

LEGAL & FINANCIAL CROSSROAD

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Definition

This CrossRoad discusses different legal and financial steps that you may choose to take in order to support and protect an older adult's personal choices, health care and finances.

Glossary of Terms

A list of terms you may come across while researching this topic.

Search Our Database

On the Navigating the CrossRoads main page you will find a drop down menu of pre-populated search terms that will bring you to a list of Central Massachusetts agencies and programs that relate to this topic. You may also [CLICK HERE](#) to go to our Guide to Elder Services, an online searchable database, to do more extensive searches or for results in a specific zip code, city/town or Central Massachusetts geographic region. ***If you are unable to find a keyword on the pre-populated list and it consists of two terms, transpose the order of the terms i.e. to search for Government Surplus Food use the keyword Food, Govt Surplus.*

Helpful Links

A list of outside websites to visit for further information.

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This information was written with older adults in mind and is meant to provide a general overview of legal and financial planning for an older adult. The information provided does not discuss every aspect of this topic. This information does not constitute legal nor medical advice. We encourage you to consult with competent professional and/or legal representatives for advice.

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Introduction

It is vital for you and the older adult you are caring for to have discussions about his/her wishes regarding personal care, health care and finances. It is important to understand that talking about these topics may prove difficult and will not be a single conversation, but will be ongoing. Ideally you should start these conversations while the older adult is healthy and fully capable of participating in the process. However it is never too late to start. As changes occur in the older adult's life you will want to revisit the existing plan to make sure that it still aligns with the older adult's wishes, needs and resources and make needed changes. There are two major goals of these discussions. The first is that the older adult's wishes are clearly stated in writing. Secondly, the individuals who are to be given authority and responsibility fully understand what will be expected of them. By addressing these two goals you can avoid confusion and conflict that may arise if the older adult should ever be incapable of voicing his/her personal wishes. The older adult needs to give the authority and responsibility to individuals they trust to be a shared decision maker. In times when the older adult is unable to voice opinions these trusted individuals will speak on behalf of the older adult and be responsible for decision making.

In these conversations you will want to create plans to address the different needs of the older adult during the following stages: currently, once the older adult cannot make independent decisions, end-of-life and after death. These plan need to take into account the older adult's current personal care, health care and financial needs and resources, as well as what you both believe the future will hold. Most importantly you need to discuss and take steps now to plan for the worst case crises that may arise. This part of the process is very difficult yet important. All too often because these types of discussions can feel so intrusive they do not happen until a crisis occurs. Often times it is then too late to have input from the older adult. Not knowing what the older adult has in place for financial and legal resources or how they would want these resources spent or distributed proves to be a burden on the CareTeam.

While creating your plan you may feel a need to access legal and financial assistance. You may have this need when you first start planning or it may arise when the older adult's situation becomes more complicated and you feel that you need additional professional support. Personal resources will help determine where you turn to for legal and financial information. Cost may be a determining factor of where you seek legal and financial help. There are legal and financial resources for individuals of all economic backgrounds. There are community professionals and programs available to help an older adult manage their finances. The community professionals with specific expertise who may be beneficial to involve in the CareTeam may include certified public accountants and financial planners. Community programs may offer services ranging from helping the older adult with bill paying to completely taking control of the older adult's finances. These programs may be available free of charge or on a sliding scale for certain individuals. To receive legal information and advice free of charge, call the **Massachusetts Senior Legal Helpline (1-866-778-0939)**. Also check with your county bar association because most have a "Lawyer for the Day Program". This program takes place at the county's probate court and a lawyer is available to answer questions free of charge during scheduled time periods. Community legal aid programs offer legal services, free of charge or on a sliding scale depending on the older adult's income.

While planning for these legal steps, keep in mind that the person who is paying the lawyer is the person who the lawyer is representing. It may or may not always be appropriate for both you and the older adult to have the same lawyer while working on certain legal documents. At times it will be of the utmost important for the older adult to have their own legal representation separate from you, the caregiver. It may be costly to have two separate lawyers, but it will ensure everyone is receiving the appropriate representation.

