



Estate Preservation Law Offices  
**BRIDGING THE GAP**  
*between traditional estate planning and asset protection*



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**Practice Areas**

- Estate Planning
- Asset Protection Planning
- Elder Law and Medicaid Planning
- Business and Corporate Planning
- Special Needs and Disability Planning
- Estate and Trust Administration
- Guardianships and Conservatorships
- Tax Planning: Corporate and Individual
- Charitable and Exempt Organizations
- Equine and Pet Trust Planning
- Veterans Benefits Planning
- Financial Aid Planning

**Locations**

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For our clients' convenience,  
 we also have offices in Leominster,  
 Braintree and Hyannis, MA

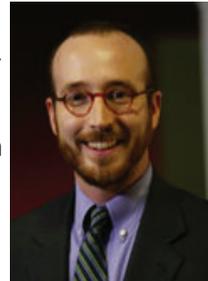
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## What You Need to Know: Current Trends in Estate Planning

**A**s we approach the end of 2013, we are struck by the significant number of legal developments the year has brought on both the state and Federal levels. Consistent with our philosophy of remaining on the cutting edge of estate planning, we will be highlighting several important changes and trends throughout this issue.



Brendan J. King



Linda T. Cammuso

- On June 26, 2013, the landmark U.S. Supreme Court decision *United States v. Windsor* declared Section 3 of the Defense of Marriage Act (DOMA) unconstitutional. The Federal government must now recognize and provide benefits to same-sex married couples. These couples may now benefit from many tax and estate planning strategies previously limited to opposite-sex married couples.

- Another issue that has arisen for Medicare recipients is classification of hospital stays as “outpatient” or “observation,” as opposed to “inpatient.” Outpatient/observation status affects coverage for rehab

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**MassHealth Update**

## Recent Developments in Long-Term MassHealth Applications

**F**or many years people have used irrevocable trusts to shelter assets from the cost of long-term care while at the same time accomplishing a host of other important estate planning objectives. Trusts are considered a safer and more tax-efficient way of transferring assets to loved ones, charities and other beneficiaries. An important purpose of a trust in the long-term care context is to trigger the running of the five-year “look back” period for MassHealth

(Medicaid), thus protecting the trust assets from a future nursing home spend down. Properly drafted and administered trusts have always been a reliable legal tool for individuals who anticipate needing Medicaid benefits for long-term nursing care.

Recently, however, the use of irrevocable trusts has met resistance from the MassHealth agency in the application process. Although these trusts seemingly meet applicable

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## Trends *Continued from page one*

in a skilled nursing facility as well as out-of-pocket expenses for hospital services (such as x-rays, drugs and lab tests). Often patients are not informed of their hospital classification status and do not realize the importance of asking.

- In Massachusetts, recent trends in applications for MassHealth (Massachusetts Medicaid) suggest a climate change in which the MassHealth agency has been denying applications on issues they have historically approved. Although Federal and state laws and regulations have not changed, the MassHealth agency's interpretation has in some recent decisions. A number of these denials involve applications where the applicant created and/or was the beneficiary of a trust.

- A final trend involves how individuals and families handle private ownership and

inheritance of guns. In the wake of recent tragic events, responsible citizens for whom firearm ownership represents protection, sport and family tradition grapple with the question of how to safely and responsibly pass these values and assets on to future generations. Pending Federal legislation may further complicate this issue. Understanding that inheritance of guns presents unique challenges, EPLO has undertaken an initiative to promote lawful and responsible inclusion of such assets in the estate planning process.

We will continue to closely monitor these issues and keep our clients informed of developments that may affect them. Read on for additional information.

## MassHealth *Continued from page one*

state and Federal guidelines, MassHealth has recently argued that many irrevocable trusts are "countable," meaning they are characterizing the trust assets as available to the applicant for long-term care expenses. There is an appeal process available to applicants who are denied. Although it is still too soon to tell how these cases will go, there have been some favorable results for applicants at the agency and Superior Court level.

In light of this recent development, the attorneys at EPLO are understandably concerned on behalf of our clients. Based on our own experience and reports from attorneys throughout the

Commonwealth, there is no single issue or provision in particular trusts that suggests a common flaw - it would appear that the MassHealth agency has simply decided to be more aggressive with these trusts.

