

PRACTICE

## Elder Law



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### OVERVIEW

#### ELDER LAW

Estate and financial planning presents unique challenges, as well as opportunities, to our elder clients and children with elder parents.

It is important that elders take steps to protect themselves in the event of their incapacity. Who will manage your financial and legal affairs? Who will make medical care decisions? What standards will apply?

The best planning protects an elder's lifetime interests; meets the elder's individual objectives, whether to reduce estate taxes or to protect assets from loss on long-term care costs and finds the right balance between self-protection and loss of autonomy and control; and finally, is done early!

The estate planning team at Bowditch is experienced in assisting with the different aspects of elder law, including long-term planning, the primary financial risk that many elders face. Many clients rely on us to help navigate Medicare and MassHealth.

To be most productive, planning for long-term care should be undertaken as much in advance of need as possible. Waiting periods for eligibility may apply. However, it is usually never too late to take at least some protective actions.

We apply our expertise to these difficult issues with compassion and understanding and develop a plan for each client's unique needs and desires.

#### How we can help

- Traditional estate planning vehicles, including wills and trusts
- Durable powers of attorney
- Healthcare proxies
- Guardianships and Conservatorships

- Gift planning
- Retirement planning
- Coordination of home and institutional care services
- Long term healthcare financing
- Government benefits (including Social Security, disability, veterans' benefits, Medicare and Medicaid)
- Medicaid planning
- Nursing home planning

#### Useful Websites

- [Department of Health and Human Services Administration on Aging](#)
- [National Clearinghouse for Long-Term Care Information](#)
- [Mass Elder Affairs](#)
- [National Institute on Aging](#)

## EXPERIENCE

### Assisting a recently widowed client on income and estate tax issues

The client, who is in her early 80's, had depended upon her recently deceased husband to manage the couple's finances. Their net worth was approximately \$2 million. We identified several income and Massachusetts estate tax issues. As part of the engagement, we reviewed and revised the client's estate tax plan, created an LLC to hold a small rental property, and advised the client on a lifetime gifting plan. The client was so pleased with our service that she decided to have Bowditch & Dewey prepare her income tax returns.

### Avoiding a crisis

Our client was an elderly woman whose husband was getting around-the-clock nursing home care following his hospitalization. The couple's daughter lived out of state and was understandably stressed by the situation. The daughter needed help determining whether her father was eligible for Medicaid and then applying to MassHealth for benefits. In order to be eligible, the husband's assets – including real estate – were moved to his wife's name. We visited with our client, listened and took the time to address her needs, including continuing to live in her own home. The MassHealth application was successful, thanks in part to the help of one of the firm's experienced paralegals.

### Planning to reduce taxes and provide for long-term-care

A married couple came to us, worried about their estate taxes, long-term-care costs and estate benefits to be left to children from their previous marriages. One spouse is still working, and the other spouse has early-stage dementia. They want to provide for each other and also enter into a trust agreement so that their remaining assets would flow to their kids. However, the couple needed help determining who would serve as Trustee. They decided on appointing an independent Trustee who would balance their needs while working with the surviving spouse and their children. We raised issues, such as how best to avoid a conflict of interest and the appropriate, balanced use of the trust for the surviving spouse and heirs. The plan is substantially in place, with the tax portion of the plan complete, and the clients have

an understanding of the MassHealth application process should the need to apply arise.

### **Solving a complicated case of elder financial abuse**

Our client in this case was a son with an elderly mother living in MetroWest who suffered from dementia. The son lived out of state and had discovered that a relative had committed financial abuse by naming himself as the beneficiary of all of the mother's assets. After we helped our client obtain a guardianship and conservatorship, the son reinstated his mother's original beneficiaries as she had intended. The son moved his mother out of state with him and used the proceeds from the sale of her home to fund her care.

### **Helping a client in need of someone they could trust**

When an elderly woman close to her 100th birthday needed help with estate planning, we discovered that our client was divorced, estranged from her son and had no local family. She had outlived almost everyone she knew and was effectively all alone. After several meetings, the woman named one of our attorneys as her Personal Representative on her will and agent under her Durable Power of Attorney and Health Care Proxy, for operational matters and medical decisions. Acting pro bono, we helped move the woman to a nursing home and managed her assets. After our client died, we planned her funeral and administered her estate. We're glad she was able to rely on us.

### **Advised a client recently diagnosed with young onset Alzheimer's**

Our client needed to develop a plan now for how to protect assets for the benefit of his wife in the event that he required long-term care in a nursing home. We advised on trust funding and eligibility requirements for MassHealth (Medicaid) in the event that he ever needed to apply for benefits.

### **Assisted in filing an amicus brief on behalf of the National Academy of Elder Law Attorneys**

This filing was on behalf of the Massachusetts Chapter in the Massachusetts Appeals Court case of *Heyn v. Director of the Office of Medicaid*. The brief successfully argued in favor of the use of Irrevocable Income-Only Trusts as a Medicaid planning tool, providing additional flexibility and predictability in long-term care planning for elders across the state. In the future, this case will protect elders when they've been unfairly denied Medicaid assistance.