



Samuel, Sayward & Baler LLC

Smart Counsel... FOR LIFE.

Partners' Letter

"April hath put a spirit of youth in everything."

- William Shakespeare

Dear Clients and Friends:

The recent blast of very warm weather signifies that spring has most certainly arrived; and although we had a mild winter by New England standards, there is noth-ing like opening the windows, stepping out without a coat and feeling that warm sun touch the smile on your face. We breathe deep and allow the fresh spring air to fill our lungs with hope and new beginnings and we ex-hale the weight of the winter cobwebs and we ponder the possibilities that lie ahead...

Spring is also a very good time to dust the cobwebs off your current estate plan documents and read them again to ensure that you and your loved ones are prepared for the years to come. Life is not static, which means your estate plan can't be either. It is important to review and revise your estate plan on a regular basis to ensure that it is keeping up with the changes in your life.

Here are a few things to consider when deciding



whether it is time to do a little 'spring cleaning' of your estate plan:

Do you currently have an estate plan? According to Care.com*, 2 out of 3 Americans do not have any type of estate plan in place. There are many reasons for this, but procrastination can mean that the state will dispose of your assets under the intestate laws at your death, and not the way you wish.

How old is your estate plan? Regardless of whether you already have a Will or Trust in place, even the best-laid estate plan needs periodic updating to account for changing laws and circumstances. Individuals you have named to handle your affairs may have passed away or you may

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Smart Counsel Series

Join us on May 18th

The Do's and Don'ts of Serving as a Trustee *A Study in Contrasts*

Please join us for the next presentation in our Smart Counsel Series on **Thursday, May 18, 2023**, from 6:00 p.m. to 7:30 p.m. virtually via Zoom, hosted by Attorneys Suzanne R. Sayward and Megan L. Bartholomew who will be presenting on the ***Do's and Don'ts of Serving as a Trustee***.

If you have been named to serve as Trustee for a family member or friend, or if you have created a Trust in which you have named someone to serve in that role should you become incapacitated or when you pass away, you may be wondering what is involved in taking on such a commitment. The answer is – A LOT!

Join us for this Smart Counsel presentation during which the presenters will discuss the specific tasks a Trustee must undertake along with the general duties and responsibilities of a Trustee. Examples of the right way – and the wrong way – of carrying out the duties of serving as a Trustee will help attendees understand what is involved in serving in this important role.

Contact Kenzie Sayward at 781/461-1020 or kenzie@ssbllc.com to reserve a spot for you and a friend.

Partners' Letter continued...

have opened or closed financial accounts. If you've named your Trust as a beneficiary of your IRA or 401(k), you may need to revise your Trust due to recent changes in the law.

Have changes occurred in your family? Life's big 'family events' – weddings, births, deaths, divorces, etc. – are often accompanied by a need to update an estate plan.

Are you entering a new stage of life? As you move through different stages of life, your goals change. What you needed when you were first married is different from what you need now that you are planning to retire. You may have children and grandchildren, and may be concerned about long term care costs.

Please contact one of our attorneys to discuss your current goals and future plans, and whether your estate plan documents should be updated as a result.

Our quarterly Smart Counsel Series continues on

Thursday, May 18, 2023, via Zoom from 6:00 p.m. to 7:30 p.m. Attorneys Suzanne R. Sayward and Megan L. Bartholomew will be presenting important information on the ***Do's and Don'ts of Serving as a Trustee***.

On page 3, Attorney Maria Baler gives us an overview of the updated Massachusetts Homestead law and on page 4, Attorney Suzanne Sayward reminds everyone of the very important reasons to have a comprehensive estate plan.

Be sure to check out our profile on Attorney Abigail Poole's role as the 2023 president of the Massachusetts Chapter of the National Academy of Elder Law Attorneys.

If you know someone who would like to receive this quarterly newsletter, please email us their contact information, and don't forget to forward this to your family and friends.

Happy Spring,

Suzanne R. Sayward
Maria C. Baler

Updates to the Massachusetts Homestead Law

By Attorney Maria C. Baler

The Massachusetts homestead law protects a homeowner's primary residence from forced sale by an unsecured creditor. What this means is that if you are sued and a creditor obtains a judgment against you, you cannot be forced to sell your home to pay the creditor unless the equity in your home is greater than the amount of your homestead protection. If the equity in your home is greater than the homestead protection, the home may be sold but the creditor will receive only what is left after you first receive proceeds equal to the amount of the homestead protection. The protection extends to the homeowner's family which is defined as spouse and minor (under age 21) children.

