

# Western Mass Estate Planning

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When one spouse in a married couple currently receives in-home or skilled-nursing home care or may need either type of care in the future, we can usually expedite MassHealth eligibility by transferring all assets into the name of the well spouse or the spouse we believe may die first (thus preserving assets from the surviving spouse's care expenses).

However, once the couple's assets are in one spouse's name, it is important that this spouse take steps to ensure that the assets continue to be protected. If the spouse holding the assets dies first and the assets pass directly to the surviving spouse (either because of the terms of the first spouse's Will, or as beneficiary or joint owner of assets), the surviving spouse will have to spend down the assets to be (re)-eligible for MassHealth.

To preserve the surviving spouse's eligibility for MassHealth benefits, the spouse holding the assets may establish an estate plan which ensures that the assets are protected, with flexibility about how many of the couple's assets continue to be available for the surviving spouse and how many will pass directly to other family members or other intended beneficiaries (by-passing the surviving spouse). The spouse holding the assets may, essentially, create two "pots" into which assets are placed or directed and then, over time, apportion assets between these pots.

One pot holds assets the first spouse wishes to continue to be available to the surviving spouse. Those assets would stay in the first spouse's name, with no joint owner or beneficiary, so that they will pass through the first spouse's Will and into a so-called supplemental needs trust for the benefit of the surviving spouse, where they remain for the rest of the surviving spouse's life. While the Trustee has authority to spend the funds on the surviving spouse's needs, the funds are non-countable for MassHealth purposes, so do not jeopardize any benefits the surviving spouse is receiving or wishes to receive in the future. Assets passing through a Will do require Probate Court proceedings at the death of the first spouse (with attendant delay and expenses), but are available for any supplemental needs the surviving spouse has (those not covered by MassHealth).

The second pot holds assets the first spouse does not think the surviving spouse would need, after the first spouse's death. Those would be placed into the name of a revocable trust and, at the death of the first spouse, would pass directly to other desired beneficiaries (usually children). While no probate proceedings are necessary, these assets would *not* be available for the surviving spouse. If the sick spouse dies first, the well spouse would want to ensure that *all* assets are titled in trust (avoiding the need for court proceedings).

The distribution of assets at the death of the spouse holding the assets will be dependent upon how each is titled. This may be modified over time, as frequently as desired. For example, if the sick spouse is in a nursing home, the spouse holding the assets may feel freer to title most or all of the assets in trust, by-passing the nursing home spouse.