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(including in the event of the child's divorce). In addition, there is also the risk of misappropriation or mismanagement by your other child(ren). Thus, this is not often the most prudent option.

The final option is to create a SNT for the benefit of your disabled child. The primary purpose of a SNT is to benefit a disabled individual who qualifies for public assistance programs which are means-tested, without jeopardizing those benefits. In addition, since your disabled child may not be able to manage his or her financial affairs, by establishing a SNT, you ensure proper management of the Trust assets by a qualified trustee. A SNT is designed so that the funds are not considered "available" to the beneficiary. The SNT must be a discretionary spendthrift trust, which limits the discretion of the trustee. For example, no distribution should be made from a SNT which would result in the reduction of public benefits. Additionally, upon the death of the disabled child, with a SNT, the assets then remaining in the trust can be distributed in accordance with the terms of the Trust document as specified by the parent who created the SNT, rather than the trust assets being available to satisfy the disabled child's creditors (such as the State in estate recovery). Also, the disabled child beneficiary cannot compel distributions from a SNT.

A SNT can be created either during your lifetime (an inter vivos trust) or upon your death pursuant to the terms of your Will (a testamentary trust). Also, you may decide to fund a SNT either during your lifetime or upon your death. Often, a free standing inter vivos trust is desirable so that other family members can direct distributions to such SNT for the benefit of your disabled child.

Also of note, New Jersey has recently enacted the Uniform Trust Code ("UTC"), which will become effective July 17, 2016. One of the benefits of the enactment of the UTC is that it clarifies and confirms the ability to create a SNT, and strengthens the protections afforded to a SNT against claims of creditors.

If you have a loved one who has special needs, and you think a SNT might help to both provide for them, while also preserving their government benefits, please call us to discuss the same.

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protect your assets. For example, by transferring assets to a Family Trust, the assets are protected from your children's creditors (including in the event of a divorce). Furthermore, by gifting assets to a Family Trust, if a child of yours predeceases you, the assets would remain, safely, in the Trust. Although you would not be a beneficiary of the trust, if a rainy day came along, your children (as Trustees) could make a distribution to themselves (as beneficiaries). Thereafter, your children would be free to use the money as they see fit and if they wanted to help you pay for an expense, it would be their prerogative to do so. So long as you do not require Medicaid assistance to help pay for long term care costs within five (5) years from the date of the transfer to the Family Trust, the assets in the Trust are protected and you would be able to qualify for Medicaid. A Family Trust may be the perfect vehicle to allow you to protect your assets and be proactive about Medicaid planning.

If you would like to further discuss the establishment of a Family Trust to help reduce your death tax exposure or for Medicaid planning purposes, please call our office to schedule an appointment.

Does your group need a guest speaker?

We are available to speak to your professional, civic, religious or special interest group on various topics (Estate Planning, Elder Law, IRA Planning, Special Needs Trusts, Disability Planning.) Give our office a call at **(856) 489-8388** to arrange a date and time or visit our website at www.fendrickmorganlaw.com.

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Estate Planning Issues of Parents of Disabled Children

If you are a parent of a disabled child, you are presented with a unique set of estate planning issues. You likely want to utilize your assets in a way that will enrich your child's life, without jeopardizing the very valuable government benefits to which your child may be entitled. A number of government programs exist to help support disabled individuals, including Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Medicare and Medicaid. To be eligible for some of these programs, the disabled individual can only earn a nominal income and own very limited resources. The receipt of cash or other assets, either through a Will or as a result of a beneficiary designation, will often disqualify a disabled individual from receipt of such valuable government benefits. The loss of Medicaid alone can be devastating.

As a parent of a disabled child, you have four primary options with respect to your estate planning: (1) disinherit your disabled child; (2) distribute assets to your disabled child; (3) distribute assets to your other children, with the understanding that they will use the assets for the benefit of their disabled sibling; or (4) distribute assets to a third-party Special Needs Trust ("SNT") for the benefit of your disabled child.

The first estate planning option, to simply disinherit your disabled child, may not be desirable to you. However, if your estate is relatively modest and your child's needs are great, this may be the best approach because any legacy from a modest estate may be inadequate to meet the potentially significant needs of a disabled child. Nonetheless, many parents will dismiss this option on principle.

