



Samuel, Sayward & Baler LLC

Smart Counsel... FOR LIFE.

Partners' Letter

"I assign myself no rank or any limit, and such an attitude is very much against the trend of the times. But my world has become one of infinite possibilities."

– Invisible Man
Ralph Ellisons

Dear Clients and Friends:

Summer is here and couples and families are heading out on vacation to the mountains, beaches and lakes of New England. Family and friends will gather around bon fires, enjoy delicious clam bakes and cocktails, build sand castles and smell of coconut sunscreen, and all around the sound of laughter echos off the mountains and travels across the waters in the still of the night. This is a special time of year.

August in summer, like January in winter, is a time of reflection and planning. Soon the nights will be cooler and fall will be upon us; the kids will be back to school, the holidays are around the corner, and our schedules will get hectic again.

But for now, as you sit in your favorite lounge chair, cold drink in your hand, and watch your loved ones enjoying the summer sun, let your mind wander to the past, to your younger days when you first came to visit SSB to plan for today and your tomorrows, and ask yourself, *"Is my*

this issue ↓



estate plan still in line with my goals?" Perhaps family dynamics have changed over the past few years. Did you get re/married? Do you now have a child/ren or grandchildren? How will your loved ones be protected if something should happen to you?

If you have questions like these, please give our office a call and we will be happy to sit down with you to review your documents and update them if needed.

One of things you can do as you relax this summer, is to read Attorney Megan Bartholomew's article on Parental Appointment of Temporary Agent (PATA). This article contains important information for parents of minor children. As difficult as this is to contemplate, it is vitally important for parents who have minor chil-

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Partners' Letter continued...

dren to appoint someone to care for those minor children should the unthinkable happen. Attorney Bartholomew tell us about the ins and outs of creating a PATA and how and when it should be executed.

As the great Aretha Franklin sang... ***“R-E-S-P-E-C-T Find out what it means to me. R-E-S-P-E-C-T Take care, TCB...”*** Attorney Abigail Poole is *takin' care of business* as she discusses Wills and the trouble your loved ones may find themselves in if you leave a hand-written Will, even if signed, without witnesses.

Everyone seems to be talking about trusts these days. With the tail-end of the baby-boomers coming into retirement in the next few years, and Gen Y starting to work on their 10-year plans, many are getting their estate plans in order. Read Attorney Suzanne Sayward's article to see if this may be something to consider when updating your estate plan documents.

Be sure to check out the *What's New* section to meet our new attorney and to read about what the team has been up to. Ice cream, awards and golfing... oh my!

Of special note is that during the months of July and August our office will be closed on Fridays

Please reach out to Kenzie Sayward (kenzie@ssbllc.com) with any questions you might have after reading this newsletter, or ideas for future newsletter articles or topics for our Smart Counsel Series, and please feel free to share this with your family and friends.

We wish you and yours a safe and wonderful summer,

Suzanne R. Sayward
Maria C. Baler



Parental Appointment of Temporary Agent

By Attorney Megan Bartholomew

One of the hardest aspects of estate planning for parents with young children is planning for the possibility of their deaths while their children are minors. As difficult as this is to contemplate, it is vitally important for parents who have minor children to appoint someone to care for those minor children in the event the parents are unable to do so.

1. What is an Appointment of Temporary Agency?

Massachusetts has a statute (M.G.L c. 190B, 5-103) which allows parents to name one or more individuals to have immediate custody and decision-making authority over their minor children should the parents die or be unable to care for the children because of incapacity or otherwise. A Parental Appointment of Temporary Agent (PATA) is an important tool to ensure there is someone of the parent's choosing who will have the right to legal custody of the minor child and the authority to make decisions about their care, education, medical treatment, etc. in the time period immediately following the parent's death or incapacity, until the guardian is appointed by the court.

2. Why Is a Parental Appointment of Temporary Agency Important?

Most people know that parents with minor children need to name a Guardian and Conservator for their minor children in their Wills. However, many parents do not know that naming someone in the Will does not mean that the nominated individual is automatically and immediately the legal guardian upon the parent's death. The appointment must be approved by the court following the parent's death, or in the event of the parent's incapacity.

Because of the legal process required for the appointment of a guardian and because the probate courts are still terribly backed up, it can take quite some time for the court to appoint a legal guardian and while waiting for appointment, the named individual will not have authority to act on behalf of the minor children. Having a PATA in place means the parent can ensure a person of their choosing has the immediate right to take custody of and make decisions for their minor child without needing court authority. The PATA is valid for 60 days following the parent's death or incapacity.

3. Who Should You Appoint in the Parental Appointment of Temporary Agent?

A parent may appoint an individual (or multiple individuals working together) to have immediate authority over a minor child. Often, the agent named in the PATA is the same individual named as Guardian in the Will. The PATA grants the named individual the same authority the

parent has regarding the care and custody of the minor child, so the individual appointed should be someone knowledgeable about the minor child and capable of caring for them.

