

THE SHORE LAW FIRM

TO: OUR COLLEAGUES IN THE FUNERAL WORLD
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INTERVENTION OPPORTUNITIES:
WAYS YOU CAN HELP YOUR CLIENTS AND THEIR FAMILIES

The Obvious: Post death referral for estate administration:

The many financial details after someone dies can be particularly overwhelming when family members are dealing with emotional loss. Some families call their lawyer before the funeral has even occurred (sometimes before they even call other family members!). Other families never call, and we discover years after the death that there was work that should have been done, especially in connection with clearing title to real estate.

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.

For all families who did not see a lawyer prior to the death, we offer the following:

- Review of all assets to advise on next steps
- Assistance with non-probate claims as needed
- Probate of estate
- Working with MassHealth to resolve any estate recovery claims
- “Chapter 2”: new planning for the surviving spouse to protect him/her going forward

The Long Range Planner: Pre-Need Planning:

Any time a family comes in to pre-plan their funerals, it is a golden opportunity to refer the family for an estate plan review. If a family is pre-planning a funeral in the context of a Medicaid spend down, there is even more work to be done.

At this stage, we offer the following:

- Review asset ownership and existing estate planning documents to plan for long term care needs, possible probate avoidance, and estate tax avoidance/minimization
- Ex: if person is single (and not seeking Medicaid assistance), we might want to establish a revocable trust so that the time and expense of probate is avoided
- If planning is being done for a Medicaid spend down where the patient is married, we want to be sure that 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, 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.

Crisis Planning at End of life:

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.

A couple of hours at end of life can potentially save:

- a year or more of work after the death
- thousands of dollars in court and legal fees
- potential protection of tens or even hundreds of thousands of dollars of assets

Examples of last minute planning include:

- confirming that someone other than "the estate" is the beneficiary of life insurance or retirement assets
- amending a will to include a power to sell real estate so that a court order will not be necessary
- life time transfer of assets
- adding a "pay on death" designation to bank accounts which have balances higher than \$10,000
- shuffling assets between spouses so that testamentary supplemental needs trusts can be funded on death of Spouse #1

It isn't just about the money:

The focus of the previous categories has been financial. Our services however, go beyond the scope of the financial.

- We help clients to determine and articulate their medical and end of life wishes to make sure that they are protected if through illness or injury they lose the ability to communicate or understand.
- We can help to identify and amicably resolve family disputes
- Through our extensive network of colleagues in the social service, health care, legal, and financial worlds, we can help to make sure that needs of all kinds are addressed