

# Western Mass Estate Planning

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## NOMINATIONS FOR FIDUCIARIES AND AGENTS Single Avoid Probate Trust and “Supplemental Needs Trust” Wills

*This plan is being put in place because, although both spouses are competent and able to sign estate planning documents, one of you is experiencing health issues which suggest that we may wish to take steps to qualify that spouse for MassHealth benefits now, or to preserve your assets from potential long-term-care expenses that spouse may incur in the future. One way to accomplish this is to move assets out of the name of the spouse we currently believe may need care, into the name of the healthier spouse.*

Your estate plan will have three buckets to hold assets: a trust being established by one of you only (the “donor spouse,” who is currently the healthier spouse), and a Will for each of you. You may move assets between these three buckets as circumstances change. How these assets will be divided will be dependent upon a variety of factors: which spouse is sick, which spouse is more likely to need long-term care, and who will/might be applying for MassHealth. Our goal will be to preserve as many assets as possible. You will be receiving more information when you sign your documents, which will help you decide how best to divide your assets.

Assets titled in the name of the Trust will avoid probate when the donor spouse (the person who created the trust) dies, but will not be distributed to the surviving spouse. Instead, those assets will be distributed directly to your contingent beneficiaries, even if the non-donor spouse is still alive. Those assets will not be subject to Probate Court proceedings and will be protected from any long-term care expenses that the non-donor spouse may have, because they will pass directly to other beneficiaries. The Trustees for the Trust will be the same as the donor spouse’s list of Personal Representatives.

Your Wills are for assets you want available for either spouse’s medical and non-medical needs, to supplement any care MassHealth is providing or may provide for either of you in the future. Although it will require probate proceedings, any assets you hold in your own names (not in the name of the Trust, and without a joint owner or beneficiary) will pass through your Will at your death and be held in a sub-trust within the Will, where the assets will be preserved from any long-term care expenses the surviving spouse incurs. The assets in this sub-trust will be available for the surviving spouse, but not counted for MassHealth eligibility (in other words, the surviving spouse will not be required to spend them down, in order to qualify for coverage).

For now, you will elect to place some of your assets in the name of the trust and the balance in the healthier spouse’s name, leaving the other spouse (the one who we anticipate may need care) with minimal assets. However, in the future, depending upon each spouse’s respective health, we may find it beneficial to move assets to the other spouse’s name. You will receive more about this as part of the estate planning process.

How our complete, legal names should appear in the documents (how each of us will be signing our name, as well as any “aka”):

\_\_\_\_\_  
(Wife) (Husband)

*The information below will be used to prepare your estate planning documents. If, after you have returned this document to our office, you wish to make changes to any of the names or order of names, or any of the named individuals change addresses or telephone numbers, you must notify us no later than five (5) days prior to the date of the scheduled signing. It is extremely difficult to make changes at the signing. We will be sending you a summary of the documents in advance, reflecting the information below, which will give you another chance to review your decisions and make changes.*

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**1. WILLS/TRUST: Please list, in order, the individuals you would like to settle your estate.** Your Personal Representative/Trustee will be responsible for identifying assets, liquidating them, and distributing them to your designated beneficiaries, and, unless you designate otherwise, would also be responsible for holding the surviving spouse’s funds in trust for the remainder of their lives. Your spouse will not serve as Personal Representative or Trustee. The donor spouse’s list of Personal Representatives will also be used as the list of Trustees of the trust in his/her own name.

**Please name at least 4 individuals to serve, for each of you.**

• **Personal Representatives for Wife’s Will:**

	1.	2.
Name:	_____	_____
Relationship:	_____	_____
Address:	_____	_____
	3.	4.
Name:	_____	_____
Relationship:	_____	_____
Address:	_____	_____

• **Personal Representatives for Husband’s Will:**

	1.	2.
Name:	_____	_____
Relationship:	_____	_____
Address:	_____	_____

	3.	4.
Name:	_____	_____
Relationship:	_____	_____
Address:	_____	_____
	_____	_____

**2. DISTRIBUTION: How would you like the assets distributed after your death?** *This would include those things titled in the name of your Trust, once the donor spouse dies, and any remaining assets from the surviving spouse's sub-trust, after the surviving spouse dies. For example, if you have children, would you want your estate distributed equally among them? If you do not have children, who would you want to inherit your estate? Other family members or charities? What happens to a share of a deceased beneficiary – does it pass to the deceased beneficiary's children, otherwise to your surviving children/beneficiaries? If not, to whom? You may use percentages or a dollar amount (which we will convert to a capped percentage). **For each beneficiary listed, please provide their complete name, their relationship to you, and the town and state where they live:***

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*(You may attach a separate piece of paper if you need more space)*

**Sub-Trust for Younger Beneficiaries.**

2(a) Age. If there is a chance that a beneficiary might inherit before or during early adulthood, either because you have named them as a primary beneficiary of your estate or because they would inherit if another beneficiary predeceased you (for example, if a beneficiary predeceased you, and that person's children are entitled to their share), We recommend that the beneficiary be given control over those funds only after they reach a certain age (which you must designate). We further recommend that this age be no younger than age 25 (but older may be appropriate), so that the beneficiary will be of sufficient maturity to handle the funds when they receive them outright, and the funds are protected from creditors and financial aid considerations. Whatever age you select, the Trustee may make distributions to the beneficiary prior to that age, but in the Trustee's discretion (in other words, the beneficiary may not demand funds).

