

\$5,120,000 in 2012, and under the new portability feature, a deceased spouse's unused exemption may be shifted to the surviving spouse. The estate tax exemption amount for Massachusetts is \$1,000,000. In 2013 the federal estate tax exemption amount will decrease to \$1,000,000. You are also allowed an unlimited marital deduction for transfers to a spouse who is a U. S. citizen. Estate tax planning with trusts for married couples relies on the exemption amount and the marital deduction to minimize the potential estate tax liability at the surviving spouse's death. Trusts have advantages in providing for non-spouses as well.

WHY IS THIS BETTER THAN LEAVING EVERYTHING TO MY SPOUSE?

When a spouse dies and leaves everything outright to the survivor, no estate tax may be due because of the unlimited marital deduction. However, on the death of the surviving spouse, only his or her estate tax exemption amount will be exempt from estate tax. This couple will have lost the opportunity to avoid estate tax liability for the exemption amount of the first spouse to die. Using a trust in this situation enables you to provide for your spouse yet pass the exemption amount to your heirs without it being included in the surviving spouse's taxable estate for tax purposes. The failure to use trusts may result in payment of estate taxes when more careful planning might have reduced or eliminated any estate tax liability.

Estate taxes are calculated based on the value of your "gross estate", which includes your interest in any property you own jointly with others, retirement accounts and certain life insurance policies. The broad reach of the term "gross estate" may mean that you potentially could have a larger estate than you realize.

Jointly-Owned Property: Some people add children as joint owners of their property for convenience or to avoid probate. There are risks incurred in making someone a joint owner of your assets. The joint owner has all the rights of an owner and those assets may be vulnerable to the joint owner's creditors. At

your death, those assets pass to the joint owner which may not be consistent with your estate plan.

WHAT IS LONG TERM CARE PLANNING?

Many elders fear that they may ultimately need significant care, either at home or in a facility, with a resulting loss of personal autonomy and savings. Often people pay privately for nursing home care until their savings run out. Long term care planning, whether in advance or in response to an unexpected need for care, can involve purchasing long term care insurance or making sure that you receive benefits to which you are entitled through Medicare, Medicaid, the VA or other benefit programs. By planning in advance, people may be able to protect some of their assets for their spouses and family.

ATTORNEY DENISE N. YURKOFISKY

Denise N. Yurkofsky is a graduate of Smith College and New York University School of Law and has done graduate work in estate planning and estate tax at Boston University School of Law. She is admitted to the Massachusetts Bar. Her practice focuses on estate planning, including planning for families with members who have special needs, probate law and elder law. Attorney Yurkofsky is certified by the National Elder Law Foundation as a Certified Elder Law Attorney*. She actively participates in the Trusts and Estates Section of the Boston Bar Association and is a member of the Board of Directors for the Massachusetts Chapter of the National Academy of Elder Law Attorneys, the Wayland Council on Aging and the Friends of the Wayland Council on Aging, Inc.

TAX ADVICE NOTICE: United States Treasury Regulation Circular 230 requires that we inform you that any United States federal tax advice contained in this message is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax penalties imposed by the Internal Revenue Code of 1986, as amended.

*Elder Law is not recognized as a specialty for certification in Massachusetts.

In accordance with rules established by the Supreme Judicial Court of Massachusetts, this pamphlet must be labeled "Advertising."



LAW OFFICE OF
DENISE N. YURKOFISKY
PLAN FOR TOMORROW SO YOU CAN ENJOY TODAY

ESTATE PLANNING

Taking Control Of Your Future

13 Pelham Island Road
Wayland, Massachusetts 01778

TEL: (508) 358-4878

FAX: (508) 817-5435

www.yurlaw.com

e-mail: denise@yurlaw.com

WHAT IS AN ESTATE PLAN? Most people prepare an estate plan for several reasons. They want to make sure their property will pass to family members, friends and charities of their choosing. They also may want to:

- minimize or eliminate estate taxes,
- prepare for possible incapacity,
- put their affairs in order so that their loved ones will not be burdened unnecessarily, and
- avoid family conflicts.

Many potential problems can be solved or minimized through careful planning and communication. An estate plan typically includes these documents.

