



Elder Law and Special Needs Planning

October 2023 Newsletter

FEATURED ARTICLES



What Are the Drawbacks of Naming Beneficiaries?

Although in many situations the advantages outweigh the disadvantages when selecting beneficiaries, there are always exceptions.

What Is a Beneficiary?

Beneficiaries are individuals who you select to receive money, various other assets, or specific bequests (such as sentimental items) upon your death. You can name these individuals in estate planning documents such as a will.

Outdated Beneficiary Choices

The most common disadvantage is failing to review beneficiary choices regularly to assess whether they still meet your requirements or adjust to any changes that have occurred in your life. For example, perhaps you designated your spouse as the primary beneficiary of your retirement accounts and other non-probate assets. However, if you go through a divorce and forget to change these designations, your ex-spouse could still end up with a significant portion of these assets.



Another example may be where new relationships develop that did not exist when you initially made beneficiary designations. For example, you have had more children or remarried. Should you fail to update your estate plan, you may inadvertently omit these loved ones from receiving a share of these assets when you really would have wanted them to receive something.

Failure to Name a Contingent Beneficiary

A related issue is failing to name secondary or contingent beneficiaries. What happens if you do not have a “backup” beneficiary? One of the main disadvantages is that an asset that could typically pass directly to persons outside of probate may now become an asset that has to be addressed through the probate process. This can create a long delay before those assets get to your loved ones.

Minor Beneficiaries

Disadvantages can also arise if you name a minor as a beneficiary and that person is still a minor when you die. If this happens, an insurance company or retirement administrator may not have a way to handle the situation. It would be unable to distribute the funds until it receives directions from a court, or the minor reaches the age of majority (age 18 in most states).

Risks for Individuals Who Rely on Government Benefits

If your named beneficiary depends on government benefits at the time of your death, they could lose their benefits despite your best intentions. This is because certain public assistance programs require their enrollees to have specific income or asset limits.

A better alternative is to leave assets to a loved one who could be in this position through a supplemental needs trust.

This type of trust allows them to receive the assets without losing their eligibility for these programs. The trust also allows the assets to be used for the benefit of the beneficiary while still preserving the government benefits. Additionally, it can ensure that the assets are managed appropriately and used for the beneficiary’s care.

Other Considerations

Another consideration is that sometimes naming a beneficiary can convert an asset that was free from the reach of your creditors into an asset that is suddenly available to them.

For example, if a person names their estate as a beneficiary of their life insurance policy, not only does this put the asset into the jurisdiction of the probate court, but it also subjects the funds to your creditors and may be used very differently from what you had in mind. The funds may be used to pay off creditors or taxes owed by your estate.

Consult With an Estate Planning Attorney

There are other potential downsides to naming beneficiaries to non-probate assets. However, not everyone may be impacted the same way. [The Elder Law attorneys at Mandelbaum Barrett PC are here to discuss your specific situation.](#)

What Does Having Power of Attorney With Dual Agents Mean?

A power of attorney is among one of the most important incapacity planning documents you can have. It designates someone you trust with taking care of your affairs if you become unable to do so.

In a power of attorney, you give one or more trusted people of your choice the right to manage your affairs if you cannot do so because of a medical emergency, mental incapacity, or other life event.

Every state has its own rules for the format, content, and provisions of powers of attorney.

In New York, for example, the statutory form states that, once executed, the POA shall not be affected by a person's subsequent incapacity unless they have specified otherwise in the form. This is often referred to as a durable power of attorney.

A power of attorney may be helpful in avoiding confusion among your family members and loved ones by putting specific people in charge of your affairs ahead of time. For example, you could appoint your spouse as well as a professional as co-agents, separate agents, or primary and secondary agents in your power of attorney. physical, mental, and financial welfare is essential.



Agency Further Explained

Many POA forms allow for a variety of options in designating who may act as your agent. First, you will have to designate your primary agent.

Depending on the rules of your state, this can be one person or more than one person. They may be able to act independently of each other, or you may be able to require that they act together. These technicalities are usually form- and state-specific.

In most POAs, you also have the opportunity to choose a successor or “backup” agent. Again, this can be one or more person(s) who may act separately or together. In some instances, you may be able to provide specific rules of succession.