The attorneys at EPLO and throughout the state are working to fine-tune the structure of future trusts to reduce the likelihood of MassHealth challenges. Clients with existing trusts should understand that nothing in the law has changed. Since these denials are not based on legal foundations, it is the strong belief of the elder law bar in Massachusetts that this trend will eventually be corrected. However, during this period of

## Updates

- *Worcester Business Journal* has named Attorney Melissa Gleick one of its 40 under Forty recipients for 2013. The award honors individuals for their professional and community outreach achievements.

- Linda T. Cammuso was named to the Executive Committee of the Worcester Estate & Business Planning Council and Vice President of the Montachusett Estate and Retirement Planning Council. She has also been appointed to the board of Casa Verna (aka Spring House), an organization in Berlin, MA, that provides sanctuary to homeless pregnant women.

- The Affordable Care Act is not a concern for Medicare recipients. To learn more, read our blog "Caution: Scammers taking advantage..." at [www.estatepreservationlaw.com/blog/](http://www.estatepreservationlaw.com/blog/)

uncertainty, there is little we can do except to let our clients know that Medicaid planning has become more complex.

We are carefully monitoring these developments to ensure that every applicant is treated fairly and we will keep our clients and colleagues informed. It is our opinion that clients with long-term care concerns who are currently creating an estate plan should continue to utilize carefully-drafted estate plans including irrevocable trusts to preserve assets from long-term care spend down. Meanwhile, we are always available to meet with current clients to discuss this trend and to review their estate planning needs.

## Have Medicare?

# A Hospital's Inpatient or Observation Designation is Critical

If you're in the hospital more than a few hours, ask if you're an inpatient or an outpatient. When admitted to a hospital, it's natural to assume you are an inpatient. But, it's possible the hospital may categorize your status as observation (outpatient), even if you stay in the hospital overnight. This status could result in significantly higher out-of-pocket expenses.

Your hospital status (i.e. "inpatient" or "outpatient") affects how much you pay for hospital services (like X-rays, drugs, and lab tests) and may also affect whether Medicare will cover the care you get in a skilled nursing facility (SNF) if you require rehab following your hospital stay. Medicare covers the first 20 days in an approved skilled nursing facility for rehab or other care, but only if someone has spent at least three full days in the hospital as an "inpatient." If instead a patient has been under "observation" – for all or part of that time – he or she is responsible for the cost of rehab.

### According to Medicare:

- You're an inpatient starting the day you're formally admitted to the hospital with a doctor's order. The day before you're discharged is your last inpatient day.
- You're an outpatient if you're getting emergency department services, observation services, outpatient surgery, lab tests, or X-rays, and the doctor hasn't written an order to admit you to the hospital as an inpatient. In these cases, you're an outpatient even if you spend the night at the hospital.

In a 2012 Brown University study, researchers found that the nationwide ratio of Medicare

patients who are "held for observation" to those who are admitted for inpatient stays, increased 34 percent between 2007 and 2009. According to the report, "More elderly patients in the emergency departments of hospitals are being held for observation rather than admitted as inpatients. Pressure from Medicare to reduce unnecessary hospitalization may be driving the trend."

### How could you (and your wallet) be impacted?

- Hospital Observation Status could incur unexpected and significant costs (co-pays) for drugs, X-rays, lab and other hospital treatments.
- If you need rehabilitation following hospitalization, Medicare will only pay for care in a skilled facility after a three-day consecutive hospital stay and only if you were classified as "inpatient."

Unfortunately, most patients are not informed of their classification nor do they think to ask. Even if notified of their status, often patients do not understand the implications.

### What to do?

- Ask about your status - and then ask again (it could change).
- If the answer is observation, ask the hospital doctor and case manager how they arrived at that classification and ask that it be changed.
- If they refuse, contact your personal physician and ask/him her for help.
- If that fails, request a hearing with the relevant hospital committee.

Bills have been filed in the House of Representatives (HR

1179) and in the Senate (S569) to amend the Medicare definition of "post hospital extended care services" to clarify that time spent in the hospital in observation status counts toward the three-day prior hospital prerequisite for Medicare skilled nursing facility coverage.

But, until the bills are enacted into law it remains important to be diligent about your, or a loved one's, hospital classification to avoid costly consequences. Take charge of your care and classification - and do not hesitate to contact an EPLO attorney for help.

