



Elder Law, Probate Litigation and Special Needs Planning

June 2025 Newsletter

2nd Annual

Elder Law Day

focusing on

Planning for Special Needs Families

We're still feeling the excitement from our 2nd Annual Elder Law Day on May 7th!

A huge thank you to our incredible speakers, vendors, and everyone who attended – your participation helped make this event a true success. The feedback has been amazing, and we're already hard at work planning for next year!

Led by Richard Miller, Esq. and our Elder Law and Special Needs Practice Groups, we remain committed to providing valuable education and community resources.

*Missed a Session or
Want to Rewatch?*

*All of our Elder Law Day
presentations are now available
on our YouTube channel below:*



*Special Needs
Resource Journal*



*Click to
Download!*



*Let us know what topics you would like us
to include for Elder Law Day 2026*

Heirs, Assets, and Arguments: Why Elder Law Attorneys Are Key in Probate Litigation

Probate is the legal process through which a deceased person's assets are distributed to heirs or beneficiaries and debts are settled. While many estates pass through probate smoothly, disputes can and do arise—sometimes tearing families apart and draining the estate's assets. This is where **probate litigation** comes in.

What Is Probate Litigation?

Probate litigation refers to the legal disputes that arise during the probate process. These disputes can involve:

- **Will contests** – When someone challenges the validity of a will, often on grounds such as lack of capacity, undue influence, or fraud.
- **Trust disputes** – Disagreements involving the interpretation, management, or validity of a trust.
- **Executor misconduct** – Claims that the executor or personal representative is not acting in the best interests of the estate or its beneficiaries.
- **Breach of fiduciary duty** – When a trustee, executor, or guardian fails to act responsibly and ethically in managing someone else's assets.
- **Contested guardianships** – Disputes about who should be appointed to care for an aging or incapacitated loved one.
- **Asset recovery** – Efforts to reclaim assets that were improperly transferred or hidden before the decedent's death.

These disputes can be emotionally charged, especially when they involve family members. They often require court intervention and can become complex quickly.

Why You Need an Elder Law Attorney

When probate litigation becomes necessary, having an experienced **elder law attorney** on your side is crucial. Here's why:

1. Specialized Knowledge of Complex Laws

Elder law attorneys understand not only probate and estate laws but also the nuances of aging, incapacity, long-term care planning, and guardianship. This specialized knowledge is essential when the dispute involves questions about mental capacity or undue influence, which are common in will contests.

2. Experience with Family Dynamics

Probate litigation often stems from strained or complicated family relationships. Elder law attorneys are skilled at navigating these delicate situations, aiming to resolve matters efficiently while preserving family ties when possible.

3. Protection of Vulnerable Individuals

Elder law attorneys often represent or advocate for elderly or disabled individuals. They are familiar with how to protect the interests of vulnerable parties, whether it's contesting a suspicious power of attorney or ensuring proper care through guardianship proceedings.

4. Guidance Through a Difficult Time

The probate process occurs at an emotionally difficult time—after the death or incapacitation of a loved one. A compassionate elder law attorney can help families make rational, informed decisions when emotions are running high.

5. Litigation and Mediation Skills

Whether a case ends up in court or is settled through mediation, elder law attorneys have the advocacy skills to protect your interests. They can represent executors, trustees, beneficiaries, or heirs—depending on the nature of the dispute.

Probate litigation can be complex and emotionally charged, but you don't have to face it alone. An experienced elder law attorney can help protect your rights, preserve family relationships, and ensure that your loved one's wishes are honored.

If you're facing a probate dispute or concerned about potential issues in an estate, don't wait. Reach out to the **Elder Law attorneys at Mandelbaum Barrett PC** for guidance and peace of mind.

