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Practice Areas

- Estate Planning
- Asset Protection Planning
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- Tax Planning -
 - Corporate and Individual
 - Elder Law and Medicaid Planning
 - Estate and Trust Administration
 - Guardianships and Conservatorships
 - Special Needs and Disability Planning
 - Financial Aid Planning
 - Veterans Benefits Planning
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Locations

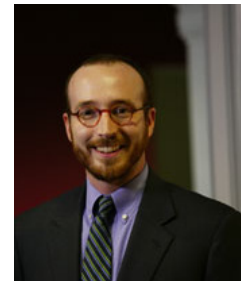
Our main office is located at
 71 Elm Street
 Worcester, MA 01609
 508-751-5010
www.estatepreservationlaw.com

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

New Laws and Their Implications for Your Estate Plan

As 2011 arrived, the passage of three new laws caught the attention of the estate planning world - two in Massachusetts and one on the Federal level. While addressing diverse topics, each is important in its own right.

Anytime a new law is passed, our clients naturally wonder how they might be personally affected. After presenting a brief summary of each law, we will go on to explore the practical implications in more detail throughout this newsletter.



Brendan J. King



Linda T. Cammuso

- **Federal Estate & Gift Tax:** After a decade of uncertainty, Congress passed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, which President Obama signed into law on December 17, 2010. The major highlight of this law for estate planning purposes is the increase in the Federal estate tax exemption to \$5 million. The Federal gift tax exemption was also increased from its prior amount of \$1 million to \$5 million. The practical effect is that a person can die with or give away during life \$5 million of assets and not pay any gift or Federal estate taxes. The law is in effect through 2012.

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EPLO Answers Your Questions

Small Business Owners: How Do I Protect My Business, Myself and My Family?

Attorney Brendan King responds to common questions and concerns of small business owners trying to make their way through the maze of tax, liability and estate planning issues.

Q. I currently operate my business as a sole proprietorship with a DBA - is it necessary to incorporate with the state?

A. When you operate your business without a formal entity - such as a corporation or limited liability company (LLC) - you have no "buffer" between your business and personal assets. Forming a business entity with the state such as a corporation or LLC allows you to insulate your business liabilities within the entity and limit the expo-

sure of your personal assets.

Q. I have business insurance - do I still need a protective entity?
 A. Insurance is always the first and most important line of defense. However, a claim may arise that is not covered by business insurance or that exceeds the policy coverage.

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New Laws *Continued from page one*

Since the Massachusetts estate tax remains at a \$1 million threshold, Massachusetts residents must still plan for estate taxes on the state level. Even so, the increased Federal levels create some welcome breathing room - at least for the next two years.

• **Massachusetts Homestead Exemption:** In December 2010, Governor Patrick signed the state's pension reform bill into law, which included the long-awaited and sweeping changes to the Massachusetts Homestead Act. The law became effective on March 16, 2011. The homestead exemption protects up to \$500,000 of equity in an owner's primary residence from the claims of creditors. Previously, only homeowners who filed a declaration of homestead were eligible for protection. Perhaps the most important provision of this new law is that all homeowners are entitled to an automatic \$125,000 of protection. The new law also allows homes owned in certain types of trusts to be eligible for homestead protection.

As important as homestead protection is, it is perhaps equally as important to understand what homestead protection does not cover.

• **Massachusetts Pet Trust Law:** In January of 2011, Governor Patrick signed into law An Act Relative to Trusts for the Care of Animals, which provides that pet owners may create a legally enforceable trust agreement to hold funds for the care of a pet in the event of the owner's disability or death.

Since many of our clients are dedicated equestrians or just plain animal lovers, we frequently hear their concerns about pro-

viding for their pet's care if the unexpected happens. As animal lovers ourselves, we're delighted to see the law recognize the importance of protecting pets. As attorneys and advocates, we are excited by the opportunity to offer this service to our clients.

Our mission is to continue to educate and inform you, our valued clients, colleagues and friends. If you have any questions about how these laws may affect you, your family or your clients, please contact us for additional information at any time.

