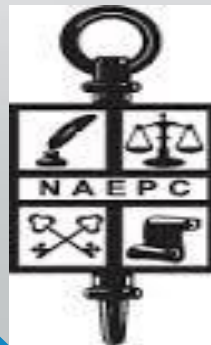


ESTATE PLANNING FOR ALL

T. Michael Sullivan, Esq.
AndoverLaw, P.C.
One Elm Square
Andover, MA 01810
(978) 470-2700



**Merrimack Valley
Estate Planning
Council**





What is Estate Planning?

Planning that ensures the needs and wishes of an individual are met in the event of incapacity or death. Estate planning should begin in early adulthood and reevaluated with every major life event from the birth of a child, to a change in income or assets, to retirement and beyond.

Recent Changes In the Law

- Massachusetts Uniform Probate Code
 - Signed into law January 15, 2009
 - Guardian Provisions enacted July 1, 2009
 - Remainder of code enacted March 31, 2012
- Massachusetts Uniform Trust Code
 - Signed into law July 8, 2012
- An Act Establishing Standards for Long Term Care Insurance
 - Enacted January 2, 2013
- Massachusetts Homestead Act
 - Amended by An Act Relative to the Estate of Homestead enacted March 16, 2011
- MOLST – July 1, 2014
- 2017 Tax Act
 - Effective January 1, 2018 – Sunset Provision December 31, 2025

Even if you already have Estate Planning Documents, these documents should be reviewed by an attorney if they were drafted five years ago or more in light of changes to the law. One should also consult with their accountant, financial planner, insurance provider, and plan provider to ensure their plans are up to date.

Estate Planning Documents

- Will – Probate Process
- Health Care Proxy
- Powers of Attorney
- Deeds
 - Life Estates
 - Realty Trusts
- Trusts
 - Revocable
 - Irrevocable

Will

- Under MUPC an Executor/Executrix now called a Personal Representative.
- Two Witnesses, Notarized
- Important Clauses
 - Power to Sell Real Estate
 - Waiver of Sureties
 - Attestation Clause/Self Proving
 - Negative Will
 - Clause making reference to list of bequests of tangible personal property outside of will.
- To die with a valid will is called testate, without intestate.

Probate Processes

- Voluntary Administration
- Informal Probate / Administration
- Formal Probate / Administration
- Ancillary Probate – Vacation Homes in Trusts
- Wills – Testate (Probate)
- Intestate (Administration)

Voluntary Administration

- Decedent was a resident of the Commonwealth according to the Death Certificate – (affidavit of Domicile).
- Petitioner is an interested person but need not be a resident of the Commonwealth nor have priority since no appointment of a PR is made.
- Decedent left an estate entirely of personal property wherever located the total value of which (excluding one car decedent owned) doesn't exceed \$25,000.00.
- No Formal or Informal Petition seeking appointment of PR has been filed in the Commonwealth.
- At least 30 days have passed from the date of the decedent's death (but the statute of limitations does not apply).
- Venue is proper (filed in proper county).

Informal Probate

- Testate or Intestate.
- Can file 7 days after date of death – must give notice to interested parties.
- Petitioner must be interested party and personal representative must have priority.
- Decedent must have been domiciled in Massachusetts and Venue must be proper.
- No formal determination of heirs.
- Process can start informal and become formal if challenged or formal determination of heirs needed.
- Bond.
- Faster and less expensive than Formal.
- Must considered whether there is Real Property that needs to be sold.

Formal Probate

- Testate or intestate.
- Petitioner must be interested party and personal representative must have priority or those with priority have all refused/failed to serve.
- Decedent must have been domiciled in Massachusetts and Venue must be proper.
- If Estate has real property and no power to sell in Will or no Will, must seek Formal Determination of Heirs.
- Supervised / Unsupervised.
- Bond – With or Without Sureties.
- Greater supervision from Court if needed.
- Formal Decree and Order much more difficult to challenge and overturn.

Competency And Incapacity: Who Can Make Decisions For Me If I Cannot?