Aging with Dignity: Why Home and Community-Based Services (HCBS) Matter

With federal budget cuts to Medicaid and other social service programs looming, increased attention is being placed on home and community-based (“HCBS”) Medicaid benefits. [A recent opinion piece in the Los Angeles Times titled “Beyond Grace: Family Caregivers Need Real Backing”](#) underscores the urgent need for greater investment in elder care—particularly for those who choose to age in place at home.

Over the past decade—and especially in the wake of the devastating toll COVID-19 took on residents in long-term care facilities—more individuals and families are opting for alternatives to institutional long-term care settings. Many are turning to HCBS Medicaid, sometimes referred to as “Community Medicaid,” which provides eligible individuals access to long-term care services outside of traditional nursing homes. These services are designed to help seniors and individuals with disabilities remain in the comfort of their own homes for as long as possible.

The benefits of HCBS are clear. Individuals and couples enjoy a higher quality of life, greater dignity and privacy, and improved emotional and mental well-being. In addition, HCBS recipients often retain more—or even all—of their income, while receiving essential services such as personal care assistance (bathing, dressing, grooming), meal preparation and delivery, and housekeeping, to name a few.

However, the HCBS system is already stretched thin due to chronic underfunding. This has led to significant limitations on both the amount and quality of care that can be delivered. For instance, in New Jersey, HCBS is capped at just 40 hours per week. This shortfall forces many individuals who might otherwise live independently to move into institutional care settings. With further budget cuts anticipated, these limitations may become even more severe.

Now more than ever, personal stories—like those highlighted in the Los Angeles Times piece—are critical in giving voice to our aging and disabled populations. The ability to choose between institutional placement and aging at home with proper support offers hope and empowerment to families facing these difficult decisions.

[At Mandelbaum Barrett PC, our Elder Law attorneys are here to help you navigate these choices.](#) We work with individuals and families to understand their options, develop customized asset protection plans, and guide them through every step of the Medicaid application process. Whether you’re planning for your own future or helping a parent or loved one, our team is committed to supporting you throughout the journey.

HCBS

Home & Community Based Services



Ensuring a Secure Future: Passing Retirement Benefits to a Child with a Disability



For parents of children with special needs, planning for the future goes far beyond drafting a will. One of the most complex — and important — pieces of the puzzle is ensuring that your retirement assets are distributed in a way that provides financial support without jeopardizing your child's public benefits.

Thanks to recent legislation like the SECURE Act and SECURE 2.0, there are planning opportunities — and potential pitfalls — families should be aware of. Here's a breakdown of what you need to know.

The Importance of Planning for Retirement Accounts

Retirement savings make up a significant portion of most families' assets. As of mid-2024, 401(k) accounts held roughly \$8 trillion and IRAs more than \$14.5 trillion in the U.S. alone. But without proper planning, these assets may pass to a child with special needs and unintentionally disqualify them from essential government benefits like Medicaid and SSI.

The SECURE Act and Required Minimum Distributions (RMDs)

Under the SECURE Act of 2019, most beneficiaries who inherit a retirement account must withdraw the full amount — and pay the taxes — within 10 years of the original account holder's death.

However, there's an important exception: Eligible Designated Beneficiaries (EDBs), which includes individuals with disabilities, can still "stretch" distributions based on their life expectancy. This allows for smaller withdrawals over a longer period — preserving tax-deferred growth and reducing annual tax burdens.

The Right Type of Trust: AMBTs and Accumulation Trusts

For retirement accounts, the best structure is usually an Applicable Multi-Beneficiary Trust (AMBT) — a type of see-through accumulation trust that meets specific IRS criteria. This trust:

- Protects public benefits
- Allows the trustee to retain and manage distributions
- Qualifies for the lifetime stretch (based on the disabled beneficiary's life expectancy)

Note: The trust must name the person with a disability as the sole lifetime beneficiary to qualify.

Conduit Trusts vs. Accumulation Trusts

- **Conduit trusts** pass income directly to the beneficiary, which is not ideal for special needs planning, as it may disqualify them from benefits.
- **Accumulation trusts** retain income and give the trustee control, offering much more flexibility and protection. This, however, may result in the trust paying income taxes at a higher bracket.