How much is the homestead protection? Under the "new" homestead law enacted in 2011, a homeowner is entitled to automatic homestead protection of \$125,000. However, homeowners who file a Declaration of Homestead with the Registry of Deeds can increase that protection to \$500,000. For married couples where both spouses are over the age of 62, the homestead protection can be doubled to \$1 million by filing an 'Elderly' Declaration of Homestead. Increased homestead protection is also available to disabled individuals. Homestead protection is available whether you own your property in your individual name(s) or in trust.



In November of 2022, the Massachusetts legislature updated the homestead law to clarify a few of its provisions, notably:

- The 2011 homestead law allowed the holder of a life estate interest in real estate to have homestead protection, but not the holder(s) of the remainder interest in the property. The 2022 updates to the homestead law have made it clear that both the life estate holder and the remaindermen are entitled to homestead protection, provided the property is their primary residence.
- For all you co-op owners out there, the 2022 updates also made it clear that a lessee-shareholder of a residential cooperative housing unit is entitled to homestead protection.

If you are the owner of a home in which another person has a life estate, you are now entitled to Homestead protection. Both the life estate holder and the remaindermen should file a declaration of homestead at the Registry of Deeds to ensure the entire property is protected from creditors' claims. Similarly, co-op owners should now file for homestead protection.

Keep in mind that a Declaration of Homestead will not protect you from all types of liability that may impact your home. It will not protect the home from a Medicaid/MassHealth lien for benefits paid on behalf of the homeowner, including benefits paid for nursing home care. A Homestead will not protect against governmental liens such as tax liens. A Declaration of Home-

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Top 5 Reasons to Create an Estate Plan

By Attorney Suzanne R. Sayward

As an estate planner and elder law attorney, I can cite a number of reasons why everyone over the age of 18 should have an estate plan. But what motivates most people to pick up the phone and make an appointment with an attorney to create their Will? I conducted a very un-scientific study of why clients decide to create or update their estate plan.

Here are the top five reasons that people decide to create or update their estate plan – in descending order.

5. They want to provide instructions for end-of-life care. Many people feel strongly about how they want to be cared for at the end of their lives. So long as someone is healthy enough to articulate instructions for their own care, they may direct the course of their care. But if a person is unwell and unable to articulate those instructions, then the only way their wishes can be carried out is if they have provided advance instructions about the care they wish to receive and appointed someone who has the legal authority to implement those instructions.

4. They want their estate to avoid probate. Probate avoidance is one of the primary reasons that people create an estate plan and rightfully so. Probate is the process of changing the title on assets when someone passes away from the deceased person's name to the name of the legal representative for the estate. Probate is costly, it is a public proceeding, it invites contests and it takes a long time. Luckily, avoiding probate is fairly easy. Only assets that are in a person's individual name at the time of death and that do not have a joint owner or beneficiary designated to receive them need to be probated. Owning assets jointly with another person (when appropriate), making sure there are beneficiaries designated on assets such as IRAs, 401(k)s, annuities, and life insurance, and creating and funding a Living Trust, are all ways to avoid probate.

3. They want to reduce or eliminate estate taxes. The estate tax is a tax imposed on the value of assets an individual owns (or is deemed to own) at death. There is both a federal estate tax and a Massachusetts estate tax. The good news is that federal law gives each person a \$12 million exemption from federal estate tax. As such, there are very few people who need to pay federal estate tax. The bad news is that Massachusetts grants its citizens only a \$1 million freebie from estate tax. For many residents of Massachusetts who own a home, have a

retirement account, and own life insurance, this \$1 million threshold is quickly reached. Undertaking planning to reduce or eliminate the estate tax that their families will pay from their estates at death is a goal for many whose estate will subject to the estate tax.

2. They want to protect their assets from having to be spent down on long-term care costs. Many clients tell us they are concerned about the cost of long-term care and worried that those costs will consume all of their assets. Given the very high cost of long-term care, whether delivered at home or in a skilled nursing facility, these concerns are warranted. Learning about the options for planning to protect assets from needing to be spent down on long-term care well in advance of needing such care is vital to the success of achieving this goal. Learning the pros and cons of such planning, and why for some it may not be necessary, are also important. Long-term care planning is very specific to each individual, and is an area in which it is especially important for each client to get advice about their own particular circumstances.

