



Elder Law and Special Needs Planning

April 2024 Newsletter

ELDER LAW DAY



Thank You to everyone who attended our inaugural **Elder Law Day** on March 22nd!

The morning was truly enriching, fostering learning and connections among friends and colleagues. Special thanks to our speakers who brought their knowledge, insights and great stories and humor. We can't wait to do it again next year!

For those unable to attend, don't worry!
A video recording will be made available in the coming weeks.

MB MANDELBAUM
BARRETT PC
ATTORNEYS AT LAW

Richard Miller, Esq.

**4 Things Advisors
Must Know About Beneficiary
Designations**

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“Many people believe that a will controls the disposition of all of one’s assets at death. **This is not so.**”

Richard Miller, Esq., Chair of the Elder Law Practice Group at Mandelbaum Barrett PC, explores crucial insights for Financial Advisors in a recent [ThinkAdvisor](#) article discussing beneficiary designations.

Read the full article here to learn about what Richard considers the 4 critical points for advisors to consider: <https://bit.ly/4alhlef>

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New Jersey Inheritance Tax and Stepchildren: Once a Stepchild, Always a Stepchild



Understanding New Jersey's Inheritance Tax

New Jersey remains one of the few States that imposes an inheritance tax. The inheritance tax is not based on the size of the estate, but who receives the estate. There is no inheritance tax imposed on transfers to a parent, grandparent, spouse, domestic partner, child or stepchild (Class "A" beneficiaries). Inheritance tax is, however, imposed on transfers to siblings (Class "C" beneficiaries), nieces, nephews, friends, and everyone else other than charities. (Class "D" beneficiaries).

Tax Rates and Considerations

The tax rate for non-Class A beneficiaries is between 11% – 16%. Transfers made within three years of death are presumed to be "in contemplation of death" and, may, also, be subject to inheritance tax. In addition, transfers intended to take effect at or after death are included in one's estate for inheritance tax purposes.

Case Study: Impact of Divorce on Taxation

Recently, our firm had a case where the Decedent's Will left the estate to his spouse and her children. At the time of his death, the Decedent and his wife were divorced. (Decedent made a handwritten notation on the Will reaffirming the bequests to the spouse and her children after the divorce).

Ordinarily, a spouse is exempt from inheritance tax as a Class A beneficiary. However, since the couple was no longer married at the time of Decedent's death, the ex-spouse is characterized as an unrelated Class D beneficiary subject to tax.

Quirks in Tax Structure: Ex-Spouses vs. Ex-Stepchildren

One would think the same analysis applies to stepchildren. This is not the case. According to the NJ Division of Taxation (and Pennsylvania Department of Revenue), ex-stepchildren are considered Class A beneficiaries, exempt from inheritance tax. In other words, once a stepchild always a stepchild.

This result is counterintuitive. If the divorce converts an ex-spouse from a Class A beneficiary to a Class D beneficiary, why wouldn't it also change the classification of an ex-stepchild? Maybe it's because the stepchild is indirectly impacted by the divorce without having a say in the outcome? Or maybe it's just a quirk in the tax structure. Either way, it is helpful information to know, particularly in a world where blended families are common and divorces frequent.

Conclusion

Understanding these nuances is crucial, especially in a world where blended families are common and divorces frequent. It highlights the importance of seeking professional advice to navigate the complexities of inheritance tax laws effectively. **The Elder Law attorneys at Mandelbaum Barrett PC** are here to answer any questions you may have.





Landmark Victory: Governor Signs Domestic Workers' Bill of Rights into Law in New Jersey

On January 12, 2024, Governor Phil Murphy signed the Domestic Workers' Bill of Rights (**S723**) into law, representing a landmark victory for labor rights groups across the state. The new law, effective July 2024, extends labor rights including, but not limited to, mandatory minimum wage, paid sick leave, and protections against unlawful termination, to over 50,000 domestic workers, many of whom have historically been excluded from state and federal labor laws.

