

Guardianship, Conservatorship, and Special Needs Trusts

Robert B. Fleming
www.FlemingAndCurti.com



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Guardianship and Conservatorship

- Definition of terms
 - Guardians of the person
 - Conservators of the estate
 - Incapacitated adults (guardianship)
 - Persons in need of protection (conservatorship)
 - Minors (both guardianship and conservatorship)
 - Fiduciaries (both)
- Court proceeding, court control

Getting Appointed

- Petition
 - Affidavits, etc.
 - Priority to file
- Service
- Court-appointed experts:
 - Attorney
 - Court investigator
 - Medical evaluator
- Hearing

After Appointment

- Bond (conservatorships)
- “Letters” (both)
- Inventory (conservatorships)
- Annual reports
 - Accountings for conservatorships
 - Status reports for guardianships

Powers and Duties

- Manage and invest property / assets
- Medical decisions
- Placement
- Special cases:
 - Settle personal injury lawsuit?
 - Divorce?
 - Marriage?
 - Driving?
 - Voting?

Problems

- Loss of autonomy / self-determination
- Cost
- Time
- Family involvement
- Limited resources
- Limited controls

Alternatives (and Issues)

- Powers of attorney (medical and financial) – require competence
- Trusts – may not help with medical decisions
- Surrogate decision-making (statutory) – limitations and conflicts
- Self-help – abuse, neglect and exploitation, APS, Public Fiduciaries

Special Needs Trusts

- Two kinds of trusts:
 - Self-settled (with funds belonging to the beneficiary)
 - Third-party (with someone else's funds)
 - “Sole benefit” trusts
 - “Miller” trusts
 - Pooled trusts
- Two principles:
 - Maintain eligibility for benefits
 - Beneficiary is “disabled”

Public Benefits Primer

- Two key concepts:
 - Not all benefits are needs-tested
 - For SSI, particularly, understand ISM (In-kind Support and Maintenance)
- Some programs are entirely federal, some jointly funded and state-administered
- Interplay of major public benefits programs:
 - SSI and SSDI
 - Medicaid and Medicare

SSI Rules on Income

- Cash (but with a \$20 disregard)
- Items that can be converted to food and shelter (gift cards, refundable tickets, etc)
- In-kind Support and Maintenance (ISM)

ISM

- Food
- Shelter and related expenses:
 - Mortgage (and any required insurance)
 - Real property taxes
 - Rent
 - Heating fuel
 - Gas
 - Electricity
 - Water
 - Sewer
 - Garbage removal
 - HOA dues (to the extent they include the above)

Effect of ISM

- SSI reduction of the **lesser** of:
 - FMV of provided benefits, or
 - “Presumed Maximum Value” (PMV)
- Calculating PMV:
 - 1/3 of the maximum Federal Benefit Rate (\$674 in 2011) plus \$20
 - For 2011, this means \$244.66 maximum *reduction*, leaving maximum SSI *payment* of \$429

Example

- John, 23 and developmentally disabled, lives with his parents and pays no rent
- John has no assets, no income
- John's SSI: \$674 minus PMV, or \$429
- Query(s)—does it matter if:
 - John lives in an apartment complex and his parents pay his \$1,500/month rent?
 - John's SNT pays his \$1,500/month rent?
 - John's SNT pays his rent of \$1,500 **and** buys his food for another \$400/month?
 - John receives \$475/month based on his father's retirement income?

The Real Differences

- Watermelons and Pomegranates
- Payback provisions (not required in third-party SNTs)
- Court supervision, bonding, accounting (not usually required for third-party SNTs)
- Statutory limitations (do not apply to third-party SNTs)

Other Issues

- The “best” uses of SNTs:
 - Housing
 - Dental and other uncovered medical care
 - Entertainment, travel and quality-of-life expenditures
 - Case/care management
- Transition to Social Security / Medicare
- Taxation and accounting
- The future of SNTs – and public benefits
- Portability