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SECURE 2.0 and Charitable Remainder Beneficiaries

Prior to SECURE 2.0, naming a charity as a remainder beneficiary in an SNT disqualified the trust from using the life expectancy stretch. The 2022 legislation changed that — now, charities can be included as remainder beneficiaries in certain AMBTs without losing stretch treatment, if the disabled beneficiary remains the sole lifetime beneficiary.

Key Takeaways

- Disabled beneficiaries qualify as Eligible Designated Beneficiaries and can stretch inherited retirement distributions over their lifetime.
 - Use an Applicable Multi-Beneficiary Trust (AMBT) to protect benefits and preserve tax advantages.
 - Work with an experienced special needs planning attorney to ensure your trust documents meet all legal and tax requirements.
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The Role of Geriatric Care Managers in Elder Law: A Vital Partnership

A geriatric care manager (GCM) is a professional who specializes in assisting older adults and their families with managing the challenges of aging. These experts come from various backgrounds, including social work, nursing, gerontology, and counseling. Their primary role is to assess an elderly individual's needs, develop a care plan, coordinate services, and provide ongoing support to ensure the senior's well-being and quality of life.

How Can a Geriatric Care Manager Assist an Elder Law Attorney?

Elder law attorneys often work with clients who are facing complex legal and healthcare issues, including estate planning, Medicaid planning, guardianships, and long-term care arrangements. Geriatric care managers can be invaluable partners in this process by offering the following services:

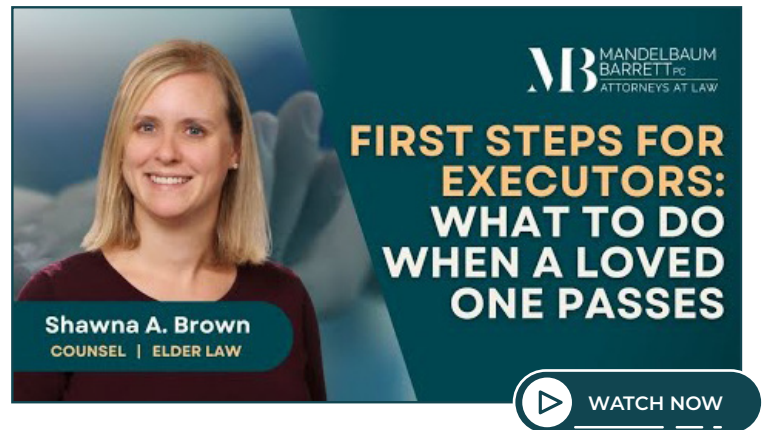
1. **Comprehensive Assessments:** GCMs evaluate an elderly individual's medical, emotional, and social needs, providing attorneys with crucial information to support legal decision-making.
2. **Care Planning and Coordination:** They develop personalized care plans and help coordinate services such as in-home care, assisted living placements, and medical appointments.
3. **Crisis Intervention:** In cases of sudden illness, cognitive decline, or family disputes, a GCM can step in to provide immediate support and guidance.
4. **Advocacy for Seniors:** They ensure that an aging individual's wishes are respected, advocating for appropriate healthcare, housing, and financial planning.
5. **Guardianship and Capacity Evaluations:** When an elder law attorney is handling a guardianship matter, a GCM can help assess the senior's level of independence and ability to make decisions.
6. **Family Mediation:** GCMs help mediate conflicts among family members regarding care decisions, reducing tensions and fostering consensus.
7. **Resource Connection:** They have extensive knowledge of local resources, including government benefits, long-term care facilities, and community services, making them a valuable asset in navigating elder care options.

The Value of Collaboration

By working together, geriatric care managers and elder law attorneys can provide a holistic approach to aging-related legal and healthcare matters. This collaboration ensures that seniors receive not only sound legal counsel but also the practical support necessary to maintain their quality of life. For families navigating the complexities of elder care, having both professionals involved can make all the difference in achieving the best possible outcomes.