Defining Domestic Workers

The new Domestic Workers' Bill of Rights defines 'domestic workers' as hourly and salaried employees, independent contractors, full and part-time workers, and temporary workers who are employed in a residence caring for a child, serving as a companion or caretaker for a sick, convalescing, elderly, or disabled person, housekeeping, cooking, providing food or butler services, cleaning laundry, gardening, or for any other domestic service purpose.

Exclusions and Protections for Domestic Workers

However, the new Bill of Rights does not apply to individuals providing care and related services to immediate family members, as well as home health aides paid through Medicare and/or Medicaid's Personal Preference Program ("PPP"). Despite these exclusions, there are several options available to protect the interests of both caregiver and loved one alike. For example, a "care contract" can be utilized to specify the services to be rendered by a caregiver, as well as their hourly rate, holidays, paid time off, etc. Written care contracts are especially important for those applying (or intending to apply) for Medicaid or other means-tested benefits in the future because of Medicaid's rebuttable presumption that care provided by a family member is performed out of love and affection (for free) in the absence of a pre-existing, written agreement. This presumption sometimes results in the inadvertent imposition of a transfer (gift) penalty when payments were made to a family member/caregiver without a formal agreement in place.

Seeking Guidance

The **Elder Law Department at Mandelbaum Barrett PC** is eager to assist you and your family with navigating the parameters of this new law, as well as discussing options related to the implementation of care contracts, government benefits and long-term care.

Mastering the Probate Maze: A Roadmap for New Jersey Estates

Losing a loved one is an emotional and challenging experience, and dealing with the legalities of their estate can add another layer of complexity. In New Jersey, the probate process is the legal procedure through which a deceased person's assets are distributed and their final affairs are settled. Understanding this process is crucial for both executors and beneficiaries.



What Exactly is Probate?

Probate is the court-supervised process of validating a deceased person's will if one exists and administering their estate. The primary goal is to ensure that the deceased person's debts are settled, and their assets are distributed in accordance with their wishes or state law.

What Could It Cost?

Total costs vary based on a few factors:

- Your state
- Size of the estate
- Complexity of the Estate Plan
- Whether or not someone contests any part of your plan

Getting Started

Typically, the process begins by filing the decedent's will with the Surrogate's Court in the county of residence. Without a will, the court follows intestacy laws to ascertain how assets are distributed. If there is a will, it is submitted along with the petition. If there is no will (intestate), the court will appoint an administrator to oversee the estate.

The Crucial Role of Executor Appointment in Probate

When a will specifies an executor, that individual is responsible for supervising the probate process. When no executor is designated, the court appoints an administrator to carry out this duty.

Collecting Assets and Creating an Inventory

The appointed executor or administrator is responsible for assembling an inventory of the decedent's assets. This could include:

Real Estate: The executor/administrator must locate and assess any real estate owned by the deceased. This includes primary residences, vacation homes, or investment properties.

Financial Accounts: A thorough search for bank accounts, savings accounts, and investment accounts is essential. Statements and related documents must be collected for a complete financial overview.

Personal Property: Items such as jewelry, art, vehicles, and personal belongings need to be identified, appraised, and documented.

They also must compile a detailed inventory:

Documentation: All relevant documents, including titles, deeds, and financial statements, should be gathered. This ensures accuracy and transparency in the inventory.

Professional Appraisal: For high-value items or complex estates, seeking professional appraisers can help determine the fair market value of assets, facilitating the inventory creation process.

There are however some assets that do not need to go through probate. Those include:

- Retirement accounts for which a beneficiary was named
- Life insurance proceeds
- Pension plan distributions
- Property held in a living trust



- Funds in a payable-on-death bank account
- Securities registered in transfer-on-death form
- U.S. savings bonds with a named beneficiary or co-owner
- Wages, salary, or commissions (up to a certain amount) owed to the deceased person
- Vehicles that go to immediate family members under state law
- Household goods and other items that go to immediate family members under state law (in some states).

Debts and Claims

Executors must notify known creditors of the probate proceedings, giving them an opportunity to file claims against the estate. Creditors will be given a specific time frame to process their claims. In addition, any debts against the estate will be paid out with the assets prior to distribution to the beneficiaries.

