief and confusion that arise in the wake of losing a family member. An unclearly drafted estate plan and poor financial planning exacerbate these family conflicts, often resulting in costly litigation and strained family relationships.

## 1. CLEARLY COMMUNICATE YOUR INTENTIONS DURING THE ESTATE PLANNING PROCESS

Clearly communicating your intentions during the estate planning process can eliminate confusion between and among family members and other individuals. During this process, you should openly address any concerns and questions with your attorney. This is especially crucial if you are considering distributing assets unequally among your children or donating the bulk of your estate to charity.

Where certain sentimental items and family heirlooms are likely to cause issues, consider leaving a tangible personal property memorandum, which is a document separate from your Will that identifies specific items and the individuals they should go to. Tangible personal property memorandums override certain provisions in the Will and can be an effective method to gift certain personal property.

We understand that these conversations with family members can be difficult, but you should consider discussing your vision for your estate plan with your immediate family to avoid potential suspicion and resentment. Be mindful of the emotional issues at play and address such concerns clearly. That does not mean you need to share every intimate detail about your finances with your children or other family members, but some sense of transparency may ease tensions and anxiety. Since families are not "one size fits all," your estate plan should not be handled this way either. Raising these concerns and highlighting your expectations and goals can assist your attorney in making appropriate recommendations that best suit your family situation.

## 2. CHOOSE TRUSTED INDIVIDUALS TO SERVE IN FIDUCIARY ROLES

Administering an estate or trust is an important fiduciary role, so you should name only individuals you trust completely. For many, these individuals are family members, whether it be siblings, adult children, relatives, or friends.

To avoid fighting, many parents consider naming all their children to serve together as co-Personal Representatives of the Will or as co-Trustees of the trust. Others simply follow "seniority-rule" and name their children in order by age. However, as appealing as the prior approach is, it is not primarily recommended as a tactic to avoid disputes. Recently, it has become increasingly difficult to streamline basic estate administration procedures if more than one signature is required. This can become impractical if co-fiduciaries are not cooperating, which increases tensions and causes further delay.

Another tactic to avoid disputes and situations where family members are in uncomfortable positions is to nominate a neutral third party to serve in these roles. Having a neutral third party can also help prevent implications of bias and favoritism.

## 3. CONSIDER ADDING A "NO CONTEST" CLAUSE TO YOUR WILL OR TRUST

Many think having a Will or Trust is enough to avoid fighting amongst heirs, but that is not always the case. If disputes are likely to arise, or even if they aren't, you may want to consider including a "no contest" provision in your Will or Trust. A "no contest" clause, also known as an "in terrorem clause," is used to dissuade beneficiaries from contesting distributions or the validity of the legal document. Typically, if a beneficiary contests any provision of the Will or Trust, they may be limited to a certain dollar amount or disinherited altogether. For most, the thought of losing their share completely is enough to promote cooperation and prevent costly litigation.

## CONCLUSION

Communication is the cornerstone of your estate plan and lays the foundation to prevent future conflicts that may arise during estate administration. You should review your estate plan every three to five years to ensure the plan still makes sense for your goals and family dynamics. Contact an experienced estate planning attorney to discuss your concerns and create an estate plan tailored to your needs. **FT**

# KEY ESTATE PLANNING CONSIDERATIONS FOR YOUNG FAMILIES

*by Rachael M. Poirier, Esq.*

Driving into work, we often hear the commercials on the radio advertising that if you are getting married, buying a house, or having a baby, you should look into getting life insurance. Although many may not think about it until much later in life, the same is true of your need to get an estate plan. Nothing is more important than having legal documents that convey to loved ones and a court what your wishes would be in the event that tragedy strikes.

## GUARDIANSHIP AND CONSERVATORSHIP NOMINATIONS FOR MINOR CHILDREN IN YOUR WILL

An important consideration for those with children is: "Who would I want to take care of my children should something happen to me?" In legal terms, this question is referring to the person who would serve as the guardian and/or conservator of your minor children.