FIRST STEPS FOR EXECUTORS: WHAT TO DO WHEN A LOVED ONE PASSES

When a loved one passes away, the emotional toll of the loss can be compounded by the sudden responsibility of managing the deceased person's estate—especially if you've been named as the executor under a Last Will and Testament. Many clients come to us unsure of where to even begin. In the following vlog, **Shawna A. Brown**, Counsel in our **Elder Law Practice Group**, shares practical guidance to help you navigate those crucial early steps.



If you have been named the executor in a will, you are legally empowered to carry out the decedent's final wishes. That includes submitting the will and a probate application in the Surrogate's Court, marshaling assets, settling debt and ultimately distributing the estate to the beneficiaries. It's a role that requires care, organization and legal compliance.

FIRST STEPS

Even before you're formally appointed as executor, there are important actions you should take. First, make it a priority to secure the original will, as you will need to file it with the court to achieve probate. If you're unable to locate it among the decedent's personal documents, try to identify the attorney who prepared the will, who may have stored the original will in the office.

In addition, be prepared to receive calls from creditors, such as credit card companies or medical providers, who may begin inquiring about outstanding debts or unpaid bills of the decedent. You are not obligated to make any payments at this stage. Simply inform them that the individual has passed away and that no executor has been officially appointed yet. Take down their contact information so that you can follow up once you are formally authorized to act on behalf of the estate.

KEEP RECORDS OF ESTATE-RELATED EXPENSES

As you begin taking care of your loved one's affairs, you may find yourself covering certain expenses on behalf of the estate before you are formally appointed as executor. These can include funeral and burial costs, carrying costs for real property or fees for securing a residence. Be sure to keep thorough records of every payment you make, including receipts, invoices, credit card statements and any correspondence or documentation related to the expense. Creating a detailed log of these costs will help ensure that you can be properly reimbursed from the estate once the administration officially begins.

SAFEGUARD AND TRACK PERSONAL PROPERTY

One of the most frequent sources of conflict among family members following a death involves the division of tangible personal belongings. Items such as photo albums, furniture, and jewelry—regardless of their monetary value—can carry significant sentimental weight and often become the focus of disputes. It is advisable to refrain from immediately clearing out the decedent's residence or disposing of any items. If the will includes instructions regarding the distribution of tangible personal property, it is essential to honor those directives and engage the beneficiaries in the decision-making process if necessary to minimize potential disagreements.

BE AWARE OF PROBATE DEADLINES AND WILL CHALLENGES

In New Jersey, a will can't be admitted to probate until 10 days after death. However, once the will is probated, it starts a formal timeline during which challenges to the will must be filed. Acting quickly to initiate probate won't stop a contest, but it starts the clock on the time within which a contest must be filed.

At Mandelbaum Barrett PC, we help clients through every step of the estate administration process. It can feel overwhelming, but our team breaks the process down into manageable stages so you can focus on grieving your loved one while we guide you through the legal process.

For more information, contact our Elder Law team today.

ESTATE PLANNING TIPS FOR NEWLYWEDS AND EXPECTING PARENTS: WHAT YOU NEED TO KNOW

For newly married couples and those starting a family, estate planning is often thought of as something to address later in life. However, as discussed by Dan Stone, an associate in the Elder Law Practice Group at Mandelbaum Barrett PC, getting started early can provide essential protections for you and your loved ones.



NAMING A GUARDIAN FOR MINOR CHILDREN

For current or expecting parents, one of the most important aspects of estate planning is appointing a guardian for your children in the event both spouses pass away. By naming a guardian in your will, you ensure that your child is cared for by someone you trust. Without a designated guardian, a court may appoint a guardian who does not share your values, parenting style, or long-term vision for your child's upbringing. Additionally, family members may disagree over custody, leading to legal battles that can be stressful and costly. Planning ahead allows you to choose someone who will provide the stability, emotional support, and guidance your child needs.

