



Estate Preservation Law Offices

# Bridging the Gap

*between traditional estate planning and asset protection*

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*From the Partners*

## Administering Estates and Trusts: What Really Happens after You're Gone?



Brendan J. King



Linda T. Cammuso

*Whether you're trying to envision how your family will handle your loss or a survivor in the wake of a loved one's passing, you're probably wondering the same thing: What actually happens next? Is there an actual gathering for a "Reading of the Will", as we've all seen in TV and movies? Is there a roadmap or a checklist? Where do you start? In this edition, we will provide a realistic picture of the postmortem estate and trust administration process.*

There are many details involved in creating and maintaining your estate plan. Typically the "after" — i.e., what do my loved ones do after I'm gone — is quite literally an afterthought.

Understanding what the postmortem process involves can make you a better and wiser planner for your own estate. Throughout our lifetimes, most of us will deal with an estate on at least several occasions, whether it is a parent, sibling or spouse who predeceases us. While the grief will be unavoidable, knowing what to expect from a legal standpoint can make the process more manageable and less frightening.

Ideally, when someone dies, they have left behind a neat and tidy estate plan. In most cases, however, even with a good estate plan in place, there are complicated issues, family dynamics, or just plain old loose ends that were not perfectly addressed. Many times there was no planning in place, not even a basic Will.

No matter what is in place from a legal standpoint, one of the first calls will be to an attorney - either the attorney who prepared the decedent's legal documents, or an attorney who specializes in estate and trust administration.

The Estate Preservation Law Offices attorneys have a vast body of experience in estate and trust administration. Read

on to learn about the administration process, including what to expect at the first meeting with the attorney, the roster of professionals who may need to be involved, and the "real" answer to "how long will this actually take?"

## EPLO Announces Acquisition and a New Satellite Office

On August 31, 2018, EPLO entered a business agreement with the law firm of Cove & Hogarth to acquire its trust and estate planning, elder law and probate practice areas.

Founded by Francis Cove Jr. in 1932, the firm has grown to be a well-respected firm in the Blackstone Valley area under the leadership of Attorney Joseph Cove, currently its sole owner.

When Attorney Cove decided to withdraw from his trust and estate planning practices to focus on municipal law and land use planning, he began a diligent search to transition his non-municipal clients to firms that could best serve their needs and that shared his vision of superior client service. "I selected Brendan J. King and Linda T. Cammuso, founders of Estate Preservation Law Offices, because of their expertise and reputation in estate and asset

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## The First Meeting with the Attorney

*The first meeting with the estate attorney after a loved one's death sets the stage for the administration process, and charts the course for the survivors' legal roadmap.*

### Who Attends

If there are estate plan documents in place, the person(s) named as personal representative (executor) in the Will and Trustee(s) of any Trusts should attend the meeting. If there is no Will, the survivor(s) who will be stepping up to act as the personal representative should participate. Often times other members of the family (for example, all of the decedent's children) are asked to attend/participate so everyone can get on the same page from the start.

The attorney's official role is to counsel the fiduciary — the personal representative and/or trustee, as applicable — not to represent the family as a whole.

### What to Bring

All estate plan documents — especially Wills and Trusts; recent statements for all accounts, life insurance policies, annuities, stocks and the like; copies of deeds for real estate including time shares; copies of vehicle titles; copies of recent bills including mortgage/loan/line of credit statements and promissory notes; and information on any business holdings.

### The Agenda

Even if the decedent is a longtime client of the attorney, the process should start with a comprehensive intake, which includes an overview of any estate plan documents, a list of the decedent's assets (including approximate values, how the assets are owned and whether there are any beneficiaries named on the asset), a list of the decedent's debts, and an overview of the family tree and beneficiaries.

Once the attorney has established a

baseline for the makeup of the estate, the conversation shifts to an overview of the expected big-picture steps.

### Will there be a probate?

If the decedent owned assets in his/her name alone with no listed beneficiary, a personal representative (PR) will need to be appointed by the probate court to access the asset(s) in question on the estate's behalf. If there is a Will, the PR and beneficiaries will be named in the document. In the absence of a Will, the family typically agrees on who will step up to assume that role, and the beneficiaries of the probate assets will be determined under state law.