4. What Is Needed for a Valid Parental Appointment of Temporary Agent?

In order for the appointment to be valid, a PATA must be: 1) in writing; 2) signed by the parents; 3) attested to by two disinterested witnesses; and 4) accepted, in writing, by the temporary agent. The parental appointment does not supersede parental rights.



5. When Does the Parental Appointment of Temporary Agent Become Effective?

The PATA becomes effective upon: 1) the appointing parent's death when there is no surviving parent; 2) an adjudication that the parent is an incapacitated person; or, 3) a written determination by an examining physician that the parent is no longer able to care for the child.

If you would like to know more about creating a Parental Appointment of Temporary Agent, please contact our office to schedule an appointment with one of our experienced attorneys.

Attorney Megan L. Bartholomew is an associate with the Dedham law firm of Samuel, Sayward & Baler LLC which focuses on advising its clients in the areas of estate planning, elder law, estate and trust settlement and probate. This article is not intended to provide legal advice or create or imply an attorney-client relationship. No information contained herein is a substitute for a personal consultation with an attorney. For more information visit our website at www.ssbllc.com or call 781/461-1020.



R-E-S-P-E-C-T Your Will

By Abigail V. Poole

You may have seen the recent articles about the jury ruling in Michigan that handwritten pages found in Aretha Franklin's couch after her death are her valid Last Will and Testament. That means those pages

will determine the distribution of her estate assets instead of the intestacy laws of Michigan. As you can imagine, that leads to very different inheritance outcomes – under Michigan law, her assets would have been distributed equally to her four sons; under the handwritten pages (according to the newspaper reports), the music royalties are distributed to three of her sons, while the remaining son receives Ms. Franklin's primary residence, cars and other personal belongings.

But what if Ms. Franklin had died in Massachusetts? So-called “holographic wills” that are handwritten and signed only by the testator/testatrix (Aretha in this case) are not valid under Massachusetts law. Instead, a Will is only recognized as valid in Massachusetts when it is in writing, signed by the testator, and signed by two individuals who witness the testator sign the Will or the testator's acknowledgment of the signature on the Will. In short, if Ms. Franklin had died in Massachusetts, the intestacy laws would have applied, and her estate would have been divided equally among her sons.



If you wish to direct the division and distribution of your estate after your death, you should prepare your Will with an experienced attorney who practices in the field of estate planning to ensure it is valid.

A note on storing your Will - it should not be tucked in a spiral notebook between your couch cushions for safekeeping. Nor should it be held in a safe deposit box at the bank, unless another person is designated to access the box. The reason for this is that after your death, only a Personal Representative appointed by the probate court has the legal authority to access a safe deposit box in your individual name. In order to be appointed as Personal Representative, you first must submit the Will to the probate court when you request your appointment. As you can see, this causes a problem that results in more time and expense for the Personal Representative handling your estate. Instead, your Will should be stored in a safe yet accessible place - for example, with us as we retain most of our clients' Wills and other documents.

If it is important to you to be clear about the distribution of your estate, and make it as easy as possible for your chosen Personal Representative to obtain your Will, please contact our office to schedule an appointment with one of our attorneys.

Attorney Abigail V. Poole is a senior associate with the Dedham law firm of Samuel, Sayward & Baler LLC which focuses on advising its clients in the areas of estate planning, elder law, estate and trust settlement and probate. This article is not intended to provide legal advice or create or imply an attorney-client relationship. No information contained herein is a substitute for a personal consultation with an attorney. For more information visit our website at www.ssbllc.com or call 781/461-1020.

Terms to Know

Beneficiary

– A beneficiary of a trust is the individual or group of individuals who are entitled to receive income or principal from a trust.

Conservator

– A person appointed by the court to make financial decisions on behalf of an incapacitated or incompetent person after a court proceeding in which notice is given to the incapacitated person and proof of incapacity is offered and assessed.

Distribution

– A payment of cash or assets to a beneficiary who is entitled to receive it.

Durable Power of Attorney

– A Durable Power of Attorney appoints one or more individuals (the “attorney(s)-in-fact” to act on your behalf with respect to legal and financial matters, and is intended to be used primarily in the event you become incapacitated.

Estate

– In general, assets left by an individual at death. The probate estate consists of assets owned by the deceased in the deceased’s name alone, without a beneficiary or joint owner. The taxable estate consists of all assets in which a deceased person owned an interest at the time of death and subject to federal and/or state estate tax as a result of the deceased’s death.

Fair Hearing

– The official name of the initial proceeding to appeal a denial or other adverse decision made by MassHealth.



Ask SSB

Q: I heard that I need a trust. It seems like everyone has one these days!

What’s the difference between a revocable and irrevocable trust?

Which one is better for me?

