



Elder Law and Special Needs Planning

May 2023 Newsletter



Does Power of Attorney End at Death?

A power of attorney is a powerful planning document that enables you (the principal) to give another person (the agent or attorney-in-fact) the power to act for you while you are alive.

Because it is often prepared in the context of estate planning, many believe it gives their agents the power to continue acting after their death.

Although every state's laws and forms vary, most power of attorney forms specify that the agency relationship created by a power of attorney ends upon a person's death.

What Does a Power of Attorney Do?

A power of attorney (POA) can convey a significant range of power to the person you appoint. This includes the ability to do the following on your behalf:

- Enter into real estate transactions;
- Enter into leases and purchase personal property;
- Buy bonds or other securities;
- Engage in banking transactions;
- Engage in business operating transactions;
- Handle insurance transactions;
- Engage in estate transactions;
- Make decisions concerning any claims you have or in which you may be involved;
- Make gifts or charitable donations;
- Manage any benefits you receive or are entitled to;
- Manage the financial aspects of your health care;
- Manage your retirement accounts;
- Handle your tax matters;
- Delegate any of the above responsibilities to a third party



Power of Attorney Forms

Most POA forms allow you to choose how specific or broad you would like the powers you give to be so that you can tailor a power of attorney to suit your needs. An agent can also update a power of attorney over time as a principal's needs change.

In many states, these powers, once delegated, remain in place even in the event of your incapacity. People frequently execute a power of attorney for this reason. They do not want to worry about what may happen should they become incapacitated or whether a loved one will have the ability to handle their affairs if they are no longer able to do so.

Power of Attorney After Death

That being said, a power of attorney expires upon your death. So, if you have entrusted a particular person with carrying out certain functions on your behalf while you were alive, those abilities cease when you pass away.

If you wish for the same person to continue handling your affairs after you die, you would need to specify they serve as the executor or personal representative of your will or trustee of your trust.

If you are concerned about maintaining continuity or making sure a particular person oversees your affairs upon your passing, be sure speak with one of the [Elder Law attorneys at Mandelbaum Barrett PC](#). Every person's situation and needs are different, and state laws also vary.



How Trustees of Special Needs Trusts Are Compensated

Serving as a trustee of a Special Needs Trust (SNT) can be a time-consuming and complicated job, which is why trustees are almost always entitled to compensation for their services.



Payment of trustees usually takes one of two forms: either a flat fee based on a percentage of the trust's assets, or an hourly rate.

The method of compensation usually depends on who is serving as trustee:

Institutional Trustees

Institutional trustees, such as banks and trust companies, almost always charge for their services using the percentage model, with one-to-one and one-half percent being the industry average.

If the trust does not have many assets, most institutional trustees will charge a minimum yearly fee instead of the set percentage.

In most cases, the fee is based on the value of all the trust assets under management, so large trusts tend to generate larger trustee fees. Of course, larger trusts also come with greater investment and reporting responsibilities that justify the higher payments.

Individual Trustees

Most individual trustees, including many professional trustees like lawyers, charge an hourly rate for their services. Like other services, this fee tends to fluctuate depending on where the trust is located, but trustees with greater expertise or people who provide care that goes beyond typical trustee duties may command higher rates.

In most jurisdictions, trustee fees must be "reasonable," but this standard varies widely.

Before You Finalize the Trust

It is incredibly important to clarify how a trustee is going to be compensated before finalizing the trust.