Any individual is allowed to petition the court and seek to be appointed to these roles. However, you can nominate someone to serve as the guardian and/or conservator of your minor children through a provision in your own will and the court will then give priority to those nominations you made. Presumably, this would be your spouse, if living, and if not, you would want to discuss with your spouse and estate planning attorney who might be best to name as potential alternates.

Some important considerations to take into account when having this discussion regarding who would be best to serve in the role of guardian and/or conservator of your minor children may include:

- What is this person's role in my child or children's life currently? Do they have a relationship with them now?
- How close do they live to my child or children? Would they try to relocate them or be able to keep them in the community they have grown up in and where they currently attend school?
- Does this person have their own children? Can they handle the responsibility of taking on my child or children, if needed, mentally, emotionally, and financially?
- Would this person have my child or children's best interest(s) at heart when making healthcare, education, and other important decisions?

For new parents and those with minor children, this could arguably be the most important consideration of your entire estate plan.

## USING TRUSTS AS PROPERTY MANAGEMENT TOOLS FOR MINOR CHILDREN

Revocable trusts have many important functions, as they are a mechanism by which to manage your property should you become incapacitated, helping avoid probate upon your death and even affording planning to help reduce your estate tax exposure. However, many people do not realize that revocable trusts can also help plan for your child's financial future should something happen to you before they become an adult.

The most common concern I see from clients is the possibility that their child or children receive their inheritance outright at an age that the parents consider to be far too young to handle such a potential windfall of money. If your children are minors, a trust would likely specify that their inheritance is to be held and managed by the successor trustee until each child reaches the age of majority (which, in Massachusetts, is 18 years old). The trustee would invest the trust funds and may have the ability to make discretionary distributions for the child until they are required to distribute their share outright to them.

An outright distribution at 18 years old is not your only option though. Some common scenarios that I see that parents feel much more comfortable with include:

- Outright distribution at an older age, say 35 years old, with the trustee managing and making discretionary distributions until then
- Staggered age-based distributions so each child receives a certain percentage of their share upon a certain age; for example, each child may receive one-third of their share at age 25, another one-third at age 30, and the final one-third at age 35
- Outright distribution to another trust held for a child's benefit for their lifetime, whether that be a supplemental needs trust, if the child has a mental or physical disability, or a lifetime trust, to protect the child's inheritance from creditors or a divorcing spouse

A revocable trust can help give you the peace of mind that your child will not be receiving a lump sum at a young age, when they may be tempted to spend it frivolously. Instead, you can control at what age they receive their inheritance and whether it is distributed all at once or split up at certain intervals, and you can name a trusted person to manage the funds for them as the trustee until the time comes for those distributions.

If you are an individual or couple with children and do not have an estate plan or want to update your current one to incorporate some of the above provisions, reach out to an estate planning attorney at Fletcher Tilton and we would be happy to discuss your options with you. **FT**


## ANNE E. GRENIER, ESQ.

Anne Grenier's path to becoming a disability rights attorney wasn't just professional—it was profoundly purposeful, built on a foundation of understanding that could only come from years of direct service to vulnerable populations.

Armed with a psychology degree from the College of the Holy Cross and a Master's in Social Work from the University of Connecticut, Anne discovered her calling while working as a Licensed Independent Social Worker in nursing homes, where she witnessed firsthand the complex challenges facing people with disabilities and their families. Her unique journey from Elder Home Care Manager to healthcare management leader, where she participated in developing innovative care models and wrote policy to comply with state regulations, gave her an insider's understanding of how systems could either empower or fail those who needed them most. This dual perspective—combining compassionate social work with legal advocacy—proved transformative when she transitioned to law, particularly in her work writing grants that funded community programs like the Donahue Rowing Center and Shrewsbury Youth Services Program.

