MANDELBAUM BARRETT PC
ATTORNEYS AT LAW

Elder Law, Probate Litigation and Special Needs Planning

July 2025 Newsletter

Shawna Brown Authors Guardianship Article for Exceptional Parent Magazine

Former talk show host Wendy Williams has been in the headlines lately due to her court-ordered Guardianship—bringing national attention to a topic that many families quietly face every day.

In the May issue of **Exceptional Parent magazine, Shawna Kirchner Brown, Esq.**, Counsel in the Elder Law and Special Needs Practice Groups at Mandelbaum Barrett PC, sheds light on Guardianship: when it's appropriate to pursue, what it entails, and the important rights of the individual under Guardianship.

[Read the full article here.]

UNDERSTANDING A WARD'S RIGHTS IN GUARDIANSHIP

BY SHAWNA A. BROWN

Former talk show host Wendy Williams has been the subject of recent media attention because she has a court-ordered guardianship, which is bringing issues surrounding guardianship to the forefront. Cases like Ms. Williams' highlight the importance of understanding guardianship and its impact.

WHAT IS GUARDIANSHIP?

Guardianship is a legal process where a court appoints a guardian to be a decision maker for an adult who lacks the capacity to manage his or her own affairs and make decisions. Guardianship is typically sought when an individual has a cognitive disability or impairment, or mental illness preventing them from managing their affairs and making decisions.

A guardianship can be "of the person," meaning the guardian makes decisions about a ward's daily care, living arrangements and healthcare, and/or "of the estate," which entails decisions about financial affairs, assets, and property. A guardianship can also be limited, meaning the ward retains the ability to make certain decisions, like the right to vote, but the guardian is responsible for other decisions.

WHEN SHOULD A GUARDIANSHIP BE INITIATED?

Minor children may have natural guardians, meaning their parents, or a court-appointed guardian if no parent is willing or able to make decisions for them. This is the case regardless of the child's mental or cognitive condition. However, once a child reaches the age of majority and becomes an adult, these guardianships are typically extinguished, leaving the new adult with no decision maker. Parents of disabled children are often surprised to learn that upon adulthood they are no longer legally authorized to manage their child's affairs. In those cases, it is prudent for parents to explore guardianship as their child approaches adulthood, so they are fully prepared once it occurs. If the condition necessitating this process does not occur until adulthood, it is appropriate to seek guardianship at the onset of the condition, or once it progresses to the degree that the individual can no longer manage matters on their own.

HANDS ON: Parents of disabled children are often surprised to learn that upon adulthood they are no longer legally authorized to manage their child's affairs.

CAN A GUARDIAN DICTATE EVERY ASPECT OF THE WARD'S LIFE?

No. Courts aim to establish the least restrictive form of guardianship possible. A guardian's role is not to completely control the ward's life, but rather to preserve the ward's autonomy when possible, and assist when needed. Even if guardianship provides for broad authority, there may be carveouts such as allowing the ward to make decisions about social and religious activities. The guardian is expected to promote the ward's dignity, privacy and self-direction whenever possible. We often tell clients that a guardianship is not a bubble or a magic wand, but rather a tool to enable them to help a loved one.

DOES THE WARD HAVE ANY RIGHTS OR INPUT IN DECISION-MAKING?

Yes. The guardian should encourage the ward to participate in decision-making where possible, and respect the ward's dignity, privacy and self-determination. In exercising authority, a guardian must consider the unique characteristics that define the ward, such as the ward's likes, dislikes, hope and fears. Wards have the right to be treated with respect and consideration, as well as the right to participate in recreational activities and employment, if appropriate.

CAN A GUARDIA

Generally, no. A ing family or fri contact with pos or family memb propriate behavi prevent that perso

WHAT OTHER O

Not all persons with Some people who need sions, but need support to d decisions independently, such as or what church to attend, but need guardianship to address other areas such as financial management, housing or medical care. For these persons, it is wise for them to execute a power of attorney, healthcare advanced directive, and/or psychiatric advanced directive naming a decision maker to assist them in the event they can no longer do so. Another option is a conservatorship, which in some states allows a disabled person to choose to allow another person to handle their financial management for them.