1. They want to provide for and protect their loved ones. The number one concern that clients have is for their families. Whether it's parents with young children, older folks with grown children, a married couple with no children, or the favorite auntie or uncle, they all want to make sure their loved ones are taken care of when they are no longer around to do so. This means different things at different stages of life. For parents of young children, it means naming guardians for those children and ensuring there are resources available to raise them. For those with adult beneficiaries, it may mean setting up their plan to provide creditor protection for the inheritance they leave to children or nieces and nephews. And for older couples, making sure that the survivor of them is left in the best possible cir-

5 Reasons Continued...

cumstances upon the death of the first spouse is of paramount concern.

There are many reasons people make the decision to create or update their estate plan on a given day. Sometimes it's circumstantial, such as the death of a loved one or a medical diagnosis. But underneath those circumstances is a desire to 'get one's house in order'. If we can help you with your estate or long-term care planning, please contact us to schedule a time to speak with one of our experienced estate planning and elder law attorneys.

May is Elder Law Month!

Local seniors can learn about Elder Law issues at free events being hosted by city and town senior centers during the month of May. These events are part of the statewide **Elder Law Education Program** presented by the **Massachusetts Bar Association** (MBA). Among the topics discussed at in-person and virtual events throughout the Commonwealth this year are, Veteran Affairs Financial Benefits, how to protect your home and assets, powers of attorney and health care proxies, reverse mortgages, Homestead and Life Estates, Medicare/Medicaid changes, and alternatives to nursing home care.



Attorneys Maria Baler and Megan Bartholomew will be speaking at a local senior center next month. For more information on the Elder Law Education Program, please visit www.massbar.org/elderlaw.

Homestead Continued...

stead will not prevent your mortgage lender from foreclosing if you do not pay your mortgage.

Interestingly, the homestead law protects the proceeds from the sale of a home for up to one year following the sale, and insurance proceeds received as a result of a fire or other casualty from the reach of creditors for a period of two years.

Keep in mind that if you filed a Declaration of Homestead and then refinanced your mortgage after your Homestead was filed and before March 16, 2011, your mortgage transaction may have voided your homestead protection. However, beginning March 16, 2011, a mortgage transaction does not impact your homestead protection even when the homeowner signs a mortgage that includes a waiver of homestead provision. The waiver of homestead provision in the mortgage relates only to the mortgage itself (which the homestead does not protect against anyway).

If you have questions about homestead protection, please feel free to give us a call, or get the advice of an experienced real estate or estate planning attorney. And if you have not filed a Declaration of Homestead on your home, make sure you do so!

Terms to Know

Health Care Agent – The person appointed under a Health Care Proxy to make medical decisions on your behalf if you are unable to do so. The health care agent should consider your health care wishes, moral and religious beliefs, and the advice of the medical professionals when making health care decisions for you.

Irrevocable Trust – An irrevocable trust is a trust you set up during your lifetime to distribute your assets after your death. Unlike a “living trust” or “revocable trust,” the terms of the trust cannot be changed by you during your lifetime. Additionally, you may have limited to no access to or control of the trust assets and income. Irrevocable trusts can accomplish a variety of goals such as reducing estate taxes, avoiding probate, shielding assets from a Medicaid/MassHealth claim, and providing privacy and creditor protection. Transferring your assets to an irrevocable trust is a big decision and the advantages and disadvantages should be discussed with your estate planning attorney.

Trustee – The “manager” of a trust who assumes the fiduciary obligation to administer the trust and its assets according to the terms of the trust and the laws.

Wills – In general terms, a Will is a legal document that controls the distribution of probate assets after death. A Will is also the document in which the maker names the person who will be charged with administering the probate estate (the Personal Representative, sometimes called Executor) and names someone to serve as guardian for minor children.



Ask SSB

Q: My mom passed away a few months ago. She had a Will that left everything to me and my sister equally. Does that mean we do not have to go through probate and can just access the assets?

A: This belief that no probate will be needed as long as you have a Will is common—and incorrect! A Will does not dictate whether probate is needed or not; this will depend on the type of assets you have and how they are titled rather than the existence of or lack thereof of a Will.

The concept of ‘going through probate’ and whether it is something you are required to do does not hinge on whether or not you have a Will. Your Will outlines who you would like to receive your assets when you pass away and can include specific instructions about the distribution of certain assets. Your Will also states who you would like to serve as your Personal Representative (formerly known as Executor) and if you have minor children, who you would like to serve as guardian for those children. Your Will can make the probate process run more smoothly as you can include certain provisions in the document (such as a waiver of surety on a bond or power to sell real estate), which can often expedite the entire process. However, your Will does not ultimately dictate whether your estate will need to be probated.