Her greatest legal triumph came in the landmark case *Stacy v. Stacy*, 97 Mass. App. Ct. 160, 144 N.E. 3d 899 (Mass. App. Ct. Mar. 13, 2020) where she successfully argued before the Massachusetts Appeals Court that federal law preempted a state court's attempt to divide a veteran's disability benefits during divorce proceedings. This case of first impression not only protected veterans' benefits nationwide but exemplified Anne's unwavering commitment to ensuring that legal structures truly serve those they're meant to protect.

This Spring, Anne presented at the Profound Autism Summit on "Legal Considerations Caring for an Adult With Profound Autism." Anne continues building bridges between law and compassion, ensuring that her clients with disabilities receive not just legal representation, but genuine understanding from someone who has walked in their world. Her practice represents the powerful truth that the most effective advocates are those who combine technical legal expertise with deep, experiential knowledge of the systems and challenges their clients face every day. **FT**

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## PLANNING UNDERWAY FOR FLETCHER TILTON'S ANNUAL SPECIAL NEEDS TRUST ADMINISTRATION SEMINAR

We're excited to share that planning is officially underway for Fletcher Tilton's annual *How to Administer a Special Needs Trust* seminar, and this year, we're back in person! This milestone year marks our 20th anniversary of hosting this essential community resource. Our team held the first planning meeting and we're already hard at work preparing what promises to be our most comprehensive and valuable event yet.

**MARK YOUR CALENDAR: SATURDAY, OCTOBER 25, 2025**
**8:30 AM – 1:30 PM, COURTYARD MARRIOTT – MARLBOROUGH**

We will once again offer both in-person and virtual attendance options, ensuring that families, caregivers, and professionals can participate in the format that works best for them. We're committed to making this essential information accessible to everyone in our special needs community.

The event will feature expert presentations from Fletcher Tilton's special needs and estate planning attorneys, and interactive sessions for questions and discussion.

Whether you're new to special needs trusts or have years of experience managing them, this event offers valuable insights, practical tools, and the opportunity to connect with others who understand the unique challenges and opportunities that come with caring for individuals with special needs.

Registration information will be available soon. To stay updated on event details, speaker announcements, and registration opening, please visit: FletcherTilton.com/special-needs-trust-administration-event/. **FT**

## MORE UPCOMING WEBINARS

**ESTATE PLANNING** with attorney Michael Lahti

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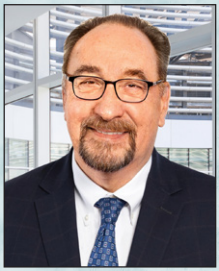
|---|---|---|
| Tuesday, **Aug. 26**, 2025 | 10:00AM – 11:30AM | Live Webinar |
| Tuesday, **Sept. 16**, 2025 | 10:00AM – 11:30AM | Live Webinar |
| Tuesday, **Oct. 7**, 2025 | 10:00AM – 11:30AM | Live Webinar |
| Tuesday, **Oct. 28**, 2025 | 10:00 AM-11:30 AM | Live Webinar |

**For details and registration, visit FletcherTilton.com/webinars**

# AWARDS & RECOGNITION



## FRED MISILO NAMED TO THE 2025 MASSACHUSETTS LAWYERS WEEKLY HALL OF FAME

We are proud to share that attorney Fred Misilo has been named to the 2025 Massachusetts Lawyers Weekly Hall of Fame.

This well-deserved honor recognizes individuals whose careers have demonstrated: Significant accomplishments in the law, contributions to the development of legal practice in Massachusetts, dedication to the legal profession, and a lasting impact on the quality of justice in the Commonwealth.

Join us all at Fletcher Tilton in congratulating Fred on this remarkable achievement.

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## FLETCHER TILTON WINS FAMILY FAVORITE FOR SPECIAL NEEDS LEGAL ASSISTANCE

We are honored to share that Fletcher Tilton has been voted the "Family Favorite" for Special Needs Legal Assistance in *Boston Parents Paper™*.

Thank you to the families and community members who placed their trust in us and took the time to vote. We are proud to support individuals with special needs and their families through compassionate, knowledgeable, and comprehensive legal guidance. Your confidence in our team inspires us every day.


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