IMPACT OF GUARDIANSHIP ON THE WARD'S FUTURE

Guardianship can ensure the ward is properly cared for, has a safe place to live, and can protect their assets and eligibility for government benefits. However, wards may bristle against the guardian's authority, especially if the ward feels it prevents them from self-determination and limits their autonomy. Guardians can mitigate these issues by engaging in open communication with the ward, involving the ward in decision-making, building trust, educating and informing the ward, and seeking the ward's feedback.

CAN A GUARDIANSHIP BE REVERSED?

If the ward regains capacity, they can seek to terminate the guardianship. This process requires medical evaluations and legal proceedings to demonstrate that the ward can manage his or her own affairs.

CONCLUSION

Guardianship serves a vital role in protecting individuals who are unable to make decisions for themselves, ensuring their well-being and safety. However, it is crucial for guardianship to balance their authority with the ward's autonomy. By carefully navigating these dynamics, guardianship can be a supportive and empowering arrangement that honors the needs and rights of all involved. •

ABOUT THE AUTHOR:

Shawna A. Brown is Counsel in the Elder Law, Trusts & Estates and Special Needs Practice Groups at Mandelbaum Barrett PC, a Roseland, NJ, law firm. She focuses her practice on estate and trust litigation, including contested and uncontested probate, trust and accounting proceedings. Shawna is frequently appointed to serve as court-appointed attorney or temporary guardian for alleged incapacitated persons in guardianship proceedings. Contact her at sbrown@mblawfirm.com

Can I Give My Kids $19,000 a Year and Apply for Medicaid?

If you have money to give your children, you certainly can, but you should be aware that you may face consequences should you apply for Medicaid long-term care coverage within five years after each gift. Medicaid's rules penalizing gifting apply notwithstanding your intention to take advantage of the Internal Revenue Service's (IRS) gift tax exclusion.

To that end, in 2025, you can give up to $19,000 to any one individual and not report the gift to the IRS. You can give this amount to as many people as you'd like. Conversely, if you give away more than $19,000 to any one person in a single year (other than your spouse), you will have to file a gift tax return. However, this does not necessarily mean you'll pay a gift tax. You'll have to pay a tax only if your reportable gifts total more than $13.99 million (in 2025) during your lifetime. This figure is the lifetime gift and estate tax exemption. In sum, the IRS and Medicaid rules are at odds with one another.

Applying for Medicaid

Medicaid is a joint federal-state program that helps seniors and people with disabilities across the United States pay for their health care costs, which may include long-term care services. The program specifically seeks to support those with extremely limited means. To be eligible for Medicaid in New Jersey, you must therefore have no more than $2,000 in assets (or $3,000 for a married couple).

Medicaid allows you to "spend down" on specific types of expenditures. These include prepaying for your funeral services or paying off your medical bills. The catch, however, is that if you transfer your money or property for less than fair market value within five years of applying for Medicaid (with certain exceptions), you will face a penalty that renders you ineligible for benefits for a period of time, despite being otherwise eligible.

So, What Does the Gift Tax Exclusion Have to Do with Medicaid?

Many people believe that if they give away an amount equal to the current annual gift tax exclusion ($19,000 in 2025), this gift will be exempt from Medicaid's five-year lookback; however, this is not the case.

The gift tax exclusion is an IRS rule, and this IRS rule has nothing to do with Medicaid's asset transfer rules. While the $19,000 that you may have given to your child or grandchild this year will be exempt from any gift tax, Medicaid will still count it as a transfer that could make you ineligible for long term care benefits for a certain period of time should you apply within the next five years. You may be able to argue that the gift was not made to qualify you for Medicaid benefits, but proving that will certainly be an uphill battle.

Medicaid's transfer penalty is based on a penalty divisor. In 2025, the penalty divisor is $402.74 per day, meaning, for every $12,082 transferred (gifted) in the five (5) years preceding a Medicaid application, benefits will not be extended to the applicant for one (1) month despite being otherwise eligible.

