

**Preserving the Residence and
Other Real Estate:
Separating Fact from Fantasy**

Emily B. Kile, Mushkatel, Gobbato, & Kile, P.L.L.C.
Elizabeth N. R. Friman, Fleming & Curti, PLC

Stetson Law, National Conference on
Special Needs Planning and Special Needs Trusts
Friday, October 18, 2024

1

Introduction

- Real estate issues and related planning issues affect every family.
- Everyone has a “war story” to tell from their practice!
- We wanted to try and frame the issues we see most commonly.

2

Residence

3

<p>Current Living Situation</p>	<ul style="list-style-type: none"> • Where does the beneficiary live now? • Is it best for them to remain in place? • What are best practices for conveying real estate to an SNT?
--	---

4

<p>Budget and Care Plan</p>	<ul style="list-style-type: none"> • How do you budget for the home? • Are there also funds for caregiving services and other needs of the beneficiary? • Will the beneficiary want to remain in the home once the parents pass away? • Who will be the caregiver? • How will the rest of the family feel about your plan?
------------------------------------	---

5

<p>Oversight</p>	<ul style="list-style-type: none"> • Who is responsible for overseeing the maintenance of the property?
-------------------------	--

6

<p>Alternate Assets</p>	<ul style="list-style-type: none"> • Is real estate the best asset to fund the SNT? • Are there other assets to fund the SNT that the beneficiary could derive special benefits from? Like a retirement account?
--------------------------------	--

7

	<p>Rental Properties</p>

8

<p>Rental Property</p>	<ul style="list-style-type: none"> • The idea of purchasing an income producing property for someone who is unable to earn an income through a traditional job is understandable. • Clients need to be educated to understand the challenges of giving income producing real estate to beneficiaries who are on SSI, Medicaid and other income-tested programs.
-------------------------------	---

9

Unique Costs & Other Issues	<ul style="list-style-type: none">• If an SNT owns rental property, in addition to the normal expenses like property taxes, then there will be ongoing costs for things like extra insurance and management.• Rental property creates an extra layer of liability for trustees of SNTs.• Property management companies can add cost, but they can lend helpful expertise.• If the SNT is one of multiple owners of rental property, then things can get more complicated when it comes to decision making.
--	---

10

	Vacation Properties

11

Ownership	<ul style="list-style-type: none">• Who owns the property now?• How will ownership be shared with future generations?• If an interest is being conveyed to a SNT, what should you consider beforehand?
------------------	--

12

<p>Use</p>	<ul style="list-style-type: none"> • Can the beneficiary use the property safely? • Will the beneficiary still enjoy the use of the property in the future? • How does the family decide who can use the home?
-------------------	---

13

<p>Rental</p>	<ul style="list-style-type: none"> • Does the family rent out the property when it is not in use? • How is rental income disbursed?
----------------------	---

14

<p>Expenses</p>	<ul style="list-style-type: none"> • How are unexpected expenses shared amongst owners? • How does the family make decisions around home improvements? • Are maintenance or improvements to a vacation home acceptable distributions from the SNT?
------------------------	---

15

<p>Sale</p>	<ul style="list-style-type: none"> • What if the trustee of the SNT wants or needs to sell the interest? • This can be made difficult because of family legacy, rights of first refusal, discounts, fair market values and tax issues. • Can good planning make future conversations about sale easier?
--------------------	--

16

<p>Ownership Structure</p>	<ul style="list-style-type: none"> • Should the vacation home be owned by an LLC or corporate entity? • Will the vacation home be owned individually with the SNT as a partial owner? • What are the tax issues and liability concerns?
-----------------------------------	--

17

	<p>Resources</p> <p>The Special Needs Alliance</p> <p><i>Leaving a Residence to a Person with a Disability</i> August 2024 - Vol. 18, Issue 8</p> <p>https://www.specialneedsalliance.org/</p>
--	--

18

	<h2>Questions?</h2> <div><div>Elizabeth Friman Fleming & Curti, PLC Friman@flemingandcurti.com 520-622-0400 https://elder-law.com</div><div>Emily Kile Emily B. Kile, Mushkatel, Gobbato, & Kile, P.L.L.C. Emily@phoenixlawteam.com 480-384-1590 https://www.phoenixlawteam.com</div></div>