Homestead

Do You Have Homestead Protection?

Effective March 16, 2011: Changes to the Massachusetts Homestead Protection Law

Homestead is protection for a person's principal residence from most creditors. A declaration of homestead protects up to \$500,000 of equity in your home in the event you are sued or otherwise pursued by a creditor. This means that - if sued - \$500,000 of your equity cannot be touched by an attachment and subsequent levy on execution of sale.

- If you had a valid homestead in place prior to March 16, 2011, your \$500,000 protection will continue to apply. The new law also creates an automatic \$125,000 protection on homes that do not have a homestead declaration filed at the Registry of Deeds.
- The new law further clarifies that homestead protection extends to pre-existing debts and the proceeds of a sale or homeowner's insurance claim, and is not severed when an existing mortgage is refinanced.
- For individuals over the age of 62 or who are legally disabled, the new law expressly states that a

homestead may be filed on each individual's behalf and the aggregate protection increases to \$1 million. This means, for example, that married couples age 62 or older can double their homestead protection.

- Homes owned in trusts are now eligible for homestead protection. While the idea of owning the home in a trust is appealing, married couples should consider the benefits of owning their home in their own names as "tenants by the entirety." This form of joint ownership, available only to married couples, prevents the creditor of one spouse from executing a judgment against the home during the life of the non-debtor spouse.
- Not all claims/debts are covered by a homestead: these include mortgages and federal, state and local taxes, assessments, claims and liens. Additionally, homesteads do not protect against the costs of long-term care, including

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Impact of Federal Estate and Gift Tax Changes

People have many questions about the recent changes to the Federal estate and gift tax law. Perhaps the one we hear most often involves the duration of the law, with many wondering, "Is the new law permanent?" The answer is no - the law remains in effect only through 2012. At this time, no one knows how or when (or even whether) the law will be adjusted for 2013 and beyond.

The provisions of the new law are surprisingly generous from a wealth transfer standpoint, and include the following:

- The Federal estate tax exemption for 2011 and 2012 is \$5,000,000, and the rate imposed on the excess value of an estate over \$5,000,000 is 35%
- Likewise, the generation-skipping transfer tax exemption has been increased to \$5,000,000 with a 35% rate, meaning that transfers up to the exemption amount can "skip" living generations without incurring a separate transfer tax
- The "portability" provisions allow the surviving spouse to elect to use the first-to-die spouse's unused Federal estate tax exemption (but not the unused generation-skipping transfer tax exemption)
- The lifetime gift tax exemption has been increased from \$1,000,000 to \$5,000,000
- For estates of persons who died in 2010, the executor can elect the provisions of the new law as an alte-

native to the law that was in effect in 2010 (no Federal estate tax, but a limited basis "step-up" for income tax purposes)

The fact that these provisions are effective only through 2012 should motivate people to review their current estate plan to better understand the opportunities available to them and their families. Interestingly, though, the environment of uncertainty since 2009 has left many people feeling as though they are in a planning "holding pattern" - many have asked, "Why bother revising my plan if everything is just going to change again in 2013?"

There are a few important things to bear in mind about the current law. First, Massachusetts residents still need to plan for the state estate tax, which remains fixed at a \$1,000,000 threshold. A properly structured

estate plan for state estate tax purposes will also anticipate a Federal estate tax (and vice versa), so whether the Federal estate tax exemption increases or decreases in the future, the plan will work.

Additionally, some of these opportunities, such as the increased lifetime gift tax exemption and portability, may not be around in the future. If we've learned anything since 2009, it's that the future of the Federal transfer tax system is unpredictable. With the fate of the estate tax being decided in a presidential election year, it is anyone's guess what happens next.

The bottom line is that proactive planning is always your best course of action. If you're uncertain as to whether this new law affects you, we would be happy to conduct a complimentary review of your estate plan.

