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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 Braintree,
 Hyannis and Leominster MA

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From the Partners Estate Planning: Answering Your Questions

Recently EPLO Partners Brendan King and Linda Cammuso discussed some of the common estate planning questions they are asked by their clients.



Brendan J. King Linda T. Cammuso

Why do I need an estate plan? I don't have a lot of assets.

Isn't a simple will sufficient? Brendan: Your estate might

be larger than you realize. An estate consists of everything you own, including your home, personal property, investments, bank accounts, retirement plans, life insurance and any interests in a business or partnership.

Linda: Our clients are often surprised when they total up all their assets. And then they are alarmed to realize that without proper legal documents, state law determines how their belongings are distributed. True estate planning considers support and financial stability for a surviving spouse, children and future generations, as well as protection of assets during the client's own lifetime. It also ensures that your wishes are carried out if you can no longer manage your affairs.

Brendan: In addition to planning for assets, estate planning is also issue-oriented. If you have a special needs child, own a business, or are concerned about protecting your assets from a nursing home stay, that particular concern will shape your planning objectives.

What's the difference between an estate plan and asset protection?

Brendan: Asset protection is a combination of laws and legal strategies that protect individual assets and business entities. The importance of integrating asset protection and estate planning to fully protect and preserve your assets cannot be overstated. By itself, even the most sophisticated estate plan may not protect your wealth against unforeseen events and economic threats that exist today.

Linda: Estate planning ensures that your assets are efficiently passed on to your intended heirs and beneficiaries upon your death and that the proper decision makers are in place during and after your life.

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Asset protection insulates assets during your life from third-party threats to protect and preserve the estate you've worked so hard to accumulate. In today's world, you do not need to be wealthy to be sued or to lose your assets.

Brendan: Asset protection also extends to your beneficiaries beyond your lifetime. With proper planning you can protect the assets you leave to a spouse and children from divorce, disability, creditors and the nursing home.

How often should I update my estate plan?

Linda: Unfortunately there are some people who think, "My estate plan is done. I can put it in a drawer and never think about it again." That's faulty thinking!

Brendan: Although you don't have to update your estate plan annually, there are life changes that warrant bringing your estate plan up to date. These might include marriage/divorce, having a baby or adopting a child, birth of a new grandchild, or loss of a spouse.

Linda: You would also want to update your estate plan if something changes in your beneficiaries' lives, such as a child getting married or divorced, or a beneficiary passing away or becoming incapacitated. Or you might have a windfall - an inheritance, sale of a business or even a lottery win.

Brendan: Changes in the law are another reason updates may be required. When we feel that a new or altered law will affect our clients, we make them aware through our newsletters, blog, and when applicable, personal communications.

What documents are needed to ensure my wishes are carried out?

Linda: Planning varies according to clients' individual needs. However there are a few core documents that should be in every estate plan.

- A Durable Power of Attorney names someone to handle your financial affairs if you are living but unavailable or incapacitated.
- A Health Care Proxy names someone to make healthcare decisions on your behalf should you become incapacitated.
- A HIPAA Release allows certain individuals, including those named in your Health Care Proxy, to have access to your healthcare information.
- A Living Will declares your wishes (if applicable) not to have your life prolonged by artificial measures such as life support.
- A Will transfers your probate assets (those

titled in your name alone without a designated beneficiary) upon your death. In reality, many assets fall outside of probate so this document rarely covers a person's entire estate. The Will also names your personal representative (executor) and guardian of minor children.

- A Trust is the preferred vehicle for most clients to handle the dispositive (beneficial) provisions of their estate plan.

Brendan: There are many different types of trusts for accomplishing different objectives, including probate avoidance, nursing home protection, special needs planning, estate tax reduction or elimination, and asset protection. Generally, when assets are transferred via a trust there is more confidentiality, less cost, increased flexibility and faster distribution.

Linda: Clients even use trusts to provide funds for the care of their pets. This is relatively new in Massachusetts, and our clients love the peace of mind these Pet Trusts provide.

When my estate plan is completed, where do I store my documents?