THE IMPORTANCE OF A MINOR'S TRUSTS AND SPECIAL NEEDS TRUSTS

In the event your child receives inheritance, a will can be used to establish a minor's trust. A minor's trust allows you to specify how your child's inheritance should be used, designates a trustee to manage the assets on the child's behalf, and specifies when the trust funds should be fully distributed to your child. Absent the establishment of a minor's trust, a child's inheritance may be distributed before they are mature enough to manage it responsibly.

For parents of children with disabilities, a will can also be used to establish a special needs trust, ensuring your child's financial support without jeopardizing their eligibility for government benefits.

PLANNING FOR YOUR CHILD'S HIGHER EDUCATION

A 529 plan is a tax-advantaged investment account to save for your child's higher education. These accounts can cover tuition, room and board, and school supplies. Contributions grow tax-free, making it a valuable planning tool for your child's academic future.

REVIEWING BENEFICIARY DESIGNATIONS AND ENSURING COMPLIANCE WITH PRENUPTIAL AGREEMENTS

Remember: not all assets pass through your will. Life insurance policies, retirement plans, and accounts with beneficiary designations transfer directly to the named beneficiary, regardless of what your will states. Reviewing these designations is crucial to ensure they align with your overall estate plan.

For those with prenuptial agreements, some require that specific policies or accounts be maintained for the benefit of one or both spouses. Accordingly, when drafting a new estate plan, it is important to verify compliance with these pre-existing legal agreements.

UNDERSTANDING THE ROLE OF A POWER OF ATTORNEY AND LIVING WILL

A critical aspect of any estate plan is appointing a fiduciary, often a spouse, to act on your behalf in the event you become incapacitated. This is done through a power of attorney and living will.

A power of attorney allows a designated individual to manage your legal and financial affairs if you become unable to do so. There are two types: a durable power of attorney, which is effective immediately upon signing, and a springing power of attorney, which takes effect only if you are deemed incapacitated, potentially causing delays during emergencies.

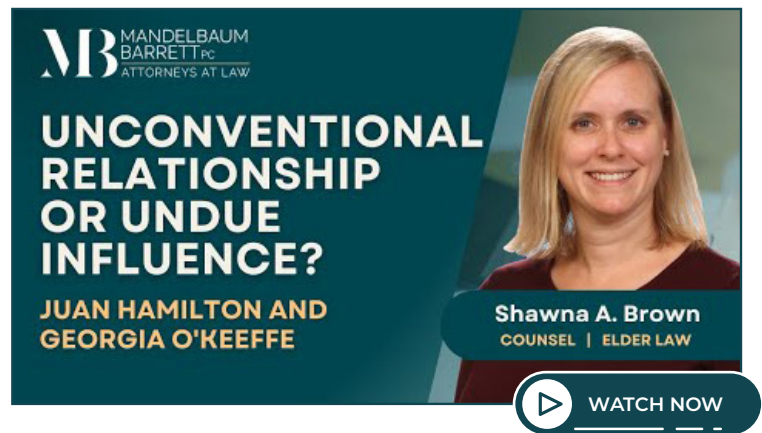
A living will focuses on medical decision-making. It includes an advance directive, which outlines your healthcare wishes in case of a terminal illness, and designates a healthcare proxy, who is authorized to make medical decisions on your behalf. These documents ensure that your medical preferences are honored and eliminates ambiguity among family members if you require medical treatment and cannot advocate for yourself.

START YOUR ESTATE PLAN TODAY

Estate planning helps avoid future complications, protects your loved ones, and ensures your wishes are followed. Whether you're newly married or preparing for parenthood, now is the time to put these essential documents in place. If you have questions, the Elder Law attorneys at Mandelbaum Barrett PC are here to help.

