



Fall 2017

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

Our main office is located at
 71 Elm Street, Suite 100
 Worcester, MA 01609
 508-751-5010
www.estatepreservationlaw.com

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

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From the Partners
**Special Needs and Disability:
 Getting Personal**

The clinical interpretation of “special needs” is an individual who requires specialized assistance or other accommodations for difficulties that may be medical, mental or psychological. The application of “disability” is more often associated with physical impairments. The uses and connotations of these terms are the subject of endless debate and discussion. But anyone who personally deals with or loves someone dealing with a physical, developmental, mental, medical, psychological or similar challenges will tell you the same thing - no matter what terminology you use, the quest for a satisfying quality of life is their daily reality, not a matter of semantics.



Brendan J. King



Linda T. Cammuso

On a personal level, living with special needs and disability is much more than clinical analysis. It's a beloved child with Asperger's who will not be able to function alone when his elderly parents are gone. It's a young man with Down syndrome who is beaming with pride that his part-time job allows him to buy Red Sox tickets. It's a woman returning from Iraq with wounds that will leave her wheelchair-bound for life, accompanied by her beloved service dog.

**Brendan King Interviewed About Special Needs Planning In
The Sunday Telegram - See Page 4**

It's a middle-aged husband with multiple sclerosis who must move out of his home and live away from his wife and teenage kids because his care needs require a nursing home.

On a social level, awareness and acceptance of individuals affected by special needs and disabilities has never been greater, and resources now abound for individuals and families. At the same time, the fiscal and political climate around healthcare and related issues has created an unprecedented level of uncertainty. Additionally, new laws at the Federal and state level - some positive, others not - continue to change the playing field.

Supporting those we love with special needs and disabilities while we are alive, and planning for them when we are gone, can

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From the Partners *Continued from page one*

be challenging. According to the U.S. Census, more than 41 million Americans, or almost 15% of the population age 5 and older, have some type of disability. These are no longer isolated pockets of society; these are your neighbors, your coworkers, your family, perhaps even in your own household.

EPLO Can Help

Special needs estate planning encompasses a wide variety of legal and financial issues for families with loved ones affected by special needs and disabilities. At EPLO, we address our clients' specific situations in all life stages. We can set up special needs trusts, obtain guardianships and conservatorships, and assist with securing benefits.

Several key estate planning tools come into play in special needs and disability planning:

Trusts

During their lifetime, parents and other caregivers can ensure that their special needs or disabled loved one has a safe and happy home with financial resources to maintain their standard of living. How will this quality of life be maintained if the parents/caregivers aren't there to support those needs? What happens when an individual reaches adulthood but is unable to earn a living? What if the individual comes into assets by way of a medical or accident settlement or inheritance?

While government benefits provide a safety net for special needs and disabled individuals, parents and other benefactors typically want to ensure a quality of life that may not be available through those benefits alone. Special Needs Trusts (SNTs) are a common financial and estate planning tool for this purpose. Coming in a variety of forms, properly established SNTs allow your loved one to benefit from assets while ensuring that benefits such as SSI, Medicaid and other government programs are not jeopardized. The funds of the SNT may be protected from creditors, and are earmarked so that they can only be used for the individual's benefit during his/her life.

Guardianships/Conservatorships

Parents of young children with special needs naturally are concerned about the well-being of their child if the parents pass away prematurely. But what about when that special needs child reaches adulthood? Parents need to strategically plan for and protect the quality of their special needs child's entire life, including the presence of authorized caregivers and decision makers. When a child who reaches age 18 does not have legal capacity to appoint decision makers through a Durable Power of Attorney or Health Care Proxy, obtaining a guardianship and/or conservatorship may become necessary.

Guardianship involves legal rights around caregiving and custodial matters such as food, health care/medical care, housing, and other personal necessities. Conservatorship involves legal rights around income, assets and related financial transactions.

EPLO Acquires Princeton Law Firm

We are pleased to announce the acquisition of the Law Office of Carrie Dolmat-Connell, a firm that specialized in estate planning, elder law, probate and estate/trust administration, and business law. The firm was located in Princeton, MA with a satellite office in Lexington, MA.

Following Carrie's sudden passing in December 2015, her family entrusted her clients and practice to EPLO, recognizing the firm's shared commitment to client service and professional excellence.

The acquisition marks a strategic step forward in EPLO's growth plans and continues the expansion of market reach beyond Worcester County into the northern and eastern areas of the state.

From a personal standpoint, it is our privilege to continue the practice Carrie painstakingly built and nurtured. Her professional legacy lives on in our ongoing work with her valued clients.

Where to Start

The saying goes that the first step is the hardest. At EPLO, we want the opposite to be true. Our goal is to offer education, information and a sympathetic ear. A complimentary, no-obligation meeting in the setting of the client's choice (one of our convenient locations, the client's home, or even a phone call) that involves a discussion and presentation of the various options and associated costs is the first important but manageable step. It would be our privilege to accompany your family on this journey.

EPLO Monitoring Changes in the Law

EPLO's professionals diligently monitor the continually-evolving legislative, judicial and regulatory landscape affecting special needs and elder law planning. At both the Federal and state levels, significant changes have taken place with more on the horizon.

Special Needs Trust Fairness Act

The Special Needs Trust Fairness Act was signed into law in December 2016. Disabled individuals with the requisite legal capacity will now be able to establish and fund their own special needs trusts without having to rely on family members, guardians or the court. This law effectively ends years of unfair treatment of individuals with disabilities by correcting a decades-old error in the Omnibus Budget Reconciliation Act of 1993 (OBRA). The law is a huge step in achieving independence for those affected by disabilities or special needs.