Brendan: People often tell us they plan to leave all their documents in a safe deposit box. However, if the box is just in your name, then your family will need a court order to open it. If you become disabled or die, it is critical that your key decision makers have access to your documents.

Linda: The better option may be to store copies of your documents in a discreet but accessible location in your home, and leave the original documents with your attorney for safekeeping.

What about other services provided by EPLO?

Brendan: We offer many other core services including Elder Law/Medicaid Planning, Special Needs Planning, Trust Administration, Probate and Estate Settlement, and Guardianships and Conservatorships. In the next issue of *Bridging the Gap* (out later this year), we will highlight some of these areas in more detail. Meanwhile, within this issue you will find articles on choosing decision makers, how trusts work within your estate plan, fitting your business into an estate plan strategy, and need-to-know information about taxes. We also discuss the new Federal ABLE Act, which allows certain disabled

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Choosing Your Decision Makers

At EPLO, we can prepare every element of your estate plan. However, there is some important homework that only you can do: that's deciding the person(s) who will represent your interests and carry out your wishes. To help you in selecting these critical individuals, known as "fiduciaries" and "agents", who will represent you if you become disabled and oversee assets during and after your life, here's a quick primer on who should be on your team.

- **Personal Representative (Executor):** Formerly known as an executor, your personal

representative carries out the directions of your will and settles your estate following your death. This includes offering the will for probate, arranging for sales of assets and payment of debts, filing your final income tax returns, and distributing property to your beneficiaries according to the instructions in the Will. Choices for this role include a family member, friend or professional, or a combination of these options with co-personal representatives

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Taxes Can Impact Your Estate Plan

The question we often hear from clients preparing their estate plans is "What about the taxes?"

- **Estate Taxes:** The estate tax is a transfer tax imposed on one's estate following death. On the Federal level, the estate tax is imposed only on assets in excess of the applicable exemption amount, which in recent years has significantly increased and for 2015 sits at \$5,430,000 with a top tax rate of 40% for assets above that amount.

While most estates are below the Federal amount, Massachusetts is one of many states that impose a separate state estate tax. The estate of a Massachusetts decedent of \$1,000,000 or greater is subject to state estate tax on the entire estate. While the graduated rates are significantly lower at the Massachusetts level (ranging from less than 1% to 16%), far more estates are caught by the tax because of its lower threshold, and the tax is imposed on the entire estate. Thus, estate tax planning is still critical for Massachusetts residents.

- **Gift Taxes:** Gift taxes are imposed by the Federal government on gifts to non-spouses above the applicable annual exclusion amount - \$14,000 for 2015. There is a lifetime exemption which is tied to the Federal estate tax exemption - \$5,430,000 for 2015 - so while most

taxable gifts will not require any gift tax to be paid, they may necessitate the donor to file a Federal Gift Tax Return to report the gift.

- **Generation-Skipping Transfer Taxes:** This is another Federal transfer tax imposed on certain transfers to individuals more than one generation younger than the donor (or 37 ½ years younger for non-relatives). There is an exemption amount tied to the Federal estate tax exemption - currently \$5,430,000.

- **Capital Gains Taxes:** Capital gains taxes are imposed by the Federal government on the profit from the sale of capital assets (such as real estate, stocks/mutual funds, and certain business interests) when the asset is sold for more than the acquisition cost and there is a gain on the sale. Capital gains reduction or elimination is a significant focus of estate planning, including strategies to utilize the step-up in basis upon death which allows the beneficiaries of a decedent's capital assets to calculate gain based on the date-of-death values and thereby reduce or even eliminate the tax.

The President's recent budget proposal calls for a repeal of the basis step-up rule, which would expose beneficiaries to significant capital gains exposure. We will closely monitor this issue and keep our clients and contacts informed of relevant developments.

Decision Makers

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- **Trustee:** The trustee manages trust assets for the benefit of the designated beneficiaries in the trust document. Trustees make investment decisions as well as decisions about how to distribute money (in accordance with the trust instructions). In most living trust arrangements, you will be the initial trustee during your life, with successors to serve in the event of your disability or death. Since most properly-designed estate plans feature a trust as the dispositive document for beneficiaries, the choice of trustee is a critical one, particularly for trusts that will continue long after your death for younger or special needs beneficiaries. Again, family, friends, professionals (a person or entity) or a combination thereof can all be appropriate options.