**At what age would you want beneficiaries to be eligible to inherit?** \_\_\_\_\_

2(b) Trustees of Sub-Trust. The Trustee of this sub-trust will be responsible for holding the funds and disbursing them as appropriate, keeping in mind the child's maturity level and need for funds for college or living expenses. Note that, in general, it is not advisable to name a beneficiary's surviving parent, since some distributions they make could be viewed by the IRS as income to the parent. This is not the case if someone other than the parent serves as Trustee. **Kindly list four (4) individuals you would trust in this capacity, in order of preference:**

	1.	2.
Name:	_____	_____
Relationship:	_____	_____
Address:	_____	_____
	_____	_____

3.

4.

Name: \_\_\_\_\_

\_\_\_\_\_

Relationship: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. POWERS OF ATTORNEY:** These documents name the individuals (called your Attorneys-in-Fact or Agents) who you would trust to handle business transactions for you, whether you are incapacitated, on vacation, or just wanting/needing assistance with banking or other financial issues. Note that these individuals will each have equal authority to act (there is no hierarchy) which means we can call on each, as needed and appropriate. None may act, however, without access to the document, which gives you control over who can exercise the power. **Please name two (2) individuals, in addition to your spouse, who you would like to serve as your Attorneys-in-Fact to handle business matters for you (if you are not naming your spouse, please name a third person):**

**For Wife:**

1. Name: \_\_\_\_\_ 2. \_\_\_\_\_

Relationship: \_\_\_\_\_

Town/State: \_\_\_\_\_

3. Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Town/State: \_\_\_\_\_

**For Husband:**

1. Name: \_\_\_\_\_ 2. \_\_\_\_\_

Relationship: \_\_\_\_\_

Town/State: \_\_\_\_\_

3. Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Town/State: \_\_\_\_\_

**4. HEALTH CARE PROXIES:** These documents designate the individuals (called your Health Care Agents) who may make medical decisions for you if your physician has declared that you are unable to make or communicate a medical decision. **Please name three (3) individuals, which may include your spouse and in order of preference, who you would like to serve as your Health Care Agents:**

**For Wife:**

1.

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone (H): \_\_\_\_\_

Phone (W): \_\_\_\_\_

Phone (cell): \_\_\_\_\_

2. First Alternate:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Second Alternate:

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone (H): \_\_\_\_\_

Phone (W): \_\_\_\_\_

Phone (cell): \_\_\_\_\_

**For Husband:**

1.

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone (H): \_\_\_\_\_

Phone (W): \_\_\_\_\_

Phone (cell): \_\_\_\_\_

2. First Alternate:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Second Alternate:

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone (H): \_\_\_\_\_

Phone (W): \_\_\_\_\_

Phone (cell): \_\_\_\_\_

**5. LIVING WILLS:** These documents say that you would not want to remain on life support indefinitely and gives your medical professionals and family members permission/encouragement to terminate life support if appropriate. **Would you both like a Living Will?**

\_\_\_\_\_ YES

\_\_\_\_\_ NO

**6. HIPAA AUTHORIZATION FOR RELEASE forms:** These forms list the individuals who you authorize to access your medical information and talk with your doctors. We will list the same individuals who you listed as Health Care Agents above. **In addition, would you like anyone else listed?**

Full Name

Relationship to You

**Wife:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Husband:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. PRIMARY CARE PHYSICIAN(S):** Please provide us with the name(s), practice(s), and address(es) of your Primary Care Physician(s), so that we may send copies of your signed Health Care Proxies, Living Wills, and HIPAA Authorization for Release forms for your records:

Husband's PCP

Wife's PCP

Practice: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8. Sub-trust for any beneficiary not inheriting directly. (IF RELEVANT)**

If there is any actual or potential beneficiary of your estate, regardless of age, who should not receive his or her share outright, due to disability, divorce, medical issues, poor money management, or other reasons, you may want to have someone else manage these funds. Note that, if funds will be held for the term of a beneficiary's life, you should name some Trustees who are the same age or younger than the beneficiary. *You may use this section to designate trustees for your spouse, if the list of people holding assets for the surviving spouse should be different than your list of Personal Representatives.* **ONLY IF THIS IS RELEVANT TO YOUR SITUATION, please tell us which beneficiary or beneficiaries should not inherit directly:**

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Please tell us who should manage the funds and make decisions about distributions (be sure to list at least four (4) individuals, in order of preference):

1.

2.

Name: \_\_\_\_\_

\_\_\_\_\_

Relationship: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

3.

4.

Name: \_\_\_\_\_

\_\_\_\_\_

Relationship: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

When trust terminates: \_\_\_\_\_ death or when trust assets depleted \_\_\_\_\_