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Depending on the situation and/or the available resources it may be appropriate to have a lawyer, paralegal, and/or community legal aid professional on the older adult's CareTeam. If you decide to pursue legal advice, it is important to consult a legal expert who has a specialty in what you need. You can contact the Massachusetts Bar Association and utilize their lawyer referral service. This service will help you find a lawyer with the appropriate specialty in your area. [CLICK HERE](#) to visit the Massachusetts Bar Association website for more information. However in the examples we have listed below we would strongly urge you to seek out an elder law attorney as opposed to other legal specialists such as real estate lawyers. Elder law attorneys have a specialized understanding of estate planning documents; wills, power of attorney and trusts and how an older adult can best utilize them. They also have an in depth knowledge of social security, retirement benefits, and planning for MassHealth (Medicaid). You may also seek out their expertise while planning for an older adult's care if they should become unable to do so for themselves. Elder Law Attorneys can also represent individuals in cases involving elder abuse. When looking for an Elder Law Attorney it would be wise to ensure that they are members of the National Academy of Elder Law Attorneys (NAELA). NAELA has an online database with member lawyers to help you find an Elder Law Attorney in your area. [CLICK HERE](#) to visit the NEALA website for more information.

The older adult must always be central to the plan as the decisions being made are going to help determine their future. They need to be actively involved to the best of their ability in all decision making. More importantly plans are to be mainly focused on their specific individual needs and ultimately have their best interest in mind.

*****Caregiver Hint:*** *No matter what stage of life you are in you should make sure you have started legal planning for your future.*

Not all of these legal and financial options discussed below are appropriate for every older adult. Please be aware that generally speaking these legal terms do not always have to refer to an older adult. Also remember that laws are different in different areas of the country. This section is to be used as a guide and generally applies to the state of Massachusetts. These terms may have very different meanings in other states.

Finances

It is not unusual for there to be much discomfort on behalf of the older adult and yourself, as the caregiver, to begin the discussion about finances and financial planning. When planning for the cost of the older adult's long-term care needs you must carefully take into consideration all possible expenses including but not limited to: housing, health care and transportation. To begin these discussions you may suggest that the older adult think about how they would pay their bills and who would be responsible to do so if they were temporarily or permanently unable to do so independently. After assessing the older adult's personal resources you would be wise to think about what family and friends would be willing to contribute as well as what community resources have to offer.

It is advisable for an older adult to inform someone on the CareTeam as to the location of all financial assets. This would include bank accounts, safe deposit boxes, stocks, bonds, pensions, cash and other valuables. The older adult needs to decide if it is important to identify another individual who will simply have access to their personal accounts or if they should establish joint accounts, in case anything happens to him/herself. It would be important for these individuals to be advised of the contact information, account numbers, access codes and any other necessary security information for such accounts. It is important that the older adult and you research the legal advantages and disadvantage of merely granting someone else access versus establishing joint ownership with regard to bank accounts, deeds, post office boxes, and safety deposit boxes.

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It may be helpful to use automatic bill paying services for the older adult's bills. These services will ensure the older adult's bills are paid on time each month without much thought. Direct deposit of Social Security and other payments may be helpful as well. This will mean the older adult's payment will be automatically deposited in their chosen bank account instead of the older adult receiving a check to deposit. It is important to note that older adults currently receiving Social Security benefits will be forced to receive benefits by direct deposit or the Direct Express debit card as of March 2013. The Direct Express debit card is for those older adults without a bank account and allows the older adult to use the card to make purchases or go to an ATM to receive cash.

Money Management & Budget Counseling

There are both public and private programs that offer services to older adults who have difficulty creating and following a budget to manage their own monies on a daily basis. The state Money Management program is designed to help protect older adults who may be at risk of losing their independence due to their inability to pay basic rent, food and utility bills. Trained, insured volunteers assist with paperwork, forms, establishing a budget, paying bills, organizing mail, writing checks, and balancing the checkbook. Services are available to anyone 60 years of age and older. In addition, people under the age of 60 who have a disability can also receive this service.

There also exist many programs in the community that offer similar services. Some of these programs may specialize in debt management, banking, taxes, consumer education, reverse mortgage, housing or bankruptcy counseling. Services may be offered via the telephone, internet or through face to face counseling.

Representative Payee Program

If the Money Management or community budget planning services prove insufficient to meet the older adult's needs then you may consider the Representative Payee Program. This program assists older adults who are unable to manage their Social Security Income because of physical or mental issues, disabilities related to substance abuse, or who have been victimized by financial exploitation. The Representative Payee Program becomes responsible for using the older adult's funds to pay all his/her monthly bills. The Representative Payee Program may also be responsible for properly utilizing the older adult's money to pay bills for medical needs and dental care not provided by Medicare or Medicaid/MassHealth. Funds for food, clothing, and/or spending money are directed to the older adult each month. This allows the older adult to retain control over the rest of their life.