In the News

- Linda Cammuso joined a group of dynamic professionals at the Worcester Women's Conference held at the DCU on June 3, 2011. Her presentation focused on the myriad of legal, medical and financial challenges women face as members of the "sandwich generation," providing care simultaneously to aging parents and children.
- Be sure to catch up on current estate planning and asset preservation topics on our blog - EPLO: In Depth at <http://www.estatepreservationlaw.com/blog/>
- Catch Brendan King on Money Matters Radio every Wednesday at 3 p.m.; WBNW 1120 AM Boston; WESO 970 AM Worcester; WPLM 1390 AM Plymouth. Or, listen to his broadcasts on our website at <http://www.estatepreservationlaw.com/media-radio.html>

Small Business Owners *Continued from page one*

Q. What is the difference between a corporation and an LLC?

A. There are many structural and tax differences between corporations and LLCs. From a liability and asset protection standpoint, one of the major differences is the greater “outside liability” protection of an LLC. Both corporations and LLCs provide “inside liability” protection, which is the protection of an owner’s personal assets from the business liabilities “inside” the entity. However, an LLC offers greater “outside liability” protection, which is the protection of the business assets from an

owner’s personal (or “outside”) liabilities.

Q. I have a corporation; my accountant oversees my accounts and files my annual report with the state, but I have not done any other record-keeping for the corporation. Does this matter?

A. Corporations, LLCs and other entities organized with the state are mandated to keep good business records, including annual meeting minutes. If an entity fails to maintain these corporate records and the entity is subsequently sued, the lack of

recordkeeping could be used by a plaintiff/creditor as evidence that the owner(s) did not “respect the entity” as a separate business entity, and therefore that the plaintiff/creditor should be able to look behind the entity to the owner(s) personally. All organized businesses should consult with an attorney to ensure that their corporate or entity book is in good order.

Q. I have a business partner - what if one of us dies or becomes disabled?

A. Business succession planning is critical when a business is owned by two or more individuals. Even (or especially!) family members who are in business together must consider what would happen if one of them exited the business - voluntarily or involuntarily. A buy-sell agreement can be established to clarify the rights and responsibilities of each owner. It protects the remaining owner(s) from unwanted parties (such as an owner’s spouse, creditor or an unrelated third party) becoming a new owner of the business, and can also establish a price and terms of payment if an owner dies or wishes to later sell/leave the business.

For more information on protecting your business and family, contact Attorney Brendan King at EPLO.

Homestead

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a nursing home stay. A Medicaid lien can be placed on a home despite an existing homestead declaration.

For more information on the new homestead law and to ensure that your home has maximum protection, contact an attorney at EPLO.

Pet Trust

Pet Trusts are Now Legal in Massachusetts Caring For Your Pet After You’ve Passed Away

To most of us, our pets are more than just animals - they are faithful companions and members of the family. What will happen to your beloved pet if you pass away? A new Massachusetts law provides a much needed solution.

The law authorizes the creation of a valid and enforceable trust for the care of an animal. The trust, which would be funded with assets from the owner’s estate, can name a trustee to manage and distribute funds for the care and maintenance of the pet. The trust would remain in effect until a date specified by the owner, or until the pet dies. Those entrusted with the care of the pet would be precluded from using the funds for any other purpose. The trust could name family members, charities or other beneficiaries to receive the remaining funds after the pet’s death.

While the law has received mostly favorable reaction, there have been some eyebrows raised at the idea of pet trusts, with some people asking whether such a legal tool is really necessary.

A simple and affordable addition to the owner’s estate plan can ensure that a modest amount of funds will be set aside for the care of the animal in the event of the owner’s death.

As estate planning attorneys, our job is to offer solutions for all our clients’ needs. We are pleased to offer Equine and Pet Trust Planning as part of our comprehensive estate planning services.

For additional information, contact Attorney Melissa Gleick at EPLO. Or, to learn more about Equine and Pet Trusts, be sure to read Attorney Gleick’s blogs at <http://www.estatepreservation-law.com/blog/>