Estate Distribution

After debts and expenses are settled, the court must approve the final distribution of assets. The remaining assets are then distributed in accordance with the decedent's will or, in the absence of a will, in accordance with New Jersey's intestacy laws.

Taxes and Fees

For estates in excess of \$13.61 million in 2024, a Federal Estate Tax may apply. Although New Jersey does not have an estate tax, it is one of the few States that imposes an inheritance tax. The inheritance tax is not based on the size of the estate, but who receives the estate. There is no inheritance tax imposed on transfers to a parent, grandparent, spouse, domestic partner, child or stepchild (Class "A" beneficiaries). Inheritance tax is, however, imposed on transfers to siblings (Class "C" beneficiaries), nieces, nephews, friends, and everyone else other than charities. (Class "D" beneficiaries). These taxes are imposed on probate and non-probate assets (with certain exemptions). Executors must know potential estate taxes and navigate the proper filing procedures.

Contested Assets

In cases where the validity of a will or the ownership of assets is contested, the executor/administrator may need to navigate legal challenges. Professional legal guidance becomes invaluable in such situations.

Experienced Legal Counsel Can Help You Navigate Probate

Considering the complexities inherent in the probate process, seeking legal guidance from seasoned estate planning and probate attorneys in New Jersey is strongly advised. At Mandelbaum Barrett PC, our Elder Law team can skillfully lead you through the process, ensuring adherence to state laws and effectively addressing potential complications. Understanding the steps, intricacies, and potential challenges empowers individuals to confidently approach the process. By enlisting the assistance of a skilled elder law attorney, you can relieve your loved ones of burdens and guarantee that your wishes align with state laws and regulations.



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Medicaid Alert: Changes to Medicaid's Penalty Divisor Effective April 1, 2024

Beginning April 1, 2024, the State of New Jersey will increase the Medicaid penalty divisor to \$440.10 per day, as compared to the previous penalty divisor of \$384.57 in 2023. [See Medicaid Communication No. 24-03.](#)



The Medicaid divisor is used to determine the period of ineligibility for individuals and couples who have transferred assets for less than fair market value during the (5) year Medicaid lookback period. The penalty divisor is intended to represent the average monthly cost of nursing home care in New Jersey.

For example, if an individual transferred (or gifted) \$100,000 during the five (5) year lookback period, Medicaid divides the transferred amount by the current penalty divisor ($\$100,000 / \440.10), resulting in an ineligibility (“penalty”) period of approximately 7 ½ months. The ineligibility period begins on the day the Medicaid applicant is determined to be “otherwise eligible” for benefits. To be “otherwise eligible,” Medicaid applicants not only need to meet the financial criteria, but also need to demonstrate medical need, which is determined through the “pre-admission screening” process.

Medicaid’s nuanced rules can be difficult to navigate without appropriate guidance. The Elder Law Department at Mandelbaum Barrett PC can assist you and your family understand these rules and offer guidance and options to preserve assets and qualify for Medicaid benefits as soon as possible.

The Importance of Charitable Beneficiary Planning: Lessons from the Matter of the Estate of Heinecke

The recent Appellate Division decision, *In the Matter of the Estate of Heinecke*, serves as an important warning to those who have named charitable organizations as beneficiaries in their Last Will and Testament. The case also illustrates the applicability of the legal doctrine known as *Cy Pres*.



Understanding Cy Pres Doctrine:

Cy Pres is an “intent-enforcing doctrine,” utilized by Courts when the purpose of the charitable disposition becomes impossible, impracticable, or illegal. In such a scenario, the Court is authorized, pursuant to N.J.S.A 3B:31-29, to “modify or terminate the [charitable disposition] by directing that [it] be applied or distributed, in whole or in part, in a manner consistent with the [Decedent’s] charitable purposes.” The doctrine’s applicability depends upon the donor’s intent and purpose in making the gift.