Financial Assistance

There are financial assistance programs and benefits available for older adults throughout the community. With the cost of living for an older adult continuing to rise it is important to make the best use of their existing financial resources. You may need to seek out ways to possibly save money. By doing this you can use the newly saved money to cover other expenses. A first step is to determine which financial assistance or discount programs for which the older adult is eligible. Each program has its own established eligibility guidelines which may include: age, income, assets, number residing in household, ownership or rental status of residence etc. You should contact all of the older adult's utility companies (electric, telephone, gas, cable, internet provider etc.) to see if they offer discounts or deductions. Some public benefits programs offer a cash benefit to purchase items. Two such programs are: Supplemental Nutrition Assistance Program (SNAP-formally known as Food Stamps), which is used to purchase food items, and Fuel Assistance, which is used to purchase heating fuel.

Tax Work-Off Program

Many cities/towns in the state of Massachusetts offer a program called the (Senior) "Tax Work Off Program". This program allows older adults to volunteer in their city/town to offset the cost of property taxes. Each participating city/town in Massachusetts has different eligibility guidelines, application processes and deduction amounts. In addition, most cities/towns have eligibility restrictions based on ownership of the property, occupancy of the property, annual income, and assets. The jobs/positions

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available also differ by city/town but may include positions in the city/town's public library, public schools, senior center, and the city/town hall. Each city/town has a different number of positions available based on the city/town's budget. Therefore, all older adults who meet the eligibility requirements MAY not be able to participate in this program. The older adult should contact their city/town hall or local board of assessors to learn about specific eligibility and application requirements. In addition, any member of the older adult's Council on Aging should be able to give more information.

Circuit Breaker Tax

The Massachusetts Circuit Breaker Tax Credit is for Massachusetts home owners and renters 65 years of age or older. This credit is designed for Massachusetts residents who have low-to-moderate income and have a real estate tax that is greater than 10% of their income. The older adult you are caring for can claim this credit if they paid more than 10% of their income on real estate tax, including water and sewer debt charges. If the older adult rents their residence, they can count 25% of their rent as real estate tax payments. The actual amount of tax credit that the older adult will receive cannot exceed the state limit and depends on their income and assets. In addition, the older adult you are caring may be able to receive the tax credit for the past three years if they did not fill out income tax forms. If the older adult fills out income tax forms for the past three years, they may be able to receive this credit retroactively. If you or the older adult has questions eligibility or would like further information, contact the Department of Revenue at 1-800-392-6089 or 1-617-887-6140 TTY.

Legal

Estate Planning

The goal of estate planning is to prepare a plan for the older adult's assets at the time of their death. Assets are anything that is owned by the older adult such as property, possessions and money. You will also hear the term estate planning used when generically talking about putting an older adult's "affairs in order". This may more broadly involve all legal planning for personal, health and financial care.

Probate Court

Probate courts are part of the judicial system and oversee legal matters involving estates, trusts, guardianship and conservatorship and also family and divorce law. As of March 31st, 2012, the Massachusetts Uniform Probate Code (MUPC) is the new effective law concerning probate in the state of Massachusetts. Under the MUPC, there are more timely and cost effective options for appointments and proceedings during the probate process. Most notably, there is now the option of an informal versus a formal probate process. Through the informal probate process, the appointment of a personal representative (executor) is done by a magistrate (if the older adult has not named one already) and the estate is then handled by the personal representative with very little judicial involvement. Petitioning for an informal probate process is for families who expect no disagreements over the will (if there is one) or the estate. When there are disagreements over such things as the appointment of the personal representative or claims to the estate, a petition should be made for a formal probate process, which will be dealt with by a judge. There are many important documents you will need to bring to probate court. [CLICK HERE](#) for a check list of and links to the documents you will need throughout the informal probate process. [CLICK HERE](#) for a check list of and links to the documents you will need throughout the formal probate process. Finally, an option known as the Collection of Personal Property by Affidavit allows for small estates to be handled in an even more efficient procedure than the informal probate process. For estates worth up to \$25,000 plus a vehicle, an affidavit can be filed no sooner than 30 days after the date of death. When this affidavit is filed, a personal representative will be appointed and the estate can be wrapped up almost immediately.