### Are there any emergency issues?

Even prior to the first meeting, the attorney should be informed if there are any time-sensitive or emergency issues to be addressed. Common issues include:

- The decedent had minor children (with no surviving parent or legal guardian)
- The decedent operated a business that needs immediate attention
- There was a major pending transaction at the time of death: e.g. the sale or purchase of a home was about to close

Developing a swift game plan to address such issues is an immediate priority. An emergency probate proceeding can be utilized to obtain immediate authority to deal with sensitive situations.

### Marshalling and safeguarding

As the assets and debts are identified in

the overview discussion, the attorney will provide a sense of how the estate is likely to distribute to the beneficiaries. If there are solvency, or cash flow or liquidity issues, the attorney will advise how to best handle up-front administration costs so the estate/trust(s) can get up and running.

The attorney will also discuss steps the PR/Trustee should take to safeguard the assets. If there is real estate, the physical security should be monitored including identifying who has/should have access to the premises, ensuring the proper insurance coverage is in place, and securing the physical contents of the property. If there are vehicles, identifying permissible drivers under the policy and the whereabouts and security of the vehicle is key.

### The fiduciaries' responsibilities

A major theme of the discussion is the responsibilities and liabilities of the PR and/or Trustee. It is the job of these individuals to act responsibly and in the best interest of the beneficiaries. The attorney will counsel the fiduciaries on the proper administration steps and protocols, from the first conversation through the final disbursement of assets.

### Who Pays?

Although the estate attorney represents the PR/Trustee, it is the decedent's estate/Trust (as applicable) that pays the attorney's fees, as well as all other professionals — accountants, appraisers, etc. — who will be hired in the administration process. Legal fees for estate and trust administration are typically billed by the hour.

## How Long Will This Take?

Survivors want the administration process to go quickly. They are grieving and eager to put the estate process behind them. Additionally, once an inheritance is on the table, beneficiaries start to get antsy — it's just human nature. The personal representative or Trustee will be eager to pay the assets out. They will look to the attorney for an estimate — preferably a short one — that they can relay back to the beneficiaries.

The process of settling a decedent's estate/trust has its own timeline that can't be rushed and needs to simply play out. Whether the estate in question is worth fifty thousand or fifty million, there are certain timelines that cannot be rushed.

That said, there are certain factors that impact how long things may take.

### The 1-year statute of limitations for creditors

People often hear that an estate will take “at least” one year. One of the reasons for this timeline is that in Massachusetts a decedent's creditors have one year from the date of death to file a claim against the estate. Loans, credit cards and medical bills generally make up the majority of a decedent's unsecured debt. (Debt that has security, such as a mortgage or auto loan, is not applicable here, as the collateral asset always remains on the hook for repayment of the debt.) Accordingly, even if all the assets are set to be paid out before the 1-year mark, the estate attorney will typically counsel the PR to retain some assets on hand to cover any last-minute creditor claims that could be brought against the estate.

### Probate accountings

When there are probate assets, the

PR may want to file an accounting with the probate court to get the court's approval of all the financial transactions he/she has undertaken on the estate's behalf. This protects the PR from a later challenge by a creditor or beneficiary. Since this accounting cannot be filed until one year from the date of death, final disbursements from the estate will be held up.

### Taxes

On the income tax side, the PR will need to file the decedent's final personal income tax return by April 15 of the year after death. Additionally, income that is received following the decedent's death will need to be reported in a separate income tax filed by the estate.

If the decedent's total estate — including non-probate assets and trusts — exceeds \$1 million, a Massachusetts estate tax return will need to be filed, and possibly an estate tax paid. The

return is due within 9 months of death, and takes a fair amount of time and effort to assemble.

### X Factors

In the course of administering an estate or trust, any number of things can happen to delay the process: Difficulty identifying or accessing assets, difficulty locating beneficiaries, sale of real estate or a business that can take an extended period of time, disputes between the parties — just to name a few.