Heinecke involves the Last Will and Testament of Barbara Heinecke (“Barbara”), who passed away on April 9, 2021. Barbara’s Will bequeathed twenty-five percent (25%) of her residuary estate to charitable organizations, which included the New Jersey Society for the Prevention of Cruelty to Animals (“NJSPCA”) and the International Relief Fund (“IRF”). The Co-Executors of the Estate filed a Complaint seeking advice and direction from the Court as to the disposition of the charitable bequests, alleging NJSPCA and IRF were defunct.

In 2018, NJSPCA was reincorporated into NJSPCA, Inc. Due to the reorganization, NJSPCA’s original responsibilities to enforce animal cruelty laws were transferred to county prosecutors and municipal law enforcement agencies. The Estate contended that the shares intended for NJSPCA and IRF should be distributed to the other charitable organizations named in Barbara’s Will because the new organization did not maintain the same function as the original entity, which would be contrary to Barbara’s testamentary intent.

NJSPCA, Inc. claimed that all assets from the NJSPCA were transferred to NJSPCA, Inc., and although it had no authority to enforce animal cruelty laws, the mission of NJSPCA, Inc. was consistent with that of NJSPCA. Accordingly, NJSCPA asserted that NJSCPA, Inc. should receive the bequest under Barbara’s Will.

The Attorney General (The “AG”), appearing in its role as protector of the public’s interest in charitable gifts, objected to NJSPCA Inc.’s contentions, asserting the primary function of NJSPCA, Inc. was fundamentally different from the law enforcement role of the NJSPCA. As such, the AG argued that the original entity identified in Barbara’s will no longer existed and the redistribution of the bequest to the other designated charities was more consistent with Barbara’s intent.

The Court was persuaded by the AG’s argument and applied the Cy Pres doctrine to redirect the devises intended for IRF and the NJSPCA to the remaining charities named in Barbara’s Will.

On appeal by NJSPCA, Inc., the Appellate Division upheld the lower Court’s application of Cy Pres. However, rather than redistributing the bequest among the remaining named charities in Barbara’s Will, the Court remanded the case back to the lower court, instructing it to “make factual findings sufficient to effectuate the distribution of the devises with organizations ‘as similar as possible’” to Barbara’s purpose in making the charitable gifts to NJSPCA and IRF.

Implications and Lessons Learned:

This case is a critical reminder to review your Will if you have named a charitable organization as a beneficiary of your estate. If the charity is no longer active, maintains tax exempt status, or changes its mission, the Cy Pres doctrine may apply. Without this verification, you run the inadvertent risk of spurring lengthy and expensive litigation between the named charitable beneficiaries upon your death.

At Mandelbaum Barrett PC, our dedicated Elder Law team is here to address all your Estate Planning inquiries, whether you’re navigating complex legal matters or seeking guidance on charitable bequests. We’re committed to ensuring that your estate plan reflects your wishes precisely, safeguarding your legacy for generations to come.



Exploring the Visibility of Wills: Understanding Public Record in Estate Planning



Wills serve as vital documents outlining the distribution of finances, possessions, and property after an individual's passing. It's common to wonder about the accessibility of this information and whether it falls under public record.

Upon entering probate, a will becomes part of the public record. The surrogate or probate court is responsible for maintaining these records, ensuring they are accessible to the general public.

Access to wills isn't restricted to heirs or beneficiaries; anyone can visit the probate court to view them, typically for a fee. In certain jurisdictions, these documents may even be available online.

Why Are Wills Made Public?

The rationale behind making wills public lies in ensuring fairness during the probate process. With numerous potential claimants to an estate, transparency is essential. By granting public access to wills, individuals with legitimate claims, such as creditors or overlooked beneficiaries, can assert their rights within the designated timeframe, governed by state law.

When Do Wills Become Public?

Prior to probate, wills remain private documents. Individuals may revise their wills multiple times during their lifetime, but only the final version becomes part of the public record. Usually, the initial will is held by the estate planning attorney or kept securely by the testator, who may share copies with family members.

While some jurisdictions allow individuals to file wills with the court during their lifetime, it's not a common practice. The timing of when a will becomes public varies based on local regulations. In some states, the will may become accessible alongside other probate records during the probate process, while in others, it only becomes public after probate concludes.