The second option is to make the gift directly to your disabled child. The problem with distributing assets to a disabled child is the impact that such a gift has on means-tested government benefits. Benefits may be reduced or eliminated as a result of the receipt of funds, potentially rendering your disabled child ineligible for SSI, Medicaid, or Federally Assisted Housing, as well as for supported employment and vocational rehabilitation services, group housing, job coaches, personal attendant care and transportation assistance. Even worse, your child may be charged for program benefits previously received. While the monthly payment received from SSI is often important, Medicaid is crucial since it represents the child's medical insurance. Furthermore, it usually is not practical to leave funds directly to a disabled child because he or she may not have the capacity to manage the assets. Consequently, it leaves the door open for someone to take advantage of the disabled child. Thus, this also is not a desirable option.

The third option is to distribute assets to your other child(ren), with the understanding that such child(ren) will use the monies for the benefit of their disabled sibling. However, distributing assets to other children is a risky proposition. If assets are distributed to another child, the assets are exposed to that child's creditors

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Why You Might Need a Family Trust As Part of Your Estate Plan

"What is a trust and do I need one?" are questions often asked by our clients.

The answer is often not a simple one. We use trusts in planning for a variety of reasons (asset protection, tax planning, and control, to name a few). But, one of the most useful types of trusts which may be ripe for you to consider as part of your estate plan is a Family Trust. Generally, with a Family Trust, the parents would create and fund the Trust and the children would be appointed to serve as trustees. Also, in order to achieve the desired results, the parents cannot be beneficiaries of the Trust. So, once assets are transferred to the Trust, mom and dad need to be comfortable that the assets are no longer available to them. Significantly, the Trust would also be irrevocable (meaning, you can't change the terms once the Trust is created). So, why might you want a Family Trust? Consider the following two scenarios:

Scenario 1: Estate Taxes

You are a single person and your assets are valued at $1,000,000. You own your home ($200,000), a retirement account ($300,000) and a brokerage account ($500,000). Let's say that you also have a nice pension and that it is sufficient to cover your monthly expenses. Thus, you are not dipping into your principal assets to cover your living expenses. If you die as a New Jersey resident with a $1,000,000 estate, the New Jersey estate tax due on that amount would be approximately $33,000. However, if you create a Family Trust and transfer $300,000 to such Trust during your lifetime, so that at your death the assets in your estate total $700,000 (instead of $1,000,000), the New Jersey estate tax due upon your death would be reduced to $18,000. Similarly, if you are a Pennsylvania resident with the same $1,000,000 estate, if you are leaving assets to your children, at your death a 4.5% tax would be imposed and an inheritance tax of approximately $45,000 would be assessed. But, if you gift assets to a Family Trust and survive one (1) year from the date of the transfer, the gifted assets wholly escape taxation. So, if you gifted the same $300,000 to a Family Trust and survived one (1) year, the inheritance tax due by your estate would be reduced to approximately $31,500. Thus, there may be a significant death tax savings to be had by transferring assets to a Family Trust during your lifetime.

Scenario 2: Long Term Care Costs

You want to be proactive about your long-term care planning and you are considering giving assets away to your children in order to get them out of your name and start the five (5) year clock ticking for Medicaid. (*Remember, Medicaid imposes a five (5) year look-back on all gifts and assesses a penalty for gifts made during that period.*) If you give assets directly to your children, the assets: (1) are at risk to the children's creditors, (2) are at risk to the child's spouse in the event of a divorce, and (3) may not be available down the road if you need some of the gifted money back to pay for your expenses. Instead, if you gift assets to a Family Trust, we can start the five (5) year Medicaid clock ticking and potentially

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NJ Supreme Court Rules That Medicaid Planning by Non-Lawyers Is the Unauthorized Practice of Law

Joining the states of Florida, Ohio, and Tennessee, the Supreme Court of New Jersey has found that non-lawyers who apply the law to a Medicaid applicant's specific circumstances are engaging in the unauthorized practice of law.

The state Supreme Court had received complaints that non-lawyers retained by families or nursing homes to assist with the Medicaid application process were providing erroneous or incomplete law-related advice, and a state attorney ethics hotline had received reports that non-lawyers have charged "clients" large sums of money for faulty Medicaid-planning legal assistance, causing the elderly victims significant financial loss.

Asked by the state Supreme Court for an opinion specifying what activities non-lawyers may engage in and what activities are the unauthorized practice of law, the Committee on the Unauthorized Practice of Law has concluded that while non-lawyer Medicaid advisors may provide limited services, "[a]pplying the law to an individual's specific circumstances generally is the 'practice of law.' A Medicaid advisor or Application Assistor may provide information on insurance programs and coverage options; help individuals complete the application or renewal; help them with gathering and providing required documentation; assist in counting income and assets; submit the application to the agency; and assist with communication between the agency and the individual. But the advisor may not provide legal advice on strategies to become eligible for Medicaid benefits, including advice on spending down resources, tax implications, guardianships, sale or transfer of assets, creation of trusts or service contracts, and the like."