If you do not have a Will when you pass away, your assets will pass according to the Massachusetts intestacy statute. However, you may not agree with what the intestacy statute says or the way it dictates your assets should be distributed. Having a Will overrides the intestacy law and allows you to state clearly what your wishes are once you pass away.

The answer to your question hinges not on your mother having or not having of a Will but rather, what assets the Will controls when a person passes away. A Will only has control over ‘probate assets’—these are assets that are held in the deceased person’s sole name with no joint owners and no named beneficiaries. Many assets, such as IRAs, 401Ks, life insurance policies, and investment accounts give the owner the ability to name a beneficiary. For assets that have a beneficiary des-

ignation, the designation takes priority over the terms of the Will with respect to that particular asset. This means that assets that name a beneficiary do not need to be probated. Even better, the beneficiary often has immediate access to the asset upon providing a death certificate.

Likewise, assets titled in the name of a Trust are non-probate assets which pass according to the terms of the Trust and not the decedent's Will. As such, these assets would not be subject to the probate process either.

The takeaway is that the act of going through probate is only required if the deceased person has probate assets (remember—assets with no joint owner, named beneficiary, and not held in a trust). Your Will is the roadmap that determines how the probate process will play out but having a Will, in and of itself, does not avoid probate.

April, 2023

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SSB: For the Health of It - Take A Walk!

Spring cleaning isn't just for homes, it's for our bodies too! Spring is the perfect time to re-evaluate your fitness routine. With the cool mornings and warm afternoons, it is a great time to get outdoors for some much needed sunshine and fresh air. Here are some major benefits of taking a simple walk...

Walking outside helps your brain. Being in nature helps us relax and feel more refreshed, which can lead to better problem solving skills and creativity. Walking outside also provides fresh air and sunlight which can help improve moods and fight off depression.

Walking helps with your heart and lung health. Walking is a great way to get your heart pumping which can help lower blood pressure and cholesterol levels. Walking improves your lung capacity and stamina, which can lead to better breathing and reduce the risk of heart disease and stroke. Improved lung capacity can also help reduce the chance of respiratory diseases such as asthma, bronchitis, and emphysema.



Lower your stress levels. Your body releases endorphins when you walk and these can help reduce pain, promote relaxation, have a positive effect on mood and behavior and even help you sleep better.

If you're not sure where to start, try walking for 10 minutes at a time at first. Once you've gotten used to that, increase the time by 5 minutes each week until you reach 30 minutes per session. As you get used to this, you can try to do this multiple times per day.

Always check with your physician before you start any exercise program.

What's New at SSB

In our last newsletter (January 2023), we congratulated Attorney Abigail Poole on becoming the 2023 president of the Massachusetts chapter of the National Academy of Elder Law Attorneys.

In this issue, Attorney Poole gives us some background on NAELA and what drew her to this wonderful organization.

What is NAELA or MassNAELA and what do they do?

NAELA stands for the National Academy of Elder Law Attorneys. I have the privilege and honor of being the President of the Massachusetts chapter of NAELA (MassNAELA) this year. Our chapter educates, inspires, and advocates for attorneys and their clients who are elderly and/or have special needs.

What drew you to their mission?

I have the pleasure of assisting multiple generations of families to put plans in place to protect their loved ones. This may mean helping parents create an estate plan that incorporates a Trust for an adult disabled child to preserve that child's inheritance, or providing guidance to the adult children of an elderly parent whose health has suddenly declined and may need to transition to an assisted living or skilled nursing facility. MassNAELA is the best resource available to ensure I am appropriately assisting my clients due to its knowledgeable and collegial membership. Being a member of MassNAELA is fundamental to practicing elder law in Massachusetts



How can NAELA help the average citizen?

MassNAELA not only educates attorneys, it provides valuable information for the benefit of Massachusetts residents, too. For example, the MassNAELA website contains videos about probate and estate recovery, and a toolkit that shares practical information and resources about supporting and advocating for children and adults with special needs. Additionally, members of our chapter visit various communities around the state to help residents complete an important document called a Health Care Proxy, which designates a person to make health care decisions for you when you are incapacitated. Our chapter is also incredibly active with respect to legislative and other advocacy that is advantageous to Massachusetts residents who are elderly or have special needs. I could continue to go on regarding the many ways MassNAELA benefits those residing in Massachusetts, but I instead invite you to visit the website (<https://massnaela.com>) to explore further on your own!