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Last Will and Testament

The first item that comes to mind when discussing estate planning is the preparation of a Last Will and Testament (will). A will specifically lays out how a person would like their assets distributed at the time of their death. A will needs to be witnessed by two individuals who are not named in the will. The older adult will also assign an executor of the will. Under the new Massachusetts Uniform Probate Code, the executor is now referred to as the personal representative. This individual will be responsible to ensure that all of the older adult's wishes outlined in the will are carried through. The personal representative will also be responsible to pay any debts of the older adult's estate, distribute assets and sign estate tax forms. It is highly suggested that the will be notarized in order to help avoid a complicated probate court process. It is critical that at the time a will is signed the older adult is legally competent. You may choose to speak with a legal professional for information on creating a will and/or the probate process. It may be the older adult's decision to hire a legal professional to create his/her will. After an older adult dies, if there is disagreement about a will's content or the older adult's competency at time of signing it will be sent to probate court to be resolved. If no will exists probate court will determine, utilizing state laws, how the older adult's assets will be distributed. In the event that probate court becomes involved it may be advisable for you to discuss the situation with a legal representative. Also remember there are taxes associated with the distribution of assets.

Trusts

Trusts are another important legal tool that the older adult you are caring for might consider. A trust is created to invest or hold the older adult's assets. When establishing a trust, the older adult is considered the "grantor" or "donor" and decides who is the "beneficiary" (which could be one or more people) of the trust. The beneficiary will receive the assets of the trust. The grantor/donor/older adult also decides who to name as the "trustee" (which could be one or more people) or the person who is responsible to manage and distribute the assets to the beneficiary. Please be advised that in the remainder of this section on trusts the grantor/donor will be referred to as the older adult.

There are several different types of trusts each with advantages and disadvantages. Some may help avoid probate court, while others may protect assets from creditors or from being counted for MassHealth eligibility. Trusts may also offer tax advantages for the older adult and the beneficiary.

- Revocable trusts
Revocable trusts, also known as living or inter vivos trusts, are not part of the older adult's will and can at any time be changed or terminated. A revocable trust allows the older adult to receive the income earned off of the assets in the trust. The assets within a revocable trust can be considered for estate tax purposes, by creditors or for Medicaid/MassHealth eligibility.
- Irrevocable Trusts
Irrevocable trusts on the other hand cannot be changed or terminated once they are created. An irrevocable trust allows the older adult to receive the income earned off of the assets in the trust. The income earned off of the assets of the trust may be considered when applying for MassHealth. The assets within an irrevocable trust cannot be considered for estate tax purposes, by creditors or for MassHealth eligibility.
- Testamentary Trusts
Testamentary trusts are part of an older adult's will and have no power until the older adult has died and the will has gone through the probate process. The older adult can set aside funds through the trust for a spouse. These funds will not be considered when the spouse is applying for MassHealth.
- Supplemental Needs Trusts
Supplemental needs trusts are created during an older adult's life or in their will. This trust allows the older adult to provide for an individual with a disability. The assets in the trust may

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be used by the beneficiary for any purpose outside of what is being provided by public benefits. The assets the beneficiary is receiving through the trust will not affect their eligibility for public benefits such as SSI or MassHealth.

Health Care Proxy

In Massachusetts an advanced directive is referred to as a health care proxy. A health care proxy is a document which outlines who the older adult designates to make health care decisions on their behalf in the event they are unable to make these decisions themselves. In a health care proxy the older adult is called the “principal”. In the rest of this section be advised the principal will be referred to as the “older adult”. The individual who the older adult names to make their health care decisions is called the “agent”. These health care decisions can include whether or not a feeding tube should be placed or a respirator should be used.

It is important that the agent and the older adult discuss early and often what the older adult’s wishes are regarding their health care. Often these conversations do not happen and in a crisis a family is left confused as to what the older adult’s wishes would be. This can cause conflict over the best plan of care for the older adult. A health care proxy can help with this confusion.

****Caregiver Hint:** A health care proxy is a legal document that every person over the age of 18 should have completed and discussed with those they are entrusting with decision making.

Living Will

Another document that an older adult may want to complete is a living will. A living will can be used to indicate what life sustaining treatment an individual wants. It is important to know that a living will is not legally enforceable in Massachusetts but may be used as a guide to make medical decisions for someone who is unable to do so for themselves. For this reason it is of the utmost importance to have a health care proxy in place.

Do Not Resuscitate/Do Not Intubate (DNR/DNI) Order

A DNR/DNI is a document which indicates that an older adult has decided to no longer receive CPR, intubation, or other life saving treatment. Providing this document to the CareTeam will be essential so that everyone involved knows the older adult’s wishes. It would also be advisable to have the document accessible for emergency medical personnel in emergency situations.

