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## Guardianships and Elder Law

Often the most difficult part of planning an estate for the parents of a young child is selecting a guardian for their child if they were both to die before their child reached the age of majority.

### Choosing a Guardian for Your Minor Child

Although the parents' choice of a guardian is accorded great weight and normally prevails, the court is not bound by this selection, but must consider the best interests of the child. Knowing that criterion, you will be better able to decide to whom you give this measure of trust. There are several factors to consider when choosing a guardian, including age, experience, temperament, values, religious beliefs, relationship with the children, and whether the guardian has his or her own children. Parents must decide whether it is preferable to name a family member or friend. We always counsel clients to consult with their candidates for guardian before making a final selection. For children with special needs, the need for an appointed guardian may extend into adulthood. When necessary, we institute proceedings seeking appointments of guardians for minors and adults with disabilities, in addition to assisting guardians with their annual and final accounts.

### Estate Planning for Parents of Children (Minors and Adults) with Special Needs

Most of us, when we decide to plan our estates are looking to minimize estate taxes while passing our assets to our heirs, and to protect our loved ones from estate-related litigation. However, when a disabled relative is involved (i.e. spouse, parent, child, grandchild, sibling) for whom you wish to provide, other planning aspects must also be considered. In particular, trusts may take on special significance when dealing with a disabled beneficiary. In fact, there are several specific considerations which the estate planner must consider when dealing with a disabled client or a client's disabled family member in order to allow assets to be used to their maximum efficiency while still allowing beneficiaries to retain all of their government benefits. We advise clients in anticipation of establishing eligibility for Medicare and Medicaid benefits, preparing appropriate powers of attorney, deeds and trust agreements (including supplemental needs trusts). We advise clients on asset transfers and gift-giving strategies to accelerate the date on which Medicaid benefits will become available. Our services in this area also include the preparation of Medicaid applications for in-home care and nursing home care, as well as, the preparation of applications for the recertification for Medicaid benefits, which generally must be completed and approved each year.

One of the most powerful tools in protecting your loved ones is the "supplemental needs trust." Using a supplemental needs trust allows for the continuation of government program benefits while also allowing access

to trust assets. New York has enacted a comprehensive statute to protect disabled trust beneficiaries' financial eligibility for such programs.

We prepare first-party supplemental needs trusts, which are funded with the disabled individuals' own assets. These types of trusts are typically used when a disabled individual has received a personal injury or medical malpractice award and are looking to have those assets largely sheltered during the remainder of their life so that they can still receive government benefits, usually Medicaid and SSI. We also prepare third-party supplemental needs trusts, which are trusts established for the benefit of a disabled individual with the assets from another person, usually their parents, children or siblings. This second type of supplemental needs trust is typically used to shelter an inheritance which an individual might otherwise receive from their parents, siblings or children, so as to not disqualify the disabled individual from government benefit eligibility. We also assist clients in adopting third-party pooled institutional supplemental needs trusts, which are sponsored by charitable organizations and provide the benefit of professional management of trust assets for the benefit of the disabled individual. In certain instances, membership in a pooled institutional supplemental needs trust requires the charitable organization to provide perpetual lifetime social worker services for the disabled individual at no additional cost to the individual or their family.