Powers Conferred on Agents

A POA gives your agent(s) control over a wide range of subject matter. This can include the following:

- Real estate transactions
- Purchase of personal property or other goods
- Banking, bond, stock, brokerage, and other transactions
- Business operations
- Insurance matters
- Estate transactions
- Management of benefits from governmental programs or civil or military service
- Financial matters related to health care (records, reports, and statements)
- Retirement benefit transactions
- Claims and litigation
- Personal and family maintenance
- Signing agreements on your behalf
- Dealing with your creditors
- Gifting
- Tax matters

Many states do not allow a POA to confer power on an agent to make medical or health care decisions on your behalf. Instead, this must be done through another form, such as a health care proxy.



Legal Responsibilities of Agents

Most state laws have specific sections that govern the legal responsibilities of an agent acting pursuant to a POA.

An agent, dual agent, or successor agent has a fiduciary relationship with the principal and, as a result, the following duties:

- To act according to any instructions of the principal or, if no instructions are available, then in the best interest of the principal.
- To avoid conflicts of interest.
- To keep the principal's property separate and distinct from any other property owned or controlled by the agent. However, many states specify this does not apply to property jointly owned by the principal and agent at the time of the execution of the power of attorney. It also may not apply to property that becomes jointly owned after the execution of the POA.
- Not to make gifts of the principal's property to himself or herself without specific authorization in a power of attorney.
- To keep records of all receipts, disbursements, and transactions entered into by the agent on behalf of the principal and freely disclose to third parties if requested by the principal.
- To share such records with:
 - any monitor, co-agent or successor agent named in the power of attorney
 - any government entity investigating whether the principal needs protective services or is being abused or neglected
 - court-appointed evaluator or guardian ad litem, guardian, or conservator of the principal
 - personal representative of deceased principal, and
 - any other persons designated by law.

Agents can be liable for conduct or failures to act that violate any fiduciary duty. A state's law will usually define the extent of their liability, so it is important to become familiar with this law before entering into a POA or agreeing to serve as an agent.

When Does a Power of Attorney Become Effective?

A power of attorney can be durable or **springing**. The terms of a power of attorney usually become effective when the agents and principal sign it, or upon the occurrence of an event specified in the document.

Disputes Between Dual Agents

If you have elected to have dual or co-agents, you should consider whether you wish for them to be able to act concurrently or separately. Each agent has equal power to decide on the matters that the principal has specified in the POA.

However, if you have specified that the dual agents must act together and they disagree about what action is in your best interests, they could find themselves in court, needing a judge to act as the tiebreaker, so to speak.

Waiting for a judge's decision can cause a delay in situations where this is not desirable. For example, if a health aide needs to be hired, or government benefits need to be applied for, and there are disagreements, this could impede appropriate care.

For this reason, many professionals recommend avoiding these situations by allowing agents to act separately, not choosing people who have the potential for conflict, or appointing one primary agent and a successor agent.

A successor agent can step in where your primary agent is unable or unwilling to serve. In addition, you may be able to appoint a monitor, which is a person who can be kept informed of decisions and actions your agent is taking. As mentioned above, if your state permits the appointment of a monitor, they are entitled to a record of all transactions done or made on a principal's behalf. The monitor can obtain this information from the agent or third parties upon request.

Can I Terminate the Power of Attorney?

You can **terminate a power of attorney** if you see fit, as long as you are of sound mind. There are several ways to end a dual power of attorney. You can terminate your dual power of attorney in the following ways:

- Put it in writing and notify all parties to the power of attorney – the agent, co-agent, successor agent, monitor, etc.
- If the situation is more complex, a third party may be able to file an action in the appropriate court and ask the court to remove or replace the agent.

A power of attorney will also terminate in the following circumstances:

- The death of either the principal or an agent
- The roles and responsibilities of serving as agent have been completed (for example, where a power of attorney is solely for purposes of completing one real estate closing or transaction)
- A clause in the power of attorney provides that the arrangement would end once triggered

Setting up a power of attorney requires the help of a professional, especially because POA laws vary by state. [The Elder Law attorneys at Mandelbaum Barrett PC can provide guidance and ensure that your power of attorney meets your state's requirements.](#)

Home Health Services Underutilized by Seniors, Study Shows

Health Affairs estimates that 4 million older adults can only leave their homes with assistance, making accessing care challenging.

The Centers for Disease Control and Prevention reports that 1.3 million Americans receive care in nursing homes. According to A Place For Mom, more than 810,000 reside in assisted living.