- Medical Decisions
 - Health Care Proxy / Living Will
 - Guardianship
 - *** MOLST FORM
- Legal and Financial Decisions
 - Power of Attorney
 - Conservatorship

HealthCare Proxy / Living Will

- Health Care Proxy
 - Provides agent with legal authority to make decisions for the Principal should that person become incapacitated or unable to communicate their wishes.
 - The Principal must choose only one agent who understands the Principal's wishes and has the courage and determination to make the decisions that the Principal would want made if the Principal able to communicate them.
 - Important Clauses
 - HIPPA
 - Antipsychotic Medication
 - Ability to place in nursing home care
- Living Will
 - Often a section or sections of the Health Care Proxy.
 - Principal provides statements as to what their wishes are in certain medical situations.
 - Examples – Wish to refuse feeding tubes, respirators and/or cardiac resuscitation.



MOLST

Medical Order for Life Sustaining Treatment

- Form filled out with Doctor/Clinician used to document end-of-life treatment options.
- Must be signed by both the patient and Doctor/Clinician.
- Make sure Health Care Proxy and MOLST do not have conflicting information to avoid possible litigation/Court involvement when you are unable to make decisions for yourself.

Guardianship

- Needed if Individual did not execute a Health Care Proxy prior to incapacity or court supervision is required and “who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.” M.G.L 190B, § 5-101(9)
- Any qualified person can be appointed Guardian.
- A Medical Certificate detailing the individuals extent of incapacity must be filed with the Petition.
- Court may appoint counsel for the person who is subject to the Petition for Guardianship.
- Guardian must file a annual Care Plan with the Court.
- Roger’s Hearing / Roger’s Counsel.
- A Guardianship is an expensive and complex process that can be avoided with proper planning.

Power of Attorney

- Legal document that authorizes an Agent or Agents to act on the Principal's behalf in handling the Principal's finances and property.
- Can give agent broad powers to act on behalf of the individual before and during a period of incapacity (Durable Power of Attorney) and take effect only upon the individual's incapacity (Springing Durable Power of Attorney) or be limited to a single transaction (Non-Durable Power of Attorney).
- May include a gifting clause.
- Does not survive the death of the Principal.

Conservatorship

- If an individual does not have a Durable Power of Attorney in place or Court supervision is necessary and “the person is unable to manage property and business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance”
M.G.L. 190B § 5-401(c)(1)
- Any qualified person can be appointed
- Has broad authority including the authority to make gifts and make, amend, or revoke the protected person’s will.
- Court may require the Conservator to file a plan for managing, expending and distributing assets of the Estate prior to death.
- Must file an Inventory of the Protected Person’s assets with the court within 90 days, must file an Account with the court no less than once a year and must file a final account upon termination of conservatorship.
- Does not survive death of Protected Person.

Estate Tax

- Federal Estate Tax
 - 2018 Exemption adjusted for inflation is approximately \$11.2 million per individual or \$22.4 million per couple. Expires 2025
 - Portability: The ability for one spouse to transfer unused portion of exemption to surviving spouse. Must file Estate Tax Return even though no tax due.
- Massachusetts Estate Tax
 - Massachusetts uses the Federal Estate Tax Return (Form 706) from 1999. – Exemption is \$1,000,000.

Gift Tax

- There is no Massachusetts Gift Tax
- Federal Gift Tax
 - 2018 - An individual can gift up to \$15,000 to another individual.
 - 2018 – Married couple can gift a total of \$30,000 to another individual.
 - Lifetime Exemption \$11.2 million, matches Estate Tax Exemption – Gift Tax Return Form 709.

Income Tax – Basis

- With elevated Federal Estate Tax, basis becomes a bigger consideration.
- Inherited property receives step up in basis.
- Gifted property for determining gain is the same as it would have been in the hands of the donor. “Carryover Basis”
- It may be better to keep property such as a highly appreciated home in the Estate.
- Consider a tax analysis with your accountant and a Life Estate with your attorney.