Do Not Hospitalize Order (DNH)

A DNH is put into place when an individual no longer wants to be transported to the hospital when care can be provided in their current living situation. Some reasons for making this decision are the increased infection rate in the hospital or the disruption caused by constantly changing environments. This document will not stop the individual from being sent to the hospital when it is necessary. A DNH must be signed by a physician.

Power of Attorney

A power of attorney is a document which is used by an older adult to appoint another individual to have control over their legal and financial matters. The older adult is the “principal” who gives another individual, called the “attorney-in-fact”, responsibility of their legal and financial matters. Please be advised that in the remainder of this section the principal will be referred to as the “older adult”. The attorney-in-fact would be able to sign checks, enter contracts and make other decisions on the older adult’s behalf. It is important to have a power of attorney in addition to a health care proxy as they designate individuals for different functions. There are two types of power of attorney, durable and springing. A durable power of attorney comes into effect as soon as it is signed by the older adult. A springing power of attorney will only come into effect when an event described in the document takes

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place. An example of such an event would be when an older adult has been certified by one or more physicians to be incompetent.

MassHealth Eligibility

When planning for the older adult's financial future it may be important to speak to an elder law attorney about Medicaid eligibility. In Massachusetts Medicaid is referred to as MassHealth. An elder law attorney will be able to help the older adult and you review the older adult's financial situation and plan for future long-term care expenses. Many older adults will not have the income or assets to be able to pay privately for their own long-term care needs. In these instances it may be time to look to MassHealth as an option. For older adults who have low incomes and are eligible, MassHealth will cover health care expenses and some long-term care needs. To be eligible for MassHealth the older adult must meet certain income and asset limits. In some cases an older adult will have to spend down their assets to meet these requirements. Also be aware that MassHealth has what is called a five year "look back period". This means that they are able to look back over the course of the past five years for any transfer of money or property (assets). If the older adult has transferred assets in the past five years there may be a penalty which would make the older adult temporarily ineligible for MassHealth. The length of ineligibility varies based on the market value of the assets transferred. There are exceptions to these asset transfer penalties. It is critical that the older adult discuss MassHealth eligibility and planning with a legal professional.

Homestead Act

A Homestead Act is used to protect the older adult's home from creditors. To file for the Homestead protection the older adult must submit a document called the "Homestead Declaration". This form is filed in the county or district of the Registry of Deeds in which the house is located. The form can be filled out without the assistance of an Elder Law Attorney. The Homestead Act does not protect against any debts that the older adult had prior to filing the Homestead Declaration. Individuals 62 years of age or older or individuals with a disability are protected at a higher amount. If the status of the older adult changes to meet either of these categories they must re-file their declaration to receive these higher protections.

Life Estate

Life estate refers to when an older adult transfers ownership of their property to another individual but still remains in control of the property until their death. The older adult would be named the "life tenant" and the individual who is given ownership of the property is named the "remaindermen". Please be advised that for the remainder of this section the life tenant will be referred to as the "older adult". The older adult still has the right to live in, use, receive income from and enjoy the property. The older adult is guaranteed to live in the property without the threat of the remaindermen moving into the property without the older adult's consent or being forced off of the property. The older adult continues to be responsible to pay property taxes and household expenses. Life estates are useful to avoid probate and also in some cases for MassHealth eligibility. Once the older adult dies the property will be transferred to the remaindermen. Life estates are not ideal for all older adults so a legal professional should be consulted if the older adult decides to pursue this arrangement. It is important that the older adult has their own legal representative to ensure the life estate allows them to reside in the property, have control over who lives there and/or receive income from the property.

Guardianship

If there is no power of attorney or health care proxy in place and an older adult is legally deemed incompetent by the court then a guardian may be named. The guardian, once appointed, can make decisions regarding finances, health care and other personal care choices on the older adult's behalf. Appointing a guardian takes place in probate court and is a long process in which the older adult may have little control over the decision. ***If a health care proxy and power of attorney are in place then in most situations there will be no need for guardianship.***

The probate court may appoint a professional in the community to be an older adult's guardian if they do not have anyone in their life, if those involved in their care chose to not take on the role or if it is deemed by authorities that those involved are not appropriate to fulfill the role. In some situations a fee will be charged by the assigned guardian to the older adult for guardianship services. However no older adult will be denied guardianship services due to lack of financial resources.

Conservatorship

Conservatorship is similar to guardianship in that an individual is appointed to oversee an older adult's assets. A conservator may be named to protect an older adult's assets if they are unable to manage them on their own or if they are being mismanaged by others. The process of naming a conservator is done in probate court.

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