UNCONVENTIONAL RELATIONSHIP OR UNDUE INFLUENCE? THE JUAN HAMILTON AND GEORGIA O'KEEFFE CASE

A recent **New York Times** article on the passing of Juan Hamilton—the caretaker, confidant, and protégé of renowned painter Georgia O'Keeffe—has rekindled interest in the legal battle surrounding her estate. When O'Keeffe passed away in 1986 at the age of 98, she left behind an artistic legacy worth millions. **Shawna A. Brown**, Counsel in the **Elder Law Practice Group** at Mandelbaum Barrett PC, examines how the distribution of O'Keeffe's estate became the center of intense scrutiny and litigation, raising the ever-relevant question of undue influence in estate disputes.



A MAY-DECEMBER FRIENDSHIP

O'Keeffe met Hamilton in the 1970s when she was 85 and he was 27. Childless and widowed, O'Keeffe lived far from her relatives, surrounded mostly by admirers and strangers who revered her artistic genius. O'Keeffe initially hired Hamilton for small tasks, but his role quickly expanded and he ultimately managed her communications, oversaw her artwork, and became her gatekeeper. Over time, he was granted power of attorney, managed her affairs and was named beneficiary of approximately \$90 million in artwork in her will.

ALLEGATIONS OF UNDUE INFLUENCE

After O'Keeffe's death, one of her nieces challenged the will, alleging that Hamilton had unduly influenced her to leave him the bulk of her estate. While O'Keeffe's family argued that Hamilton manipulated her into favoring him, others contended that he had been her closest companion and caregiver, providing her with joy and purpose in her final years. The case was eventually settled, reverting the estate to an earlier will that allocated millions to O'Keeffe's family while still allowing Hamilton to retain significant assets.

A COMMON ESTATE DISPUTE

Though O'Keeffe's case is high-profile, similar situations unfold frequently. It is not uncommon for an elderly individual to leave their estate to a caretaker, a close friend, or a single relative who was present at the end of their life. Such bequests often prompt challenges from other family members who feel excluded, suspecting undue influence.

Courts assess undue influence claims by examining whether the beneficiary exerted excessive pressure, isolated the individual from others, or manipulated their decisions. In some cases, undue influence is proven, leading to the will being invalidated. In others, the decedent's choice to leave their assets to a devoted caretaker is upheld as a legitimate act of gratitude and trust.

At Mandelbaum Barrett PC, our Elder Law attorneys frequently represent both beneficiaries facing estate challenges and family members contesting wills on the basis of undue influence. Understanding both sides of these disputes allows us to anticipate legal arguments, navigate complex family dynamics, and advocate effectively for our clients. If you are involved in an inheritance dispute, we are here to guide you through the process and work toward a fair resolution.

For more information, contact our Elder Law team today.





We are proud to share the powerful reflections of **Barry Mandelbaum** on his six decades of leadership, advocacy, and unwavering support for the Mental Health Association (MHA).

Barry's journey with MHA began in 1964 and what began as a professional connection quickly turned into a lifelong mission to uplift individuals with mental illness and special needs. From serving as Director, Vice President, and Counsel, to championing the formation of the President's Giving Society, Barry's contributions have shaped MHA's legacy and extended far beyond.

His advocacy helped secure housing for those facing community and government opposition, led to investigations that improved conditions in state psychiatric hospitals, and spurred the growth of organizations like DARE and Employment Horizons.

Through the years, Barry has not only dedicated his time and talent but has brought along others, like **Craig W. Alexander** and **Joshua Gorsky**, ensuring that the torch of leadership continues.

Thank you, Barry, for being a beacon of hope and for using your platform to make lasting change for thousands. Your story is a true testament to the power of community, compassion, and purpose.

[READ BARRY'S REFLECTIONS HERE](#)



MEET OUR TEAM



Team Mandelbaum

Make sure to check out our new resources section at the bottom of the Elder Law and Special Needs pages on our website.

ELDER LAW

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SPECIAL NEEDS

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