Home health care presents an alternative to nursing homes and assisted living, providing care for homebound people. Those who receive home health care can remain in their residences, reducing expenses, preserving autonomy, and maintaining community ties.

Although Medicare funds some home health care services, a recent study has found that Medicare beneficiaries are underutilizing the program's home health care options. Many older adults do not receive the home-based clinical care or home-based long-term services and supports that could benefit them, of how the application process works and what you can expect after you've applied.



WATCH NOW

Medicare Coverage of Home Health Services

Medicare Parts A and B cover certain **home health services**. Homebound individuals can receive part-time or intermittent skilled services. Part A covers home health care for people following a hospital stay or a stay in a skilled nursing facility. Part B provides home health care for homebound adults who need skilled nursing care.

A Medicare beneficiary is considered homebound in the following situations:

- Because of an illness or injury, they have trouble leaving their home without help, such as a cane, wheelchair, walker, or crutches, special transportation, or another person's assistance.
- Their physician recommends staying at home.
- Leaving their residence takes a major effort.

The program covers medically necessary part-time or intermittent skilled nursing care and health assistance, durable medical equipment, and medical supplies for use at home.

Medicaid also covers **long-term services and supports** (LTSS), which include medical and personal care services that aid with activities of daily living (ADLs). These are the kinds of services an assisted living facility typically provides.

Use of Home-Based Clinical Care and Long-Term Services and Supports Among Homebound Older Adults

A 2023 study published in the **Journal of American Medical Directors Association** looked into home-based clinical care and home-based LTSS among homebound older Medicare beneficiaries. The researchers examined the Medicare claims of 974 beneficiaries to shed light on their use of in-home services.

The study found that while homebound individuals used these services, no group received high levels of all care types. Homebound individuals more commonly utilized LTSS services than home-based clinical care.

- Approximately 30 percent of participants received some home-based clinical care.
- About 80 percent of the sample received home-based LTSS.

The researchers identified three levels of home clinical care and LTSS usage among older adults:

- **Low Care and Services (46.6 percent)**. The largest group of participants received little home-based care. These individuals tended to be younger with fewer chronic conditions and functional impairments.
- **Home Health Only with LTSS (44.5 percent)**. While this group used some home health services, such as assistance with ADLs, they received little home-based clinical care.
- **High Clinical with LTSS (8.9 percent)**. Only a few participants had extensive home-based clinical care. In addition to tending to be older, they were more likely to have dementia and live alone.

In finding that only roughly 9 percent of participants receive high levels of clinical care and LTSS, the study points to a gap between those who could benefit from these services and the care provided. Although in-home care and support could meet the needs of older adults, many homebound older adults do not take full advantage of the services available.

Learn More About Your Options

If you or your loved one need help with medical care or activities of daily living at home, the Elder Law attorneys at Mandelbaum Barrett PC are here to discuss your specific situation. They can help you determine and obtain the services for which you or your loved one are eligible.

Medicare Extra Help Program Set to Expand in 2024

Seniors and disabled citizens will receive more access to the Medicare Extra Help Program as of the beginning of 2024, the federal government announced. This expansion of benefits could enable up to 3 million people to reduce their prescription drug costs.

What Is the Medicare Extra Help Program?

The Medicare Extra Help Program assists older adults and people with disabilities who have trouble paying their [Medicare Part D](#) premiums. Note that you are automatically eligible for Extra Help if you:

- receive Medicaid coverage,
- are enrolled in a [Medicare Savings Program](#), or
- receive Supplemental Security Income.

The program was expanded through the Inflation Reduction Act, which President Biden signed in August 2022, by increasing the income limit to 150 percent of the [poverty level](#) (\$21,870 for an individual and \$45,000 for a family of four). When the program expands at the beginning of 2024, 300,000 participants will go from partial to full benefits. That means they will not have to pay a premium or deductible, and they will have lower, fixed co-payments on certain medications.

Expanding Access to the Program

The government estimates that nearly 3 million people who could benefit from the program are not currently enrolled. The Department of Health and Human Services will activate government agencies to increase participation. The Administration for Community Living will reach out to underserved and rural communities, while the Centers for Medicare and Medicaid Services will provide an outreach toolkit for community organizations and beneficiary advocates.

Those who participate in the Medicare Extra Help Program could save [nearly \\$300 per year](#).