ABLE Act

The Able (Achieving A Better Life Experience) Act became Federal law effective January 2015. In the spring of 2017, Massachusetts implemented the law to allow for the establishment and funding of ABLE accounts within the state.

Previously, disabled individuals could have no more than \$2,000 in savings without risking their eligibility for means-tested benefits such as Supplemental Security Income (SSI). Excess assets had to be owned by a special needs trust in order to avoid a spenddown.

Under the ABLE Act, a person with a disability can own an account in his/her own name with a balance of up to \$100,000 that does not

count towards benefit limits. A maximum of \$14,000 annually may be contributed to the account (by the individual, or gifted from another source). The account can be used for a number of qualified disability expenses including education, housing, transportation, employment training and support, assistive technology, personal support services and health care expenses. The growth on the accounts is tax-deferred and the funds withdrawn are income tax-free if used for qualified disability expenses.

While the minimal administrative burdens of ABLE accounts make them an attractive and practical option in many cases, there are important limitations, including a "payback provision" which requires remaining funds to reimburse the government upon the owner's death. Additionally, only individuals who experienced the onset of disability before age 26 are permissible account holders.

MassHealth Trust Cases

In recent years, Massachusetts attorneys have been fighting the erroneous interpretation and application of state and Federal trust law by the state MassHealth agency that has resulted in numerous denials of MassHealth applications, particularly for nursing home residents.

As of this writing, several landmark cases at the

Massachusetts Appeals Court and Supreme Judicial Court levels, as well as numerous other Superior Court cases and administrative appeals within the MassHealth agency, have continued to affirm the effectiveness of properly drafted irrevocable trusts.

Frustratingly, the MassHealth agency continues to attack trusts in the application process. However, our elder law bar and organizations such as the Massachusetts chapter of the National Academy of Elder Law Attorneys continues to vigorously defend these attacks. Talented legal professionals and other special needs and disability advocates have united in an effort to protect the interests of the most vulnerable members of our society, including seniors and the disabled.

See related article: Changes Coming to MassHealth (Medicaid) Rules on page four

Community

- Carol F. Barton has been named president of the Long Term Care Financial Association (LTCFA), an organization of specialists in the long term care finance industry. In this era of unprecedented change and uncertainty surrounding health care, particularly in the long-term care realm, we are grateful for the unique insights and experience that Carol's leadership with LTCFA brings to EPLO.

Understanding Special Needs Trusts

What is a Special Needs Trust?

A Special Needs Trust is an estate planning and financial tool that is designed to enhance a disabled person's comfort and quality of life while maintaining eligibility for public benefits (e.g., Medicaid and SSI). These Trusts can be established with funds that belong to the person who is receiving public benefits or with funds that belong to someone else, such as a family member. The trust can be funded with just about any type of asset: securities, real estate, cash, retirement accounts, or the proceeds of a life insurance policy, to name a few.

How is a Trust used?

The trust pays for goods and services that Medicaid doesn't cover (e.g., a handicap accessible van, dental treatment or special therapies), for travel and cultural experiences, or anything else that would add to a person's quality of life. Remaining funds can be used as an inheritance for family members, friends or charities.

What are the different types of trusts?

- A First Party (or Self-Settled) Trust is created by the beneficiary's family member(s), guardian, the court or by the beneficiary him/herself, and funded with the individual's own funds. While the beneficiary is living, the funds in the trust are used for his/her benefit, and upon the beneficiary's death assets remaining in the trust are used to reimburse the government for certain benefits paid out during the beneficiary's life. Remaining funds can be an inheritance for family members or others.

- A Third Party Special Needs Trust is established by a parent,

grandparent, sibling or other benefactor and funded with the benefactor's own assets which are intended to be a gift or inheritance for their special needs or disabled loved one. The funds can be used to pay for the beneficiary's supplemental needs aside from those covered by government benefits. When the beneficiary dies, any remaining funds pass to family members or charities, without a requirement to reimburse the government.

- A Pooled Trust is a type of First Party trust that is managed by a nonprofit trustee. Beneficiaries "pool" their resources for investment purposes, while maintaining separate accounts for their respective funds. When the beneficiary dies, a portion of the funds is retained by the nonprofit trustee/organization, and the balance is used to reimburse the government, with any remaining amounts to pay to the beneficiary's family members or others.

Changes Coming to MassHealth (Medicaid) Rules

In late 2016, the MassHealth agency announced significant proposed changes to its regulations. After an extended public comment period, which has included vigorous commentary and objection by elder law attorneys and professional organizations, it appears the proposed regulations could go into effect by the end of September. The proposed changes include:

- Prohibiting disabled individuals over age 65 from funding pooled disability trusts (a type of first party special needs trust), which will eliminate an option many applicants (particularly single individuals) have historically relied upon to preserve some of their assets to help supplement expenses MassHealth does not cover

- Modifying the irrevocable annuity rules to include a more aggressive payback to the state on the annuitant's death, which will have a particular impact on spousal planning

- Including the assets of a non-applicant spouse under various community MassHealth benefits

These pending regulations are consistent with the more aggressive stance exhibited by the MassHealth agency over the past several years. We will continue to provide updates, including a detailed explanation of the final regulations when they are passed. Please be sure to check our Blog for the latest information and analysis.

Brendan King on Special Needs Planning

"Helping families and caregivers of people with special needs is important to me because I deal with special needs in my own family as well as daily with my clients. Educating and supporting these families is something that is important to me, and to our staff, both personally and professionally."

Brendan King was interviewed by the *Worcester Sunday Telegram* in March. The topic was Special Needs Planning. To read the article, go to www.estatepreservationlaw.com Click on Blog on the home page, then click on Brendan's name in the navigation bar.