For more information on inpatient versus outpatient, check out our blog at [www.estatepreservationlaw.com/](http://www.estatepreservationlaw.com/)

## Estate Planning for Gun Owners

Although guns are often perceived as being for protection or for sport, some weapons represent fond memories and family traditions. They may be a family heirloom, memorabilia or a piece of history meant to be passed on to future generations. Establishing a will in which you bequeath a gun to a family member is not the same as giving your son your classic car or your daughter her grandmother's diamond brooch. When an estate includes guns, there are Federal, state, and local gun laws to consider. Massachusetts in particular has very strict gun laws. Incorrectly transferring a gun to a beneficiary who is unlicensed or otherwise ineligible could subject the beneficiary as well as the personal representative

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# Questions and Answers: Understanding the DOMA Ruling

### What is DOMA?

Passed by Congress in 1996, the “Defense of Marriage Act,” (DOMA) is a Federal law that allows states to refuse to recognize same-sex marriages granted under the laws of other states. At present, 14 states and the District of Columbia recognize same-sex marriage.

### What is Section 3 of DOMA and what is the significance of its repeal?

Section 3 of DOMA prevented the Federal government from recognizing marriages of same-sex couples. The repeal of Section 3 creates a significant increase in protections for same-sex couples, including:

- Social security benefits for widows and widowers
- Joint income tax filing and exemption from Federal estate taxes
- Health insurance and pension protections for Federal employees’ spouses
- Support and benefits for military spouses
- Immigration protections for bi-national couples
- Spousal rollovers to continue income tax deferral on a deceased spouse’s IRA or other qualified retirement plan

### What are the IRS ramifications?

Previously same-sex married couples were subject to Federal estate taxes (beyond the general exemption amount) on assets inherited from each other at the first spouse’s death. They were also subject to the Federal gift tax on gifts to each other, which made it difficult to jointly own or transfer assets between them. Same-sex spouses (provided they are U.S. citizens) are now entitled to the unlimited marital

deduction which allows them to avoid estate taxes entirely on the first spouse’s death. They may also make unlimited lifetime gifts to each other and share ownership of assets without gift tax implications.

On the income tax side, same-sex spouses may now file income tax returns jointly. They also have the option to amend income tax returns for the prior three years if doing so would result in more favorable tax treatment.

### What does this mean for same sex couples’ estate plans?

The DOMA ruling dramatically changes financial and estate planning for same-sex couples. Areas implicated include Federal benefits such as Social Security, Medicare and Veterans benefits; Retirement benefits; Federal transfer taxes including the estate tax and the gift tax; and Federal income taxes. For example, Same-sex couples can now use traditional spousal planning techniques, such as

marital trusts which allow the first spouse who dies to control the ultimate disposition of his/her property after the surviving spouse’s death while still taking advantage of the Federal estate tax marital deduction and providing an income stream to the survivor.

### What if a couple is not legally married?

Same-sex unmarried couples are not impacted by the DOMA ruling. However, they do have access to trust strategies to reduce estate taxes and protect their partners and children.

Same-sex married couples who have previously created estate plans should seek advice from their estate planning attorney to determine if changes are needed. Those who have not established an estate plan should schedule an appointment to do so.

*For more information on DOMA, check out the Estate Preservation Law blog at [www.estatepreservationlaw.com/](http://www.estatepreservationlaw.com/)*

## Estate Planning for Gun Owners *Continued from page three*

(executor) of the estate to criminal penalties and fines.

Some states permit the use of a National Firearms Act (NFA) Trust (or Gun Trust) designed specifically for the lawful ownership, transfer and possession of weapons. However, the particulars of Massachusetts gun ownership and possession laws render such trusts largely inadequate for Massachusetts residents.

Gun owners in Massachusetts should consider naming a personal executor (executor) who has the appropriate gun ownership/possession licensure to ensure the assets can be safely collected and held following death. Likewise, spouses of gun owners should consider becoming licensed to ensure they can continue to lawfully possess and safeguard guns meant for children to inherit when they reach adulthood. There are complicated rules and timelines that apply when a gun owner dies, so planning ahead is key.

If you currently own or plan on owning guns and would like to ensure that your assets are protected during and after your lifetime, speak to an attorney at EPLO.