In selecting your personal representative and trustee, you must consider people who are trustworthy, will not be overwhelmed by the responsibilities of the role, and will promote a good relationship with your beneficiaries. These individuals will have legal advice available to them, so it is acceptable to choose someone without a professional background.

- **Guardian of your Children:** This individual makes legal and financial decisions on your behalf in the event you become temporarily or permanently unable to do so. Most people name family members, but anyone (e.g., a friend) can be named. In choosing a guardian, consider someone who will raise your children in a manner consistent with your values and who is able to provide a stable home life.

The guardian is not necessarily the same person who will be managing your children's inheritance - that job belongs to the trustee, if you have included a trust in your estate plan. Sometimes it makes sense to have a different guardian and trustee so you can select individuals who can best handle children and finances respectively.

- **Agent under your Durable Power of Attorney:** This individual makes legal and financial decisions on your behalf in the event you become temporarily or permanently unable to do so. This includes injury, disability and aging-

related decline. In selecting your agent, consider someone who is both available and responsible. It is acceptable to name someone who is not local, as many matters can be handled through phone or electronic communication.

- **Agent under your Health Care Proxy:** This individual makes health care decisions when your doctor "invokes" the Health Care Proxy - meaning the doctor determines you are not capable of making sound medical decisions for yourself. This can be and often is just a temporary situation. Again, the person in this role need not be local, but they must be available to be consulted if an emergency arises. In selecting your agent, consider who would have the capability to handle emotional decisions and honor your wishes. The person need not have special medical training - after all, we all make our own medical decisions every day, most of us without any special expertise.

Estate and Asset Protection Plans for Business Owners

What will happen to your business if you died? Sadly, many owners of thriving businesses fail to adequately protect their most important asset - the business itself!

Just as you need an estate plan for your family, you also need a plan in place for your business. Your business estate plan should also have an asset protection component since ownership of your business presents special creditor concerns.

To learn more about estate plans and asset protection for business owners, go to the EPLA website: www.estatepreservationlaw.com and check out Brendan King's blog: [Asset Protection: A Crucial Component of a Business Owner's Estate Plan \(January 29, 2013\)](#).

Using a Trust to Optimize Your Estate Plan's Effectiveness

Trusts are widely considered the best way to leave assets to beneficiaries for a variety of reasons, and have come to trump the Will as the central component of most estate plans. There are two basic types of Trusts: Living Trusts and Testamentary Trusts.

- A **Living Trust** is set up during your lifetime. Living trusts can be either “revocable” or “irrevocable.”
 - Revocable Trusts allow you to retain control of all the assets in the trust; you are free to revoke or change the terms of the trust at any time.
 - Irrevocable Trusts are used to create distance between you and the assets - most commonly for estate taxes, asset protection or nursing home planning. Once set up, your ability to modify or control the trust is limited.
- A **Testamentary Trust** is contained within your will and does not go into effect until your death. Because these trusts do not avoid probate and are more public, they are often limited to specialized circumstances such as spousal nursing home/long-term care planning.

Who's who in a Trust:

- **Grantor, Donor, or Settlor:** The person who creates a trust to hold assets.
- **Trustee:** The person or entity (such as a bank trust department) who manages the trust assets.
- **Beneficiary:** The person(s) and/or entities the grantor chooses to benefit from the trust assets.

The advantages of a Trust:

- **Avoiding Taxes:** A trust can help avoid or reduce estate taxes and capital gains taxes.
- **Avoiding Probate:** A properly-funded living trust passes assets directly to beneficiaries without the involvement of the probate court, which saves time, legal fees and paperwork.
- **Privacy:** Properly-funded trusts offer more privacy than wills because the administration of the trust is self-contained and does not

require probate court supervision or public recordkeeping.