Where Do I Apply for Extra Help?

To apply for Extra Help, you can visit the Social Security Administration's dedicated [webpage](#) for more information, support, and an online application.

Read more about Extra Help and other Medicare Savings Programs in the following articles:

- [What Are Medicare Savings Programs?](#)
- [Medicare Prescription Drug Coverage for Low-Income Beneficiaries \(Extra Help\)](#)



No Need to Be Insecure About Your Retirement Plan: A Guide to SECURE Act 2.0

In July of 2019, the Setting Every Community Up for Retirement Enhancement Act, also known as the SECURE Act, changed the rules pertaining to 401(k), Roth, IRA, and other retirement savings plans. In December of 2022, the updated SECURE Act 2.0 was signed into law, supplementing the 2019 Act. Before delving into the recent changes brought about by the SECURE Act, it's important to understand the different types and fundamental elements of retirement plans.



What is a 401(k)?

A 401(k) is a tax deferred retirement savings account, typically offered by employers for the benefit of their employees. Each pay cycle, employees contribute a percentage of their gross pay, and employers may match that contribution up to a certain limit. 401(k) funds can be invested in stocks, bonds, mutual funds, and certain securities. The proceeds of these investments are not taxed until they are withdrawn at retirement.

What is an IRA?

Individual Retirement Accounts (IRAs) are another form of tax-deferred retirement savings accounts established and funded by individuals. They can be created and held by banks, brokerages, and investment firms. Contributions made to traditional IRA's are tax deductible. As such, earnings, interest, and dividends earned will accumulate on a tax-free basis. However, like traditional 401(k) plans, funds are taxed at the time of withdrawal. Roth IRAs are funded with after-tax money. Although contributions to Roth IRAs are not tax deductible, account proceeds are not taxed at the time of withdrawal.

What is an RMD?

At retirement age, many IRA plans require that participants withdraw a certain amount of money each year to avoid a tax penalty. These are known as **Required Minimum Distributions (RMDs)**. The amount of each distribution is determined by dividing the account's prior year-end fair market value by the owner's life expectancy. The life expectancy factor is published by the IRS in the Uniform Lifetime and Single Life Table.

In 2022, SECURE Act 2.0 implemented the following changes:

1. The Starting Age for RMDs:

As of January 1, 2023, SECURE 2.0 requires IRA participants to take RMDs by April 1, beginning the year they reach age 73. From that point onward, RMDs must be received by December 31 on a yearly basis. By January 1, 2033, the threshold age for RMDs will increase to 75. This reflects the fact that American life expectancies are increasing. It also allows individuals to keep retirement savings in tax-advantaged accounts for a longer time-period before being required to take distributions. Additionally, the penalty for failing to take RMDs on a timely basis has been significantly reduced from 50% of the undisputed amount to 25%.

2. New RMD Rules for Surviving Spouses:

A surviving spouse, who is sole beneficiary of a deceased

plan participant or IRA owner, may now elect to have RMDs determined using the Uniform Lifetime Table rather than the Single Life Table. This gives widowing spouses the benefit of a longer distribution period and a smaller RMD obligation.

3. "10-Year Rule" for Inherited IRAs:

SECURE Act of 2019 required most non-spousal beneficiaries inheriting IRA assets after January 1, 2020, to withdraw the full balance of the account within 10 years of the original owner's death. However, the 2019 Act did not state whether the "10-Year Rule" required annual distributions. SECURE Act 2.0 clarified that such beneficiaries must take out annual RMDs, with a full payout by year 10.

However, surviving spouses, beneficiaries with disability or chronic illness, minor children, and beneficiaries no more than 10 years younger than the original IRA owner, are exempt from the 10-Year Rule. These beneficiaries may take annual RMDs based upon the life expectancy tables, as referenced above. They have until December 31 the year following the original IRA owner's death to begin taking distributions.

4. Increased Catch-Up Contributions:

Catch-up contributions allow those aged 50 and up to contribute additional funds, beyond the maximum contribution amount for workplace retirement plans.

- As of 2023, the maximum amount that can annually supplement a workplace plan increased from \$6,500 to \$7,500.
- In 2025, those aged 60 to 63 can annually contribute \$10,000 above the standard limit.
- In 2026, all catch-up contributions in such plans must be made on an after-tax basis, unless the plan owner earns less than \$145,000 annually.