The Elder Law attorneys at Mandelbaum Barrett PC are here to answer any questions you may have.

Navigating Health Coverage After 26: Special Protections for Individuals with Disabilities

Turning 26 is a major milestone when it comes to health insurance. Under most group health plans, this is the age at which dependent children typically "age out" of coverage under a parent's policy. For many, this means exploring options to temporarily extend coverage. But what happens when the young adult has a disability?

Ongoing Coverage for Young Adults with Disabilities

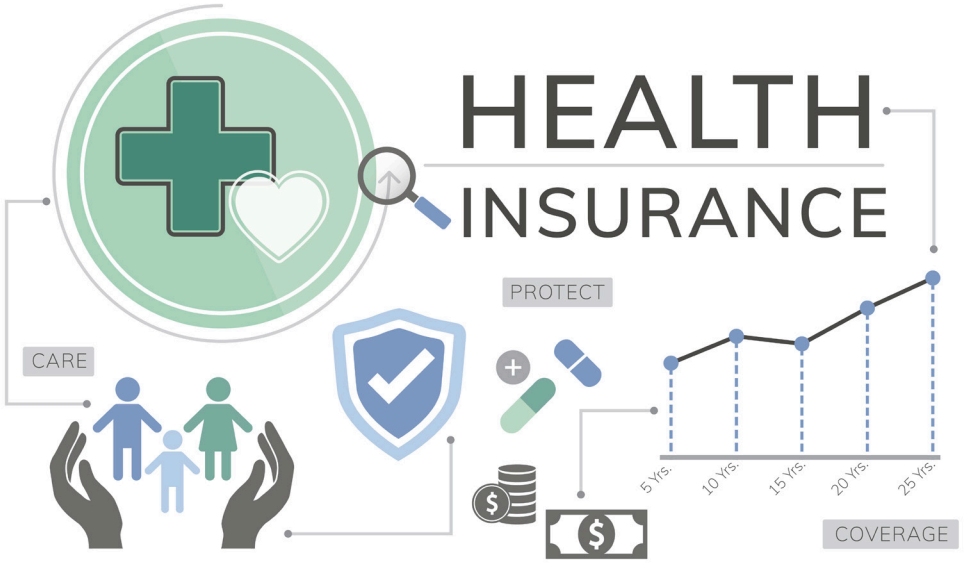
For young adults with disabilities, New Jersey offers a long-term solution. If a child is disabled and dependent on a parent for care and support, they may remain on a parent's fully insured group health plan indefinitely, even after age 26.

To qualify:

- The young adult must be incapable of self-sustaining employment due to a mental or physical disability.
- They must remain primarily dependent on the parent(s) for support.
- The parent must provide proof of disability to the insurance company before the child turns 26.

It is important to note that the insurer may require ongoing verification of the dependent's condition and reliance on the parent. Importantly, this coverage may be maintained in conjunction with Medicaid, allowing families to utilize private insurance as primary coverage while Medicaid fills secondary gaps — a significant advantage for care continuity and cost control.

If you have questions about dependent health coverage, continuation rights, or eligibility for the disability exception under New Jersey law, we're here to help. **Our Special Needs team at Mandelbaum Barrett PC** can guide you through the process, assist with documentation, and ensure your loved one maintains the coverage they need.



Protecting the Future: Why the Right Investment Advisor Matters for Special Needs Trusts

Managing a Special Needs Trust (SNT) comes with tremendous responsibility. Trustees are not only tasked with safeguarding the financial future of a beneficiary with special needs, but they must also ensure that trust assets are invested wisely and in compliance with complex legal and financial rules. While some trustees may feel pressure to manage investments on their own, most — especially non-professionals — are better served by hiring an experienced investment advisor.

Why Trustees Shouldn't Go It Alone

Trustees have a legal duty to prudently manage trust assets. But unless the trustee is a sophisticated investor, managing large sums of money without professional guidance can lead to mistakes that jeopardize both the value of the trust and the beneficiary's eligibility for vital government benefits. That's why working with a knowledgeable investment advisor is often one of the most important decisions a trustee can make.