Protecting the Home Part 1

- Homestead Act As Amended
 - Protects the principal residence of a debtor, debtor's spouse or debtor's minor children.
 - \$125,000 automatic protection or may file a Homestead declaration and receive \$500,000 of protection \$1,000,000 per married couple.
 - Owners do not have to re-record homesteads when home is refinanced.
 - Does not protect against Medicaid/MassHealth liens; federal, state and local taxes; first and second mortgages; Debts prior to filing; and Judgment that the spouse pay alimony or child support.
- Deed with Life Estate
 - Individual can deed away his home and retain a life estate which is transferable.
 - Value of life estate based upon life span / actuarial values.
 - Remainderman benefits from step-up in basis upon the death of the life tenant.
 - MassHealth can only collect on a lien from the proceeds of a sale attributed to the life estate actuarial worth and cannot enforce a lien if the life tenant dies owning the life estate. *** Recent Court cases have challenged this and has held up in recent cases*** *Mary E. Daley, Personal Representative v. Secretary of the Executive Office of Health and Human Services* and *Lionel C. Nadeau v. Director of the Office of Medicaid*.

Protecting the Home Part 2

- MassHealth Permissible Transfers
 - Transfer to Spouse.
 - Transfer to the nursing home resident's child who is under age 21, or who is blind or permanently and totally disabled.
 - Transfer to the nursing home resident's sibling who owns a portion of the home and was living there for at least one year prior to nursing home placement.
 - Caregiver – Child Exception
 - The care provided by the child must be such that if he/she was not providing it the parent would have needed nursing home level care.
 - Must be living in the house and providing this care for a minimum of two years.
- MassHealth Qualified Trusts
 - Irrevocable
 - Can retain right to live in house ***Recently Challenged***
 - *Mary E. Daley, Personal Representative v. Secretary of the Executive Office of Health and Human Services* and *Lionel C. Nadeau v. Director of the Office of Medicaid.*
 - Be wary of 5 year look-back period
- Exemptions and Deferrals on Real Estate Taxes

Reverse Mortgages

- Allow older homeowners to convert home equity into tax-free cash in order to accomplish personal financial goals such as remaining in the home.
- Lender disburses the loan proceeds to the homeowner through regular monthly payments, in a lump sum, as a line of credit or a combination of these methods.
- Does not need to be re-paid until the homeowner transfers the home, ceases to occupy it as his principal residence for 12 consecutive months or dies.
- Over time the debt increases.
- Deed in Lieu of Foreclosure
- Minimum age to qualify for government insured reverse mortgage is 62.
- Mandatory Counseling Prior to Reverse Mortgage.
 - American Consumer Credit Counseling (617) 559-5700 www.consurcredit.org
 - Central Main Area Agency on Aging D/B/A Spectrum Generations (207) 623-0761 www.spectrumgenerations.org

Long-Term Care Insurance

- Should be considered by elders who do not meet the requirements for MassHealth and cannot afford to pay for the level of long term care they desire out of pocket.
- Best to purchase at any early age when health is good and the price is low (disadvantage – may pay premium for more than 20 years before needed).
- If an individual purchases LTCI with the minimum benefits and ends up fully depleting the policy for in-home or assisted living care prior to admission to a skilled nursing facility the waiver against estate recover remains intact – for MassHealth recipients, protects the equity in the home (currently up to \$858,000).
- When purchasing consider
 - Individual / Group Policy.
 - Limits on benefits.
 - Length of benefit period (Average Nursing Home Stay 2 ½ years.)
 - Length of Elimination Period - Beneficiaries must pay out of pocket during the lamination period or period of time in a nursing facility before policy kicks in.
 - Eligibility to begin receiving benefits.

Hybrid Policies – Life Insurance / Long Term Care Insurance

Leaving the Home

- Nursing Home Care
 - Suited for elders who require skilled sub-acute nursing care 24 hours a day. These facilities provide medical care and assistance with daily living.
 - Monitored by Massachusetts Department of Public Health, must follow regulation set out by Division of Medical Assistance and the Attorney General - Nursing Home Residence "Bill of Rights".
- Assisted Living
 - Residential living arrangement providing room and board for those who need some aid, support or supervision with daily activities but do not require 24 hours of skilled nursing care. Lockable Doors, Kitchenette, newly constructed must have Private Bathroom for each unit.
 - Monitored by the Executive Office of Elder Affairs - Assisted Living "Bill of Rights".
- Continuing Care Retirement Communities
 - A place where single and married couples can remain even when their needs change.
 - Plans are individualized and include nursing and health care, housekeeping, transportation, meals, recreational activity and emergency help.
 - Regulated by The Executive Office of Elder Affairs.