- **Asset Protection During Your Life:** Certain trusts can protect assets during your life from divorce, creditors, long-term care/nursing home costs and other third parties.
- **Asset Protection for your Beneficiaries:** Leaving your beneficiaries' inheritances in trust can protect the assets from a variety of threats including the beneficiary's own imprudence, a divorcing spouse, foreclosure, bankruptcy and lawsuits/judgment creditors. It can also preserve eligibility for benefits for disabled/special needs beneficiaries.
- **Flexibility:** You can establish the exact parameters around how assets are to be paid out to your beneficiaries - for example, education for grandchildren.
- **Benefiting Charities and Institutions:** A trust allows you to support charities during and beyond your life in a way that optimizes tax efficiency and creates a lasting legacy of ongoing benevolence.
- **Conflict Minimization:** Trusts can help diffuse conflict when family dynamics are complicated by putting an independent trustee in charge of assets.

There are as many types of trusts as there are reasons for using them. When you are ready to consider the trust option, the EPLO attorneys can provide advice as to what will work best for you and your beneficiaries.

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individuals to own investment accounts above typical program/benefits limits.

Linda: As always, Brendan and I and the entire EPLO team are available to assist you with any estate planning and asset protection needs or questions. Our team approach to serving clients ensures that someone is always available to help you.

Achieving a Better Life Experience (ABLE) Act of 2014 Now Law

What It Means to Disabled Individuals and Their Families

The ABLE Act, aka Achieving a Better Life Experience Act, introduced in the 113th Congress by a bipartisan group of Congressional leaders, was signed into law by the President on December 19, 2014.

The law amends a section of the tax code allowing for the creation of tax-advantaged savings accounts for individuals with disabilities and their families. This law will allow those with disabilities to open special accounts where they can save up to \$100,000 without risking eligibility for SSI and other government programs. Additionally, individuals will be able to keep Medicaid coverage no matter how much money is accrued in their accounts. The final version of the ABLE Act limits eligibility to individuals with significant disabilities that begin before 26 years of age.

The new law is modeled after the 529 college savings plans and interest earned will be tax-free. Contributions can

be made from the disabled individual's own funds or by third parties. Funds may be withdrawn tax-free if used for a variety of qualifying expenditures including medical and dental care, education, community-based support, employment training, assistive technology, housing and transportation.

Regulations are being developed to guide states as they create their own programs. The ABLE account could be a viable option in addition to a Trust or as a stand-alone fund. An ABLE account is different from a special needs or pooled trust, in that it can be controlled directly by the disabled owner/beneficiary. The cost is lower than traditional trust options, but limits on account totals and contributions make it likely that these accounts will be most useful as a companion to trust planning, or as a stand-alone tool for smaller amounts

of resources. Additionally, the age limitations on eligibility will make them inappropriate for some disabled individuals.

An important trap for the unwary is the mandated payback feature of ABLE accounts, requiring funds left in an account on the owner/beneficiary's death to first be to reimburse the government for benefits received during the beneficiary's lifetime. For third parties (parents, grandparents and others) looking to benefit a disabled loved one with lifetime gifts or through inheritance, third party special needs trusts remain a more attractive option because any remaining funds upon the deceased beneficiary's death can be left to other beneficiaries and escape a payback requirement.

We will track implementation of the ABLE regulations in Massachusetts and keep you informed of its status during the year.

Summer/Fall Issue

There will be more answers to your estate planning questions in our Summer/Fall issue. We will also highlight additional key practice areas, including:

- Elder Law
- Special Needs
- Estate/Trust Administration
- Guardianships and Conservatorships

Please don't hesitate to call our office at any time with your estate planning questions. We will answer them personally and confidentially.

Carol Barton Takes New Position with LTCFA Board



Attorney Carol F. Barton accepted the Vice President role of the Board of the Directors of the The Long Term Care Finance Association (LTCFA). The LTCFA is a voluntary membership association of individuals within the long term health care industry who demonstrate an interest in long term care financial management. Carol joined the board as a director in 2013. This new leadership role gives Carol a unique opportunity to have a voice in critical health care issues that affect a significant portion of our client base.