



## Guardianship, Conservatorship, and Special Needs Trusts

Robert B. Fleming  
[www.FlemingAndCurti.com](http://www.FlemingAndCurti.com)



FLEMING & CURTI PLC

---

---

---

---

---

---

---

---



## 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

FLEMING & CURTI PLC

---

---

---

---

---

---

---

---



## Getting Appointed

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

FLEMING & CURTI PLC

---

---

---

---

---

---

---

---



### After Appointment

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

FLEMING & CURTI PLLC

---

---

---


---

---

---

---

---



### Powers and Duties

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

FLEMING & CURTI PLLC

---

---

---


---

---

---

---

---



### Problems

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

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---

### 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

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---

### 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"

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---

### 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

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---

### 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)

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

### 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)

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

### 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

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

### 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?

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---

### 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)

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---

### 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

FLEMING & CURTI PLLC

---

---

---

---

---

---

---

---