Understanding the Role of an Investment Advisor

An investment advisor provides professional guidance on how to grow and preserve the trust's assets, helping the trustee make informed decisions that align with the trust's goals, timeline, and risk tolerance. For SNTs, the primary objectives typically include:

- **Preserving the principal** to ensure funds last as long as the beneficiary needs them.
- **Generating income** to cover ongoing expenses.
- **Achieving growth** to keep pace with inflation and future financial demands.

What sets SNT investment planning apart from standard portfolios is the added complexity of protecting the beneficiary's eligibility for needs-based public benefits such as Medicaid or Supplemental Security Income (SSI). A knowledgeable advisor understands how to navigate these unique requirements.

What to Look for in an Investment Advisor

Choosing the right advisor requires more than just reviewing past performance.
Here are key qualities trustees should seek:

- **Experience with Special Needs Trusts** – Look for advisors familiar with the specific legal and financial rules that apply to SNTs.
- **Fiduciary Responsibility** – Advisors should be legally obligated to act in the trust's best interests, not their own.
- **Custom Investment Strategies** – Every trust is different. The advisor should tailor their strategy to the beneficiary's needs, life expectancy, and goals.
- **Aligned Investment Philosophy** – Ensure their approach matches your goals, whether that's conservative income generation or moderate growth.
- **Transparent Fee Structure** – Avoid hidden fees or commission-based advice. Seek clarity and honesty.
- **Strong Communication Skills** – Regular, clear updates are essential for monitoring performance and adjusting strategies as needed.
- **Reputation and References** – Check credentials and request referrals. Look for designations like CFP (Certified Financial Planner) or credentials verified by FINRA.

Building a Successful Relationship

Once a qualified advisor is selected, trustees should:

- **Establish Clear Goals** – Define what success looks like for the trust, including expected expenses and growth needs.
- **Create an Investment Policy Statement (IPS)** – This document sets the rules for managing trust assets and helps keep the strategy on track.
- **Monitor and Adjust** – Periodically review performance with the advisor and make adjustments as circumstances change.
- **Keep Good Records** – Document decisions and advisor communications to protect against liability and demonstrate proper trust management.

Peace of Mind Through Professional Guidance

Hiring the right investment advisor helps trustees fulfill their duties while giving families peace of mind. A thoughtful, well-informed investment strategy ensures that the trust continues to provide for the beneficiary's needs — now and in the future.

The Special Needs attorneys at Mandelbaum Barrett PC are here to answer any questions you may have.

LIAM PAYNE'S ESTATE: WHAT HAPPENS WITHOUT A WILL

WHY ESTATE PLANNING MATTERS — REGARDLESS OF AGE OR WEALTH

Many people believe estate planning is something to consider later in life, or only if they have significant assets. But the recent and tragic passing of Liam Payne, the 31-year-old singer and former member of One Direction, is a powerful reminder that no one is too young to create a Will.

When Liam died in 2024 without a Will, his estimated £24 million estate became subject to the UK's intestacy laws. Because he was unmarried at the time of his death, none of his assets will automatically go to his former partner or other family members. Instead, his entire estate will pass to his 9-year-old son, Bear, under the law.

CHERYL TWEEDY'S ROLE—AND LIMITATIONS

Despite being the mother of Liam's child and a key figure in his life, Cheryl Tweedy (also known as Cheryl Cole) is not entitled to inherit any portion of the estate under UK intestacy law. However, she has been appointed—alongside a music industry lawyer—as one of the estate's administrators. Their role is to manage Liam's estate until Bear turns 18 and inherits the assets.

This situation highlights a crucial issue: without a Will, partners, close friends, and other loved ones receive nothing unless they are legally married or direct heirs. And minors inheriting large estates raises its own set of challenges.

WHAT IF THIS HAPPENED IN NEW JERSEY?

In New Jersey, the outcome would be quite similar. Under New Jersey's intestacy laws, if someone dies without a Will and is unmarried, their estate goes to their children. Unmarried partners, regardless of how close their relationship was, would not inherit anything by default.