5. New Exceptions to Penalty for Early Withdrawals:

Currently, there is a 10% penalty for distributions taken from a retirement account before the recipient reaches age 59-1/2.

- Per SECURE Act 2.0, this penalty is waived for those who receive a physician certification as to having a terminal illness or condition that can reasonably result in death in 84 months or less. Those distributions must be repaid within three years to avoid a fee penalty.
- In 2026, annual withdrawals of up to \$2,500 can be made to pay premiums on certain long-term care contracts.

Despite the beneficial provisions introduced by SECURE Act 2.0, navigating the intricacies of retirement planning can still be overwhelming. **Our team at Mandelbaum Barrett PC** has extensive experience and is committed to relieve any retirement plan insecurities you may have. Planning today can SECURE the future for you and your loved ones.

Have You Ever Wondered What a Day in the Life of an Elder Law and Probate Litigation Attorney is Like?

Richard Miller, Esq., Chair of the Elder Law practice group at Mandelbaum Barrett PC has a Netflix recommendation for “Fisk”. Richard describes it as a “typical Thursday” in his practice! Check it out and let us know what you think of the care provided through a nursing home as compared with hospice.



RECENT EVENTS

An event poster for an NJICLE webinar. The background is a blurred image of a courtroom with a gavel and scales. The poster includes the Mandelbaum Barrett PC logo, the NJICLE logo, the title 'Guardians Ad Litem - How They Work & How to Get Appointed', the date 'September 20th, 2023', and two speakers: Richard I. Miller | Partner (Chair, Elder Law and Co-Chair, Special Needs) and Shawna A. Brown | Counsel (Elder Law and Special Needs).

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NJICLE
Guardians
Ad Litem -
How They Work
& How to Get
Appointed
September 20th, 2023

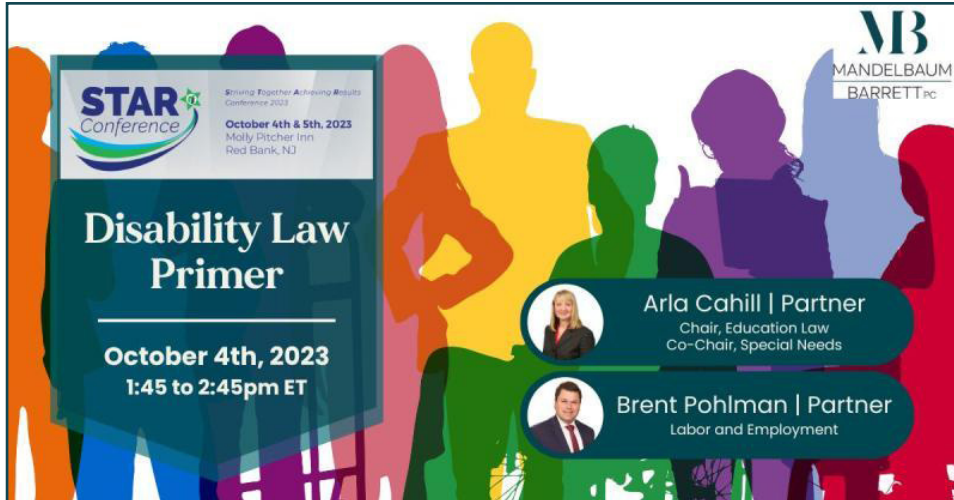
Richard I. Miller | Partner
Chair, Elder Law and
Co-Chair, Special Needs

Shawna A. Brown | Counsel
Elder Law and Special Needs

Guardians Ad Litem - How They Work & How to Get Appointed

On September 20th, 2023, Richard Miller, Esq., Chair of Elder Law and Co-Chair of Special Needs and Shawna Brown, Esq., Counsel in the Elder Law and Special Needs Practice Groups at Mandelbaum Barrett PC joined a distinguished panel of Judges and practitioners for an NJICLE CLE webinar to share real world scenarios that give context to the Statutes, Rules and Case Law that govern Guardians Ad Litem. From the Family Part to the Civil Part to Chancery and Probate, this informative seminar covered everything you need to know about Guardians Ad Litem (GAL).