Programs and Options Available for Seniors

- Social Security
- Medicaid / MassHealth
 - Long-Term Care
 - Community Benefits
- Medicare
- Veteran's Aid and Attendance Benefits
- Long-Term Care Insurance
- Protecting the House
- Reverse Mortgage

Social Security

- Eligibility for retirement benefits is based upon credits earned as determined by amount and number of years that an individual, or individual's spouse, paid Social Security Taxes
- If you were born in 1929 or later you need 40 credits (10 years of work) to qualify for benefits.
- Full retirement age is from 65 for those born 1937 or earlier and increase on a sliding scale to 67 for those born 1960 or later.
- Anyone can elect to take Social Security benefits as early as 62 but benefit will be permanently reduced unless one stops taking the benefit and re-enters the work force prior to full retirement age.
- Conversely can wait to take retirement benefits until age 70 and substantially increase ones monthly benefit.

Social Security Advisory Service www.ssas.com

U.S. Social Security Administration (800)772-1213 or www.ssa.gov

Medicaid / MassHealth

- Federally and State funded health insurance program.
- Provides medical benefits for low and middle income individuals.
 - Institutionalized Individuals
 - Must pay all monthly income to institution with the exception of a personal needs allowance of \$72.80.
 - MassHealth pays for 100% of the balance for room and board.
 - If no income MassHealth pays 100% plus a \$72.80 personal needs allowance.
 - Community residents
 - Those who reside in apartments, private homes and state funded group homes.
 - Seven coverage types See MassHealth Member Booklet.
<http://www.mass.gov/eohhs/docs/masshealth/appforms/member-booklet.pdf>
 - MassHealth Standard
 - SSI recipients automatically receive.
 - Pays for 100% of most medical services including hospital care, outpatient services, medical equipment, doctor visits, mental health services, prescriptions, transportation, day programs and residential care.
- See <http://www.mass.gov/eohhs/gov/departments/masshealth/>

Medicaid / MassHealth Long Term Care

- Qualifying
 - Assets less than \$2,000
 - Non-Countable Assets – Spouse Principal residence equity exclusion up to \$858,000, household belongings, personal belongings, burial plots, pre-paid irrevocable burial contracts, \$1,500 bank burial account, life insurance with face value up to \$1,500, one automobile for use by the applicant or his or her family.
 - Inaccessible Assets – those to which the applicant has no legal access such as expected inheritance before probate is complete.
 - Countable Assets – at the rest
 - MassHealth assumes all assets in joint accounts are the applicants – this is rebuttable.
 - Income
 - Must pay all monthly income to institution with the exception of a personal needs allowance of \$72.80.
 - MassHealth pays for 100% of the balance for room and board.
 - If no income MassHealth pays 100% plus a \$72.80 personal needs allowance.
 - Trusts
 - Irrevocable - If an applicant is the beneficiary and grantor of a trust, and if the applicant can receive distributions from the trust, any amount of principal that the trustee has the discretion to distribute to the applicant is considered a countable asset.
 - Revocable – if the applicant, or his or her spouse, is the grantor of a revocable trust, all assets in the trust are considered countable assets.

Medicaid / MassHealth Frail Elder Waiver

- Frail Elder Waiver
 - Allows those seniors who are eligible for nursing home care to receive services at home.
 - Requirements
 - 65 years old or if under 65 permanently and totally disable
 - Must meet clinical requirements and show that if Fair Elder Waiver was not granted would require institutionalization.
 - Cost to provide care in home cannot exceed nursing home care.
 - Must meet same financial standards that are required for long term care.
 - In addition to \$2,000 asset limit waiver imposes a 2017 income limitation of \$2,205 per month.
 - Includes coverage for adult day care, home health care services, delivered meals, home modification to improve accessibility and transportation for medical or other appointments.

Medicaid / MassHealth Community Choice

- More care-intensive program for those enrolled in Frail Health Waiver program who either face imminent nursing home placement or currently reside in a nursing home but wish to return home or to the community.
- Provides extensive home and community-based services to elders who require nursing home level care and meets one of four indications of frailty and one of five clinical characteristics demonstrating a certain level of risk.
- Services are provided by an agency hired by MassHealth and offer more hours or service than any other similar program including personal care nursing companionship, chore assistance, delivered meals, grocery delivery, laundry, transportation, transitional assistance and adult day health care .