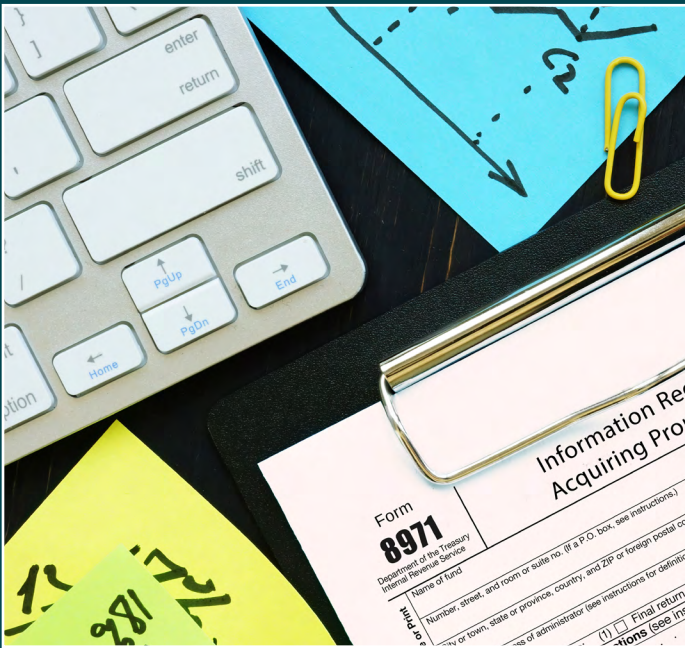
In some cases, state law dictates how much a trustee may charge, and it is important for a trustee to understand this before signing on. (Of course, if the trustee doesn't know local rules regarding trustee compensation, they probably don't know much about trust law in general, which doesn't bode well for their stewardship of the trust.)

Donors of special needs trusts also have to be aware of how institutional trustees will charge for services that might be provided by other departments in their companies. For instance, an investment company may serve as trustee and charge a flat fee, but it might also steer the trust's business through its brokerage department, where additional fees may apply.

Finally, if you are serving as a trustee of a Special Needs Trust, keep in mind that the fee that you receive is taxable income that must be reported on your personal income tax return. After all, this is compensation for work being done as trustee, not a gift from the trust.

For additional guidance, the Special Needs attorneys at Mandelbaum Barrett PC are available to answer any questions you may have.





What Does the Term “Decedent” Mean?

“Decedent” is a legal term that refers to a person who has died with unsatisfied legal obligations.

At the end of their life, a decedent has some legal duties that must be fulfilled through a representative. For example, decedents remain obligated to satisfy certain debts incurred during their life and file their last income tax return.

What Is the Difference Between a Decedent and a Deceased Person?

A deceased person is someone who has died. While the word “decedent” also refers to a person who has passed away, it denotes a legal status as well. Essentially, all decedents are deceased people, but not all deceased people are decedents.

The word “decedent” is mostly used for estate planning purposes. For example, you may see this term in a last will and testament, or in estate closure documents related to closing a deceased person’s bank account and filing their final income taxes.

In addition to finalizing an estate, if a person was a party in an active civil lawsuit before they died, the word “decedent” will be added to the party’s name in court documents to signify that a representative is continuing with the case.

How Are Their Legal Obligations Fulfilled After Death?

Decedents have legal obligations after their death. Since they cannot perform these duties, the person they appointed before their death must meet any obligations. These legal responsibilities must be handled according to state law if the deceased person did not name a representative before they died.

Duties that someone has after they die that must be completed by their representative include the following:

- Notify banks, credit card companies, and other creditors about the death of the individual. Also, government agencies must be notified, including Medicaid, Medicare, and the Social Security Administration.

- File the decedent’s last will and testament with the probate court. The representative will also be responsible for representing the decedent’s estate in court.
- Pay any of their outstanding and payable debt.
- File income taxes.
- Open a bank account for the estate. The representative will pay bills, debts, and taxes from the new account.
- Distribute the estate’s assets to the heirs named in the decedent’s last will and testament, or ensure that the heirs at law receive the appropriate property if assets are passed down via **intestate succession**.

What Is Included in Their Estate?

A decedent’s estate includes all the property they owned when they died. Examples of property included in their estate may include:

- | | |
|-----------|-------------------------------|
| • Cash | • Property (i.e., their home) |
| • Jewelry | • Vehicles |
| • Stocks | • Bonds |
| • Land | |

Their estate must go through the probate process before the estate is closed. Some property may be included in the estate but is not subject to **probate**, including life insurance.

What Is a Decedent Trust?

Also called an A-B **trust**, this type of trust is created between a married couple and dissolves when the first spouse dies. Its goal is to reduce the amount of estate taxes.

If you would like guidance on estate planning for yourself or for **administering an estate** following the death of a loved one, **please contact the Elder Law attorneys at Mandelbaum Barrett PC.**

Should My Loved One With Special Needs Use a True Link Card?