The conclusion of the Committee on the Unauthorized Practice of Law should serve as a reminder that seeking appropriate legal counsel to assist with Medicaid planning is critical to ensure proper planning. We are here to help you through the myriad of Medicaid rules and regulations to help you devise the best plan possible for you and your family.

"I Would Die 4 U". . . But, After Resolving All Estate Issues

For those of you who may not be familiar, "I Would Die 4 U" is a 1984 Prince classic. Unfortunately, the passing of pop icon Prince on April 21, 2016 marks not only the loss of another musical superstar, but also the loss of another uber-wealthy individual who failed to create any type of estate plan. Prince's estate is valued in excess of $300 million, a figure that may be significantly underestimated, depending on the value assigned to his massive vault of unreleased music, and he appears to have died without a Will.

Because Prince died without a Will, the intestacy laws of the State of Minnesota will dictate the distribution of his massive fortune. Prince is not survived by a spouse or any known children. Thus, his estate is likely to be divided among at least one sister and several half-siblings. However, there are more than two dozen potential claimants who purport to be half-siblings or secret children of Prince. The Minnesota judge presiding over the matter has said that he will not rush to adjudicate, and will take his time to consider all the facts (including DNA findings). It is a fascinating tale.

The story of Prince's estate, and the mess resulting from his failure to specify a plan for the distribution of his assets, is another cautionary tale to us all to be sure that our estate planning documents are in proper order. When a person dies without a Will, they are deemed to have died intestate. When a person dies intestate, the state in which they reside at the time of their death will govern the distribution of their assets. In such case, the laws of the state will also govern who has priority to serve as representative of your estate (known as the "Administrator"). Prince leaves us all thinking, "How could he not have planned?" "How could he have not had a Will?" "How could he have not said anything about how his assets are to be divided?" "How could he have not done any tax planning?" Just because you may not be a multi-millionaire doesn't mean that if you passed away without proper planning that we wouldn't be asking the same questions about you.

We all need estate planning. We all need a Will, a Power of Attorney, a Health Care Directive and, possibly, a Trust. When we fail to enter into those documents on our own, our state of residence will impose its own plan on us. That plan is not likely to be the plan that we would have chosen for ourselves. Please heed the warning which Prince's untimely and tragic death affords us: Don't leave your estate plan to chance. Be proactive and get it done. If you woud like to discuss your estate plan, or any revisions to your existing estate plan, please call our office to schedule a consultation.

The Uniform Trust Act is Coming to New Jersey

Effective July 17, 2016, the Uniform Trust Code (UTC) will become the law of the land in New Jersey. It will apply to all trusts, even those created prior to July 17, 2016 (with some limited exceptions). With the enactment of the UTC, New Jersey joins more than 30 other states (including our neighbors in Pennsylvania and New York) which have already enacted some version of the UTC. While this news may not seem earth shattering to you, it could have a significant impact on your estate planning or on your ability to modify trust documents already in place.

The goal of the UTC is to standardize the law of trusts. With family members and loved ones potentially scattered across the country, the enactment of the UTC in New Jersey provides a level of confidence that a trust created here will more likely be administered in a consistent fashion in another state. This gives clients and planners alike the ability to move forward with trust planning with an even greater degree of comfort and certainty.

The most significant potential impact to you will likely be that the UTC makes it easier to modify the provisions of a trust without having to go to court. Subject to certain limitations, the following changes will be permissible under the UTC without court intervention: (1) changing the trust's jurisdiction; (2) interpreting confusing or ambiguous trust terms; (3) approving a trustee's resignation; (4) appointing a new trustee or removing a trustee power; (5) determining trustee compensation; (6) approving a trust accounting; (7) terminating a trust (so long as such termination is not inconsistent with the purposes of the trust); (8) correcting mistakes; and (9) permitting a parent to bind the interests of children and future generations so long as there is no conflict of interest. New Jersey's version of the UTC also clarifies certain other areas of trust law, such as the time frame in which one can contest a trust; trust provisions for animals/pets; and a trustee's duty to communicate with trust beneficiaries. The UTC provides methods for modifying or terminating a trust if the trustee and adult beneficiaries agree; even absent the consent of the settlor.

If you have created an irrevocable trust or are the beneficiary of a trust and you would like to understand more about how New Jersey's enactment of the UTC may affect you—or how it may allow you to affect the trust—please call us to schedule a consultation.