Although probate courts have the authority to keep wills private in exceptional cases, this is rare. If a will has undergone probate, it's typically available as a public record through the relevant court.

Finding Someone's Will

Determining whether someone had a will can be crucial. Methods for locating a will include:

1. Checking with the probate court in the jurisdiction where the individual passed away.
2. Searching the deceased's residence.
3. Consulting with acquaintances or the appointed executor.

Accessing Public Records

For interested parties like heirs or creditors, locating a will within public records involves identifying the probate court that handled the estate. If probate has concluded, this process is relatively straightforward. However, if probate is ongoing or yet to occur, finding the will might be more challenging. Potential avenues include checking safe deposit boxes or contacting the individual's attorney.

Trusts and Privacy

For those desiring more discreet asset distribution, trusts offer an alternative. Unlike wills, trusts generally remain private and are not part of public records.

How Our Team Can Help

Crafting a comprehensive estate plan often extends beyond creating a will. Elder law attorneys specialize in assisting families with recording and executing their final wishes. At **Mandelbaum Barrett PC**, our team is dedicated to addressing all aspects of estate planning to ensure your peace of mind.

Congratulations to our 2024 New Jersey Super Lawyers



Steven I. Adler
Partner



Michael F. Bevacqua, Jr.
Partner



**Andrew R. Bronsnick
Partner



Arla D. Cahill
Partner



Jeffrey W. Cappola
Partner



David S. Carton
Partner



Vito Colasurdo, Jr.
Counsel



Damian P. Conforti
Partner



Douglas I. Eilender
Partner



Raj Gadhok
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Arthur D. Grossman
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*Barry R. Mandelbaum
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Richard I. Miller
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Michael A. Saffer
Partner



Robert C. Scrivo
Partner



*Lynne Strober
Partner



Peter H. Tanella
Partner



Jacqueline Greenberg Vogt
Partner

2024 Rising Stars:



Brian M. Block
Partner



Melody M. Block
Counsel



John P. Burns
Associate



Donald A. Dennison
Associate



Mena R. Francis
Counsel

**Made top 100 Attorney List

*Celebrating 20 years on Super Lawyer List

Mandelbaum Barrett PC is delighted to share that 18 of our attorneys have been selected for the 2024 New Jersey Super Lawyers® list, and 5 were named to the 2024 New Jersey Rising Stars® list.

We are proud to work alongside such an exceptional team.

* A description of the selection methodology can be found at <https://lnkd.in/eS384Qcf>.

No aspect of this advertisement has been approved by the Supreme Court of New Jersey.



Decision Alert:
Arla Cahill & Richard Miller
Secure Favorable
Decision for Client
in Special Needs Trust Case



Arla Cahill, Esq.
Co-Chair, Special Needs

Richard Miller, Esq.
Co-Chair, Special Needs

DECISION ALERT:

Arla D. Cahill, Esq. and Richard Miller, Esq., Partners and Co-Chairs of the Special Needs Practice Group at Mandelbaum Barrett PC, recently won a favorable decision on behalf of the firm's bank client, which filed a suit in 2021 to modify a special needs trust (SNT) agreement that appointed the bank as a professional co-trustee for a disabled child.

The Superior Court of New Jersey Appellate Division affirmed the lower court's decision to (1) terminate the SNT due to circumstances unanticipated by the settlor and (2) approve the formation of a new irrevocable trust for the child with the bank serving as co-trustee along with a new co-trustee. Richard represented the client in the lower court proceedings and Arla prepared and argued the appeal before a three-judge appellate panel.

Read the decision here: <https://bit.ly/3TAVJoB>



PRIMERUS



Donald “Donny” A. Dennison, Esq., Elder Law attorney at Mandelbaum Barrett PC recently attended the 2024 International Society of Primerus Law Firms™ Young Lawyers Section Leadership Conference in New Orleans, LA!

Donny had an incredible experience connecting with other young and talented attorneys from across the country. It was a fantastic opportunity to network, share insights, and gain valuable knowledge to better serve our clients.

MB

Thank you for placing your trust in our team!



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