A: Trusts come in all different shapes and sizes. Revocable, irrevocable, inter vivos, testamentary, nominee, supplemental—the list goes on and on.

Revocable trusts are one of the most common types of estate planning trusts. These are flexible documents that allow full access to assets owned in the name of the trust during the trust-maker’s lifetime. These trusts are often created with a primary goal of avoiding probate and typically do not provide any creditor protection. As such, a revocable trust in which the creator of the trust reserves the right to change the trust terms and use the trust property freely, is not protective should the grantor apply for long-term MassHealth benefits to pay for nursing home care. Conversely, an irrevocable trust is often used to protect assets from creditors—including needing to spend down assets to pay for long-term care. In an irrevocable trust, the grantor gives up the right to access the trust assets.

The bottom line is that each person’s situation and goals are different. What’s best for your neighbor is not necessarily what is best for you. The type of trust that is right for you is the trust that will achieve your goals.

To determine whether a trust is right for you, consult with an experienced estate planning and elder law attorney who will ask you about your goals, analyze your situation and advise you accordingly. If we can be of help, please contact our office to schedule an appointment with one of our experienced attorneys.

What's New at SSB

SSB is growing again! Please meet our newest team members...



Brittany Hinojosa Citron

Associate Attorney

Brittany joined Samuel, Sayward & Baler in May, and hails from San Antonio, Texas. Attorney Citron holds a BA from The University of Texas at San Antonio and in 2016, earned her Juris Doctorate from Western New England College School of Law. Brittany concentrates her practice in the areas of estate planning, probate and trust administration, and elder law.



Joanne Loetz

Receptionist

Joanne greets and assists clients with a variety of tasks including answering phones and facilitating visits to the office. Joanne is a graduate of Los Angeles Valley College and holds an associate degree in Theater Arts. Joanne loves acting and singing and can be found on stages in the Greater Boston area.



Ashiq Khan

Legal Assistant

Ashiq is a graduate of UMass Amherst and has a BA in Philosophy, along with Certificates in Criminal Justice and Paralegal Studies. He assists the attorneys and paralegals with preparing estate plan documents for signing and all post-signing tasks, including obtaining title insurance endorsements and recording documents with the various Registries of Deeds. If you have questions about your estate plan binder, please reach out to Ashiq.



Jasmine Sanchez

Legal Assistant

Jasmine is a graduate of UMass Lowell and has a BS in Criminal Justice and an AS in Paralegal and Legal Studies from Bristol Community College. Jasmine works with our probate paralegal, Caitlin Fantegrossi, to file probate pleadings with the courts, prepare Trustee documents and otherwise assist with the estate and trust settlement process.

CONGRATULATIONS to our recent graduate Jasmine Sanchez, who earlier this week was awarded the Rhode Island Paralegal Association Tucker Wright Book Award at at RIPA's Annual Meeting earlier this week.

This award is presented to a recent graduate of each of the local paralegal programs.

Jasmine graduated from Bristol Community College Bristol Paralegal & Legal Studies program with a 3.98 GPA> She is currently working as a legal assistant at Samuel, Sayward & Baler LLC.

In June, Jasmine was the recipient of the prestigious Tucker Wright Book Award from the Rhode Island Paralegal Association. **Congratulations!**



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The Master's Tournament at McGolf Mini Golf



On Thursday, June 23rd, the greatest miniature golfers from the second floor of 858 Washington Street in Dedham gathered for the kinda-maybe, semi-annual *Mini Master Golf Tournament* at McGolf in Dedham.

Trained by the great Happy Gilmore, Maria Baler, the quinquagenarian, who missed the cut for the 2022 tourney, started the day four strokes behind co-leaders, Sue Sayward and Joanne Loetz, at -2. But as the leaders fell off the pace, Baler took advantage and rallied down the stretch – making birdies at 12 and 16, and a bump and run eagle at 18 – to shoot 1-over and clinch the title.



Brittany Citron for the birdie



Sue Sayward for par

“I just can’t believe it,” she said afterward. “Years and years of hard work have paid off. Happy, my family, and all of my colleagues believed in me and gave me everything I needed to get to this moment. It is a dream come true.”

Baler had just two top-5 finishes prior to the McGolf Masters, finishing fifth in the WPLT earlier this year and a solo third at the 2019 Putt-Putt Knockout.

Noticeably absent from this year’s field of duffers was Krazy Kurve Kenzie (Sayward), *K³* to those who know her). Known for her unconventional grip and baseball-like swing, no clown, loop de loop, or volcano is safe when she’s on the course. Her absence gave the others a great advantage.

The rest of the field (*the losers*) could not be reached for comment.

Congratulations Maria!



The look of disappointment from Citron and Loetz as Maria Baler sinks the eagle for the win!



Nothing beats the summer heat (and rain) like delicious frozen treats from Ron’s Gourmet Ice Cream.