UPCOMING EVENTS



Disability Law Primer

Arla D. Arla Cahill, Esq., Partner and Chair of Education Law and Co-Chair of Special Needs and **Brent Pohlman, Esq.**, Partner in Labor and Employment at Mandelbaum Barrett PC will be presenting a “Disability Law Primer” at the upcoming **ACCSES New Jersey Star Conference** on October 4th from 1:45pm to 2:45pm.

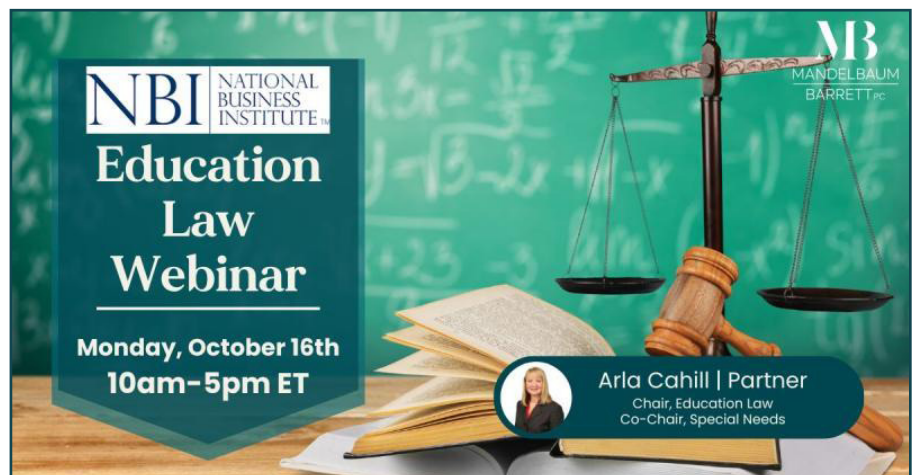
The Disability Law Primer will be an introduction to relevant state and federal laws pertinent to service providers of individuals with disabilities. Of particular focus will be laws related to employment. Topics covered during the session will include the Americans with Disabilities Act (ADA), Individuals with Disabilities Act (IDEA), Workforce Innovation and Opportunity Act (WIOA), and the New Jersey Law Against Discrimination (LAD). Participants will receive an overview of those laws impacting their work in the provision of disability services as well as the ways in which they can ensure their consumers receive the full benefits and protections to which they are entitled under the law.

Register and learn more here: <https://accsesnj.org/star-schedule/>

How does your knowledge of special education law stack up?

What are the newest legal issues concerning technology and the classroom?

Are you up to date on the latest Title IX developments?



Join Mandelbaum Barrett PC Education Law Chair **Arla D. Cahill, Esq.** for the **National Business Institute (NBI, Inc.)’s** “The ABCs of Education Law.” Being held on Monday, October 16, 2023, this program is a Beginner’s Guide to IEPs and 504 Plans, Transgender Students’ Rights, and more. It is designed for attorneys, but school administrators, teachers, principals, counselors, superintendents, board members, school psychologists, and paralegals may also benefit.

Register and learn more here: <https://bit.ly/3KH6Asu>

Use Promo Code **FSPN50A** at checkout to get **\$50 off**.



Plan Today for Tomorrow

Why It's Important to Put Your Wishes in Writing.

Most people have very definitive ideas about what they want as they age. For example, it's common to hear, *"I don't want to go into a nursing home."*

But many times, these preference are never put into writing. Therefore, it is so important not only to plan ahead, but to have these wishes made legally binding.

"Long-term care planning is generally a holistic approach to meeting the legal, financial and medical needs of an individual," says Donald Dennison, an associate with Mandlebaum Barrett PC Law Firm whose expertise is in elder law. *"The objective is to allow a person who may not yet be in their proverbial golden years to remain in the driver's seat for as long as possible."*

He says even young people should have a plan in place. *"Anyone who's over the age of 18 should consider signing legal documents such as a power of attorney, a living will, and/or a last will and testament. These documents are really important so that there's at least one or more people who can make healthcare decisions if there is a catastrophic accident."*

It's hard for the average person to know what considerations to take into account when doing this type of planning, and most online legal services can't know every person's unique situation. This is why sitting down in person with a professional is critical.

"Most people delay this type of planning because they don't like to think about getting older," says Don. *"But, aging can cause forgetfulness, memory loss, and the inability to communicate effectively, and without proper planning, people are left hoping that others are making the right decisions for them."*

Thank you for placing your trust in our team.

Team Mandelbaum



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