If the child is a minor, additional complications arise. In most cases, the inheritance would be placed in the Surrogate's Intermingled Trust Fund (SITF). The surviving parent would then need to file formal applications with the Court to request distributions, a process that can be time-consuming and burdensome. Moreover, the entire fund is typically released when the child turns 18, regardless of whether they have the maturity or financial acumen to manage a large inheritance.

TAX IMPLICATIONS IN NEW JERSEY

While New Jersey no longer has an estate tax, it does impose an inheritance tax depending on the relationship between the deceased and the heir. Fortunately, children are exempt. But for blended families or unmarried partners, the lack of a Will can result in unintended tax burdens and administrative difficulties.

THE TAKEAWAY: ESTATE PLANNING IS ESSENTIAL

Had Liam Payne created a Will or Trust, he could have:

- Directed a portion of his estate to Cheryl
- Appointed guardians or trustees to manage Bear's inheritance
- Delayed distributions until Bear reached a more appropriate age
- Reduced administrative red tape and uncertainty

Life is unpredictable, and none of us knows what tomorrow holds. That's why having even a basic estate plan—a Will, Power of Attorney, and possibly a Trust—is one of the most important steps you can take to protect your loved ones.

If you don't have a Will or want to ensure your estate plan reflects your current wishes and family structure, the **Elder Law attorneys at Mandelbaum Barrett PC** are here to help.

Let Liam's story serve as a reminder: It's never too early to plan.

CAVEATS IN PROBATE: HOW TO CHALLENGE A WILL IN NEW JERSEY

After the loss of a loved one, families often face difficult questions—especially when the terms of a will are unexpected or the person named as executor is unfit. In these situations, it's important to know that you do have options. If something about the will seem right, New Jersey law allows you to act to pause the probate process and protect your loved one's legacy. **Shawna A. Brown**, Counsel of our **Elder Law Practice Group**, breaks down the process in the following video.

WHAT IS A CAVEAT?

A caveat is a legal document filed with the Surrogate's Court in the county where the decedent resided. It acts as a formal objection to either the probate of a will and/or the appointment of the named executor. Once filed, it halts the probate process, preventing the will from being admitted to probate and the executor from being appointed and acting for the estate until the matter is resolved through further legal proceedings.

After a caveat is submitted, whether the will is admitted to probate or not is an issue to be decided by the Probate Part of the New Jersey Superior Court, where a formal complaint must be filed by the person seeking to admit the will to probate. Absent an agreement between the parties, the complaint must be resolved before probate can occur.

This pause created by the caveat gives interested parties time to raise and investigate concerns in a complaint, such as whether the deceased had the mental capacity to create the will, if undue influence or coercion played a role in its terms, or if the proposed executor is unfit to serve.

WHEN AND WHY YOU MIGHT FILE ONE

Filing a caveat may be appropriate if you suspect the deceased lacked capacity, was pressured into signing the will or if you question the qualifications of the named executor. It can also be used when you believe a more recent will may exist, or the terms of the will seems inconsistent with what the decedent would have wanted.

TIMING IS CRITICAL

In New Jersey, a will cannot be probated until at least 10 days after death. However, once that period passes, the process can move quickly. Filing a caveat as soon as possible is crucial—it must be in place before probate is completed to pause the process. If it's filed in time, the court will not move forward with probate until a formal complaint is brought in Superior Court and the issues are resolved.

PROCEED WITH CARE

Some wills contain a no contest clause, also known as an in terrorem clause, which states that anyone who challenges the will forfeits their bequest. Filing a caveat may trigger the clause, but the Court could also determine that the caveat was filed with good cause and decline to trigger the clause.

It's important to speak with an attorney before filing a caveat to understand the filing process and potential implications. At Mandelbaum Barrett PC, we regularly help clients evaluate their options and act when needed, whether that means filing a caveat or a complaint seeking to probate a will.

You can reach Shawna A. Brown at sbrown@mblawfirm.com or at 732-317-0720.