An important part of special needs planning is protecting your loved one from financial abuse. A True Link card is a tool you may not have considered before, but it could save your family member from exploitation and predatory banking practices.



Although True Link offers many benefits to its customers, there are a few downsides to consider before opening an account. Continue reading to learn more about True Link accounts and whether creating an account is right for you or your loved one.

What Is a True Link Visa Card?

A True Link card is a prepaid, reloadable Visa debit card designed to help people who may be at risk of exploitation or financial abuse – including adults with disabilities – manage their money. According to [United States Department of Health and Human Services National Center on Elder Abuse](#), financial abuse costs vulnerable Americans more than \$2.6 billion every year.

A True Link card simplifies wealth management while providing special needs beneficiaries, or their caregivers, guardians, payees, trustees, and other overseers with the tools they need to protect themselves or their loved ones from fraud and exploitation.

In addition, a True Link card can help a special needs beneficiary avoid becoming disqualified from receiving public benefits. For example, giving cash to a loved one with a disability who depends on Supplemental Security Income (SSI) and is limited to certain asset limits can inadvertently make them ineligible for SSI.

How Does a True Link Card Work?

If you want to monitor your loved one's finances while helping protect their eligibility for government disability benefits, a True Link card allows you to do so.

For one, you can set customizable spending rules made from their account. Examples of spending rules available include:

- Limiting the amount spent at specific retail stores or on certain types of products
- Blocking or allowing access to cash back or ATM withdrawals

Along with spending rules, True Link lets its customers set alerts to monitor any suspicious activity. Examples of customizable alerts a caregiver can place on an individual's account include:

- Balance alerts when the account balance is lower than a specified amount
- Cash withdrawal notifications
- Spending alerts for transactions over a set limit
- Deposit alerts
- Notifications of blocked transactions
- Alerts for suspicious purchases or activity



Is a True Link Card the Best Option Available?

True Link cards may provide the cardholder and their families with many benefits, but there can also be downsides to using this card.

Benefits of Using True Link

In addition to helping to protect a special needs trust beneficiary from exploitation and aiding caretakers in monitoring their loved one's finances, a True Link card offers security benefits that include the following:

- Security firewalls
- Encrypted communication between True Link and customers
- Two-step authentication requirements for administrator access
- If multiple family members want access to an account, they each receive a specific account access level

Having a True Link account also gives cardholders access to investment opportunities designed for special needs trusts. Unlike traditional retirement and investment accounts, True Link does not require a minimum balance. Money is not a barrier to investing.

True Link also provides investment advice tailored to each client. Cardholders and their families can use this information to plan for the cardholder's financial future.

Downsides of True Link

Although there are many upsides to individuals with disabilities using a True Link card, there are some downsides, too. Cardholders of True Link Visa cards may pay higher fees than with competitors and may have fewer available in-network ATMs.

True Link service fees include:

- Out-of-network ATM fee = \$1.50
- Domestic ATM balance inquiry fee = \$0.50
- Card replacement fee = \$5
- Bank teller withdrawal fee = \$4
- Monthly service fee = \$10

How Do I Obtain a True Link Card?

Individuals can start a True Link account and order a card on the [True Link website](#). For beneficiaries of a special needs trust, the card account can be set up to receive deposits directly from the trust.

Minimum and Maximum Account Balance Amounts

True Link accounts have no minimum balance requirement. The maximum on a single True Link account at any given time is \$20,000. The card allows you to load up to \$5,000 per day.

Cardholders are not limited to the number of True Link Visa cards they can have.

Learn more about the [True Link](#) card.



RECENT EVENTS



Thank you to everyone who attended our Elder Law presentation this morning both in-person and via Zoom. We hoped you enjoyed the discussion on “Legacies Instead of Litigation” along with the Pop Culture video snippets. If you missed their presentation, you can click on the link below to watch the video.

Please use the following link to watch the presentation:

<https://vimeo.com/819592478?share=copy>

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RECENT EVENTS

On April 20th, Mandelbaum Barrett PC Elder Law attorney Donald “Donny” A. Dennison, Esq. presented at the New Jersey State Bar Association’s 25th Annual Elder and Disability Law Retreat.