The bottom line: It is realistic for an estate or trust to easily take anywhere from 12-18 months to be completed. That does not mean it will take that long for all the assets to be paid out. With cooperative beneficiaries and a liquid estate/trust, the fiduciary can typically begin making partial distributions as early as several months after death.

## A Word about Ongoing Trusts

Many trusts have an ongoing purpose beyond the grantor's (creator of the trust) lifetime, such as a special needs trust for a disabled beneficiary or a discretionary trust for a minor or otherwise financially vulnerable beneficiary. Once the grantor/decedent's estate is otherwise settled, the ongoing administration of these trusts may be a period of many years. Once a beneficiary's trust share is funded, this ongoing process becomes a separate endeavor from the grantor's initial estate settlement.

Trust administration is very fact-specific and depends on the trust's purpose, the assets of the trust, the beneficiary's circumstances, and many other factors. Most of the timelines and procedures referenced in this newsletter apply more to the initial estate settlement for so-called “outright” distributions — i.e. beneficial interests that pay out to beneficiaries following a person's death.

If you are the trustee of a trust, your job may exist well beyond the scope of the initial estate settlement. Fortunately, you have the option to hire legal counsel to guide you through the process. At EPLO, we welcome trustees of all types of trusts as clients. Made up of attorneys, paralegals and bookkeeping professionals, our trust administration team guides trustees through all aspects of administration.

## 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  
Worcester, MA 01609  
[www.estatepreservationlaw.com](http://www.estatepreservationlaw.com)

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

## Acquisition and a New Satellite Office

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preservation and their commitment to providing competent estate planning solutions," said Attorney Cove.

We consider it a privilege to continue the legacy of the deeply-respected Attorney Joseph Cove, who gave so much to his clients and community. As a result of this agreement, EPLO has added a satellite office at 10 River Road, River Glen Office Park, Suite 103, Uxbridge, MA.

## Estate Planning Professionals

### Key Players in Estate Administration

Depending on the composition of a decedent's estate, the following professionals may need to be utilized:

#### Attorney

The attorney for the fiduciary (personal representative and/or trustee) will typically be one of the first professionals involved following a death. The attorney's role is to counsel the PR/Trustee on how to do his or her job properly, and covers everything from interpretation of legal documents, representation at court proceedings, guidance on assessing the assets and debts of the estate, including the timing of paying each, and coordination of tax matters (ensuring tax deadlines are attended to and tax obligations are properly paid).

#### Accountant

The accountant's role may include filing the decedent's last income tax returns, preparing income tax filings for the estate/trust(s), and preparing state and Federal estate tax returns, all as applicable. In some cases, more than one accountant may be used, particularly if the decedent owned a business.

#### Financial professionals

The decedent's existing financial/investment advisor will typically be involved early on to help navigate the existing assets and assist with liquidation of assets and payouts of claims on life insurance. The Financial Professional may also continue to manage ongoing portfolios for the duration of the estate/trust.

#### Appraisers

Certain assets may require appraisals by certified appraisers who specialize in a particular field, including real estate, businesses, cars (particularly antiques and other rare vehicles), and personal property such as art and collectibles.

#### Realtor

If real estate is being sold, a realtor will be hired by the PR/Trustee to list the property for sale.

#### Other brokers

If unique assets such as a business or collection are being sold, brokers who specialize in those areas may need to be employed to assist with the sale.

## LTCFA

### Barton serves as head of LTCFA



In May of 2018, EPLO Attorney Carol F. Barton began her third year as President of the Long Term Care Finance Association, an association of professionals in the field of long term care financial management. The last several years have seen significant challenges in the long term care industry, including major regulatory and legislative changes in programs such as Medicaid, Medicare and Veterans benefits. In the elder law arena, the Med-

icaid application process has evolved into an uphill battle that has resulted in an increased number of denials throughout the state. This environment has brought about unprecedented challenges for long term care providers and facilities, who strive to provide quality care under tightening conditions, as well as seniors, disabled individuals and their families in search of affordable quality care.

We are proud of Carol's leadership and contributions to these important conversations, and we appreciate the experience and perspective that her role in the LTCFA has brought to the firm. EPLO clients navigating the Medicaid landscape benefit greatly from Carol's unique understanding of the long term care industry.