Medicaid / MassHealth PACE

- Provides comprehensive medical and social services to frail elders so as to allow them to live in their communities and receive all their health services under the same umbrella.
- Eligibility Requirements
 - 55 years or older
 - Live in a service area of a PACE organization.
 - Able to live safely in the community.
 - Be certified by the state as eligible for nursing home care and agree to receive health care services exclusively through the PACE organization.
 - Financial Eligibility same as all MassHealth programs, \$2,000 asset limit.
- All other medical services are provided by MassHealth as no cost to the elder.

Medicaid / MassHealth Other Choices

- SSI-G/GAFC (Group Adult Foster Care program)
- Personal Care Attendant Program – Participant self-direct their care
- Massachusetts Caregiver Homes Program
- Elder Services of the Merrimack Valley, Inc. (978) 683-7747
- MassHealth – Customer Service Center (800) 841-29000
- Massachusetts Health Care for All Health Care Resources (617) 350 7279

Medicare

- Health Insurance Plan Administered by Federal Government
- If receiving benefits from Social Security or Railroad Retirement Board automatically have Part A and Part B Benefits start the first day of the month that you turn 65.
- Part A
 - Covers inpatient hospital care, inpatient care in skilled nursing facility (up to 100 days), Hospice Care, home health care services, inpatient care at a religious nonmedical health care institution (must be reasonable and medically necessary).
- Part B
 - Covers medically necessary doctor's services, outpatient care, home health services, durable medical equipment and a variety of preventative services.
- Part C
 - Offered by private insurance companies, covers Part A and Part B benefits and typically offers additional benefits such as vision, hearing, dental, health and wellness programs and prescription drugs.
- Part D
 - Administered through private pay insurance plans to assist Medicare recipients in defraying the costs of prescription drugs.

Medicare Help Line – (800) 633-4227 or www.medicare.gov

Veteran's Aid and Attendance Benefits

- Provides eligible veterans and their surviving spouses financial benefits to help pay for assistance with their daily activities.
- Requirements
 - The veteran must have served 90 days active duty, one day of which was during a time of war.
 - Must not have received dishonorable discharge.
 - Surviving spouse must have been married to veteran for at least one year or had a child with the veteran and cohabitated with the veteran continuously until the time of his death.
 - Generally \$80,000 used as a rough asset limit not counting family home and vehicle.
- Local Veteran's Affairs Office can help you with this process – Massachusetts Department of Veterans' Services (617)210-5480 or www.mass.gov/veterans

Elder Abuse and Neglect

- Actions by caretakers, conservators or guardians causing
 1. physical or emotional injury;
 2. financial exploitation; or
 3. life necessities essential for physical and emotional well-being to be denied (neglect).
 - a. Also includes an elderly person's own failure to care for himself.
 - b. Warning signs include bedsores, poor hygiene, malnutrition and mood changes.
- Protective Services
 - Elder Abuse and Protective Services (800) 882-2003
- The Executive Office of Elder Affairs
- Massachusetts Elder Abuse Hotline - (800) 922-2275
- Elder Services of the Merrimack Valley, Inc. (978) 683-7747

Identity Fraud and the Elderly

- Identity theft occurs when a person knowingly uses another person's personal information in a fraudulent manner for the purposes of obtaining goods, services or credit.
- Common methods include
 - Stealing a wallet, mail, submitting a change of address form to the post office to re-route mail, sifting through trash.
 - Internet – Birth Certificates, driver's licenses and social security information can be found online. Thieves can buy items online without being face to face with a salesperson who might otherwise suspect fraud.
- Update Anti-Virus Programs on your computer, avoid automatic log-ins, before throwing away a computer or mobile device make sure hard drive is wiped and memory card removed.
- FTC Clearinghouse Hotline – (877) ID THEFT (438-4338)



Conclusion

Planning for your future may seem like an arduous task, but with the proper planning and consultation with your Attorney, Financial Planner, Accountant and Life Insurance provider, you and your family will be able to fulfill your goals and continue your legacy.