- Will
- Durable Power of Attorney
- Health Care Proxy, Living Will and HIPAA Release
- Homestead Declaration
- Trust (if needed to address specific issues, to avoid probate or to minimize estate taxes)

WHY SHOULD I HAVE A WILL? A Will is a legally binding document directing who will receive the property you own, individually, at your death. Jointly-owned property, property in trust, and property with a designated beneficiary, such as life insurance policies, annuities and retirement assets, are not governed by your Will. If you die without a Will, the Probate Court will distribute your property according to the laws of your state, and the result may be different than what you would have chosen.

There are other important reasons for having a Will. First, a Will gives you the chance to name a **Guardian** and **Conservator** for minor or disabled children to ensure that the right person will care for your children after your death.

A Will also gives you the opportunity to name a **Personal Representative** (sometimes referred to as an Executor), the person who oversees the distribution of your assets at your death. If you have not named a Personal Representative in your Will, the Probate Court will choose one for you, and there is no

assurance that the Probate Court will make the best choice.

PLANNING FOR INCAPACITY. As medical resources improve, people live longer lives and have a higher risk of outliving their ability to make informed decisions for themselves. In such cases, a Guardian or Conservator may have to be appointed for you by the Probate Court to manage your affairs. Typically you can avoid this with a Durable Power of Attorney and Health Care Proxy.

WHAT IS A DURABLE POWER OF ATTORNEY? In a Durable Power of Attorney, you authorize someone (the “Attorney-in-Fact”) to act for you legally and financially. This is helpful to avoid a conservatorship in the event that you are ever unable to manage your affairs yourself. The Durable Power of Attorney can be limited to a certain situation, but typically it is effective immediately and gives the Attorney-in-Fact many of the rights and powers that you have yourself. It is important to name someone you trust completely. Although the people you name are fiduciaries and must act in your best interest, they can act without giving you advance notice. You can revoke your durable power of attorney at any time.

WHAT IS A HEALTH CARE PROXY? A Health Care Proxy is a document in which you name someone (the “Health Care Agent” or “Proxy”) to make health care decisions for you if you are unable to make or communicate them yourself. If you don’t have a Health Care Proxy, a Guardian has to be appointed to make decisions for you. Your Health Care Agent has a duty to follow your wishes, even if the Agent does not agree with them. If your Agent does not know your wishes, the Agent can decide what is in your best interest.

WHAT IS A LIVING WILL? A Living Will (also called an Advance Directive) is a document in which you express your wishes concerning your medical treatment in certain medical situations. Although it is not binding in Massachusetts, it is evidence of your wishes with respect to your medical treatment.

WHAT IS A TRUST? A Trust is a legal arrangement through which one person, called the Trustee, holds assets for another person, the Beneficiary, in accordance with the Trust document. It can be funded during your lifetime or at your death. It can be revocable, which means you retain the right to change or terminate it, or it can be irrevocable, meaning that you cannot change it. A revocable trust funded during your lifetime is called a “living trust”.

Protecting Children: Trusts are often used to provide for minor children or adult children who are not yet able to manage money in order to provide for their needs without giving them complete control.

Incapacity: If you were worried about eventually being unable to manage your own affairs, you might want to use a Trust. In the event you became incapacitated, the Trustee (your spouse or child, for example) would manage the property in the Trust for your benefit in accordance with your wishes as specified in the Trust document.

Disabled Dependent: If you want to provide for a disabled child or sibling who is receiving or may need public benefits, such as SSI or Medicaid, a Supplemental Needs Trust can be used as part of your estate plan to protect that person’s inheritance and eligibility for benefits.

Avoiding Probate: Probate is a court supervised process for the transfer of your assets to your heirs and can result in delay, loss of privacy and expense. Trusts offer one way to avoid probate. Any assets in your Trust at your death pass to the beneficiaries you named in the Trust without going through probate.

MINIMIZING ESTATE TAXES: Many people also use Trusts to reduce their estate tax liability. Whether your estate will be subject to estate taxes will depend on the value of the assets you own at the time of your death and the exemption from estate taxes which is available at that time. The federal estate tax exemption amount is \$5,000,000 in 2011,