MANDELBAUM BARRETT PC
ATTORNEYS AT LAW

One Big Beautiful Bill Act

Inside the OBBA Tax and Budget Plan

A Note on Medicaid from our Elder Law Team

- Imposes **work requirements** for able-bodied adults without dependents.
- **Excludes non-citizens** and penalizes states that use public funds to cover undocumented immigrants.
- Blocks regulations for **minimum staffing in long-term care**, and **defunds gender-affirming care for minors**.
- Ends automatic re-enrollment in Affordable Care Act ("ACA") Medicaid programs. This will require ACA Medicaid recipients to submit **annual renewal applications** in order to maintain their Medicaid eligibility.

Learn more about the bill here.

Richard Miller Co-Presented CLE Webinar on Special Needs Trusts and Protecting Government Benefits

Richard Miller, Esq., Chair of the Elder Law Practice Group at Mandelbaum Barrett PC, and **Patricia Kefalas Dudek, Esq.**, recently presented a live 90-minute Strafford CLE webinar on

Special Needs Trusts for Persons With Disabilities to Protect Government Benefits and the Individual

Wednesday, July 30, 2025

This session covered:

- Drafting and administering first- and third-party Special Needs Trusts (SNTs)
- Navigating the interplay between SNTs, Guardianships, and Conservatorships
- Avoiding common pitfalls when amending SNTs
- Preserving public benefits and ensuring compliance

Don't miss this chance to deepen your expertise in one of the most critical areas of elder and special needs law.

Strafford
A BARBRI Company

Exploring the Complexities of Guardianships in NJ: Richard Miller and Shawna Brown Join NJSBA CLE Panel

Guardianships in New Jersey Are on the Rise — Are You Prepared?

Richard Miller, Esq., Chair, and **Shawna Kirchner Brown, Esq.**, Counsel in the Elder Law Practice Group at Mandelbaum Barrett PC, were panelists at a New Jersey State Bar Association CLE seminar focused on the complexities of guardianship law in NJ.

Date: July 8, 2025

The panel of experienced judges and attorneys covered:

- When and why guardianships are necessary
- Title 30 vs. Title 3B filings
- Ethical challenges for counsel and guardians ad litem
- Post-pandemic changes and court procedures
- Common attorney mistakes
- Emerging issues, recent case law & more

Whether you're just getting started or looking to deepen your understanding, this CLE will help you navigate the evolving guardianship landscape with confidence.

NJSBA

We're proud to share that **Lawrence Weiner** has been elected to the **Board of Directors** of Jewish Service for the Developmentally Disabled **(JSDD)**.

His commitment to making a meaningful difference in the lives of others aligns perfectly with JSDD's mission of empowering individuals with developmental disabilities to thrive in inclusive and supportive communities.

CONGRATULATIONS, LAWRENCE – A WELL-DESERVED HONOR!

Learn more about JSDD here: www.jsdd.org

Welcome!

Welcome Xena Balcazar, Esq. to the Elder Law Team!

Prior to joining the Firm, Xena served as a Judicial Law Clerk to the Honorable Marcella Matos Wilson, J.S.C. in the Essex Vicinage of the Superior Court of New Jersey, Chancery Division, Family Part. During her clerkship Xena worked on a variety of complex matrimonial cases involving alimony, cohabitation, equitable distribution, relocation, child custody and child support.

Xena earned her Juris Doctor from Rutgers Law School, and her B.A. from Fairleigh Dickinson University. While in Law School, Xena served as an Associate Editor for the Race and the Law Review, and as Event Coordinator of the Association of Latin American Law Students.

Xena is admitted to practice law in the State of New Jersey. She is a member of the Family Law Section of the New Jersey State Bar Association, the Essex County Bar Association, the Young Lawyers section of the Essex County Bar Association, and the Barry I. Croland Family Law Inn of Court.

Team Mandelbaum

Make sure to check out our new resources section at the bottom of the Elder Law and Special Needs pages on our website.

ELDER LAW *Click Here* SPECIAL NEEDS

FOLLOW US ON SOCIAL MEDIA!