Donny discussed long-term care planning for non-traditional couples. He also serves as Legislative Coordinator for the NJSBA Elder and Disability Law Section.

25th Annual Elder and Disability Law Retreat

Wind Creek Bethlehem, PA



NJICLE

A DIVISION OF THE NEW JERSEY STATE BAR ASSOCIATION

Long Term Care Planning for Non-Traditional Couples

Donald A. Dennison, Esq.

 April 20, 2023

 10:10 am ET



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106.7 LITE FM

PODCAST



 **NINA DEL RIO** **WITH**  **DONALD DENNISON**

Medicaid Benefits and Eligibility
at the End of the PHE

During The Public Health Emergency (PHE) caused by the recent COVID-19 pandemic, the Division of Medical Assistance and Health Services (“DMAHS”) suspended routine redetermination for most Medicaid beneficiaries. But now with the end of the PHE this month, many Medicaid beneficiaries are wondering how they will be impacted.

Mandelbaum Barrett PC Elder Law attorney Donald “Donny” A. Dennison, Esq. was a recent guest with Nina Del Rio on 106.7 LITE FM where he discussed what Medicaid recipients and their families should know.

Listen to the interview here:
<http://bit.ly/40HCKtJ>

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TESTIMONIALS

Advocating for families is what matters most to our Elder Law team.

Donald "Donny" A. Dennison, Esq. recently received the following email from a client that really amplified that purpose:

"Thank you and the Mandelbaum team for helping through the guardianship process for my mother... If it was not for you, I would not had made it through the court system like I did. If it was not for you, who knows what my mother's or my fate would be.

As of today mother is healthier, happy content and wishes to remain in my care. I would recommend you to anyone who would be in like situation."

Dear Donald,

Thank you and the Mandelbaum team for helping through the guardianship process for my mother... If it was not for you, I would not had made it through the court system like I did. If it was not for you, who knows what my mother's or my fate would be. As of today mother is healthier, happy content and wishes to remain in my care. I would recommend you to anyone who would be in like situation.

Barbara W.

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good job!



Hi Blake

This is just a little something to say thank you for all you have done to obtain closure on The Task with your firm. you remain professional & responsive in an exemplary way. Should you ever be looking for a new job call me, your work ethic is exemplary! Don't let anyone sway you from that great asset. Best always,
Kevin Brothers

UPCOMING EVENTS

Special Needs Presentation

"Planning for Families with Special Needs Children"

May 18th at 6pm at 3 Becker Farm Road in Roseland



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for more details and to register:
please contact mbevents@mblawfirm.com

PLANNING FOR FAMILIES WITH SPECIAL NEEDS CHILDREN

**MANDELBAUM BARRETT PC
3 BECKER FARM ROAD, ROSELAND, NJ**

Thursday

May

18

6:00pm - 7:00pm

Our compassionate and experienced attorneys provide a wide variety of legal services intended to help your family navigate the legal system and maximize the rights and benefits available to individuals with special needs.

- Helping Families with Life's Challenges
- Special Education Law
- Special Needs Trusts
- Estate Planning
- Guardianships
- Disability Benefits

Attend in-person or via Zoom.

Register today at mbevents@mblawfirm.com

UPCOMING EVENTS



NBI NATIONAL BUSINESS INSTITUTESM

SPECIAL EDUCATION LAW: THE ULTIMATE GUIDE

Tuesday, May 16, 2023
9:00 AM - 4:30 PM US Mountain Standard

ARLA CAHILL, ESQ.

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Arla D. Cahill, Esq., Chair of Education Law and Co-Chair of Special Needs at Mandelbaum Barrett PC will be presenting a live online seminar for National Business Institute (NBI, Inc.) on May 16th, 2023 titled “Special Education Law: The Ultimate Guide.”

Special education legal issues can be confusing for school personnel and attorneys alike. This hands-on legal guide will walk you through legal best practices concerning IEPs, 504 plans, manifestation determination reviews, and more.

Learn more and register: <http://bit.ly/3ky4S2S>

**Thank you for
placing your trust
in our team.**

Team Mandelbaum



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