

THE SHORE LAW FIRM

TO: OUR COLLEAGUES IN THE FINANCIAL WORLD

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**INTERVENTION OPPORTUNITIES:**  
**WAYS YOU CAN HELP YOUR CLIENTS AND THEIR FAMILIES SAVE MONEY!**

**Planning for disability/Avoiding Guardianship:** Every client intake interview is an opportunity for you to inquire whether or not your client has done any estate planning documents (DPOA, HCP, etc.). If someone says “yes,” they should be congratulated, but if the clients are 60+ years old, they should still be encouraged to have the documents reviewed by an attorney who specializes in elder law. So many of my clients come to me with documents prepared by general practitioners whose DPOAs do not cover all of the bases needed for an agent to plan for the client’s long term care needs. I have seen DPOAs without named alternates, DPOAs with no or very limited gifting or self-dealing or estate planning powers, and DPOAs which do not give the power to sell real estate. In many cases, the client thinks s/he is all set, when in reality, there is still work to be done in order to avoid court involvement down the line. I have also seen HCPs where the documents have been witnessed by the named proxies, which voids the document and leaves the client without a directive.

Massachusetts Guardianship practice changed radically as of 7/1/09 when the Uniform Probate Code took effect. Guardianships are now even more complicated, time consuming, and expensive than ever before. With good documents in place, guardianship can be avoided in most cases.

**Community care opportunities:** With changes in long term MassHealth rules rendering some people ineligible for a period of time, community care is now more important than ever before. More people than ever before are eligible for Community MassHealth coverage. Veterans’ benefits can help to make community care for vets and their surviving spouses affordable. Clients may need help getting eligible for community assistance, and may need counseling about the many opportunities for care available in our local area.

**Long term MassHealth planning, applications, and appeals:** This is one area where being “penny wise” by having someone other than an elder law attorney file an application can end up being “pound foolish” for the client and his/her spouse. Clients often don’t remember that the nursing homes and their designees have their own financial interests and are licensed to provide health care and not legal services. Based on our knowledge of the breadth of Medicaid law, an elder law attorney can help a client become eligible at the soonest possible date, can help to preserve assets and ensure that funds will be available for a community spouse, can prepare and facilitate the approval of a MassHealth application, and can handle any appeal necessary to obtain benefits.

**Post-long term MassHealth eligibility planning:** Once a married client is on MassHealth, the community spouse has the opportunity to do additional planning for his/her own future care needs. And, in order to protect against the possibility of estate recovery when the patient dies, there should be a complete review of the manner in which all assets are owned. Finally, we typically want to re-do the documents of the community spouse to protect against the possibility that s/he might predecease the nursing home spouse. Thus, even if someone other than an attorney has prepared the application and gotten a patient on MassHealth, there is often still legal work to be done to be sure that both members of a couple are fully protected.

**Sale and transfers of real estate:** Clients selling properties often do not understand that the bank attorney does not represent their interests. Each of us has horror stories where careful real estate planning with life estates or other asset preserving strategies gets undone because the client no longer remembers how it was supposed to work, kids get nervous, some uninformed player in the sale tells them the deed has to be changed before a sale can occur. We need to get involved as soon as the idea of sale arises to make sure that planning does not get damaged. There are many asset preservation opportunities that arise at the time of a sale. And, if the seller is already on MassHealth, the sale will affect benefits. Families will need advice on how to use and manage the sale proceeds, and eventually get the MassHealth benefits reinstated.

**End of life planning:** We know that the reality is that many (if not most) long term patients die in a hospital or in a nursing facility. Some of them are still private pay patients. Others are taking advantage of hospice services in their homes. When someone's health status is changing, it is an excellent time to review the status of one's assets to see if there is any work that can be done quickly to avoid probate when the person dies. There are also steps that might be taken for single Medicaid patients whose estates might be subject to estate recovery claims by the Commonwealth. With the increasing use of testamentary trusts as an asset preservation strategy, a last minute shuffling of asset ownership can provide years of protection to the survivors.

**Estate Administration:** Ideally, for most clients, if we have done everything right in advance, there will likely be no estate to administer when one of your clients dies. However, it is always prudent to take an hour or so after someone dies to review the status of any assets, retitle assets as needed, change beneficiaries, and perhaps change the estate plans of the surviving family members. And, in cases where we have elected probate as an affirmative strategy, we will want to begin the process as soon as possible after the family is ready to focus on finances.