



McCormick, Murtagh & Marcus

ATTORNEYS AND COUNSELORS AT LAW

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LEGAL UPDATE

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CHANGES IN COBRA

(Consolidated Omnibus Budget Reconciliation Act of 1985)

COBRA is a Federal law that allows workers who lose their jobs to continue their group health insurance for a limited period of time, usually 18 months. Employers with 20 or more employees must offer COBRA for their group health plans. Massachusetts expands the federal law to require employers with 2 to 19 employees to offer COBRA benefits.

On February 17, 2009, President Obama signed into law H.R.1, the American Recovery and Reinvestment Act, which provides a 65% federal subsidy of COBRA premiums for employees who were involuntarily terminated between September 1, 2008 and December 31, 2009, subject to certain income limits and other restrictions.

You may be eligible for the COBRA subsidy if during the period of September 1, 2008 to December 31, 2009 you were involuntarily terminated not due to gross misconduct; you had health insurance coverage through your employer's group health insurance plan when you lost your job; your employer continues to offer group health insurance coverage; you have COBRA coverage now or you had COBRA coverage, but terminated it, or you were eligible for COBRA coverage, but chose not to accept it; you are not eligible for another employer group health plan or Medicare; and your income for the year will be less than \$125,000 (individual) or \$250,000 (family)(partial subsidy is available if your income is less than \$145,000 (individual) or \$290,000 (family)).

If you qualify for the COBRA subsidy, you are eligible to continue your group health insurance coverage at a reduced premium amount that is only 35% of your monthly premium for COBRA coverage for up to 9 months. The subsidy is administered by the employer's plan, or the insurer depending on the type of plan, and that entity will be reimbursed by the government through payroll tax credits.

Under COBRA, qualified beneficiaries are typically only committed to continue coverage they had in effect at the time of loss of employment. The new law gives employers the option of allowing employees the right to change their health insurance coverage when making a COBRA election under the employer's plan. The new coverage option must have the same or lower premiums and must be an option also available to active employees under the plan. If the employer gives employees the opportunity to change coverage, the employee must elect to change his or her coverage within 90 days of the receipt of the COBRA election notice.

This article is an effort to provide accurate, timely information to help you understand the recent changes to the COBRA benefits. This overview is provided for your information only and does not constitute legal advice. If you have any questions or need legal advice, please contact McCormick, Murtagh & Marcus.



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Practice Areas

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Municipal Law

Estate Planning

Land Use, Zoning & Permitting

Labor Relations

Employment Law

Litigation

Landlord/Tenant Law



Has the current economic and market downturn affected your estate plan?



LONG TERM CARE PLANNING DURING TOUGH FINANCIAL TIMES

The long term care landscape has changed dramatically over the past few months as a result of the economic problems our nation faces. Suddenly, many individuals who worked all their life to set aside enough resources to provide for their long term health care costs must reevaluate their plan to determine what steps need to be taken to preserve their remaining assets. Planning for the future is a constant process and needs to be examined throughout your life, but specifically needs to be reevaluated now due to the current market conditions and the rising costs of nursing home care.

For an individual over the age of 65 who requires skilled nursing home care, there are three options for payment: payment with the individual’s own assets, long term care insurance or by Medicaid.

Medicaid is a joint federal and state program that pays for the cost of nursing home care if the individual meets strict eligibility requirements. In Massachusetts, the agency that administers the Medicaid program is known as MassHealth. An individual can only have \$2,000 in Countable Assets to be eligible for MassHealth. Countable Assets are items such as cash, bank accounts, pensions, annuities, retirement accounts, cash surrender value of life insurance, and real estate (except primary home). For a married couple, the Community Spouse (the spouse who does not require nursing home care) may also keep approximately \$109,500 in Countable Assets. All countable assets above \$2,000 must be spent down prior to being eligible for MassHealth. The Deficit Reduction Act of 2005 places severe restrictions on the ability to transfer assets before qualifying for MassHealth. Under this law, any transfers made within a five-year look back period prior to the application for MassHealth will result in a Disqualification Period commencing on the date of admission to the nursing home. The length of the Disqualification Period is one day for each \$267 transferred during the look back period (representing the average daily nursing home rate in Massachusetts). However, there are certain permissible last-minute transfers and strategies that can be made which will not result in a Disqualification Period and there are certain steps that can be taken in order to convert Countable Assets into Non-Countable Assets. Proper advanced planning can remove assets from the individual’s estate which would reduce the likelihood that Medicaid could recover upon the death of an individual who has received Medicaid benefits during their life.

Another option to cover the cost of long term care without depleting all of your individual assets is long term care insurance. This insurance can be structured in many ways to assist you in achieving your individual care needs, whether it is nursing home care, assisted living or other options to keep you in your home longer. The best time to buy long term care insurance is in middle age as it becomes cost prohibitive for most in their 70’ and 80’s. Long term care insurance is not for everyone, but is a tool that should be discussed when planning for future health care costs while trying to preserve your assets.

Due to the change of the current financial landscape and the five year look back period, we encourage you to review the adequacy of your long term plan and, if necessary, to adapt such planning to meet changes in your current financial circumstances. In addition, it is always important to review your estate planning and long term care planning periodically to adjust changes in your marital status, family structure, your assets, tax laws and market conditions, as they all have a dramatic impact on your estate plan.



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Practice Areas

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Estate Administration & Probate Law

Employment Law

Residential Real Estate



The Federal Estate Tax exemption has increased from \$2 million (2006 thru 2008) to \$3.5 million (2009).



MEDICAL AND SUPPORT PROGRAMS TO KEEP YOU HOME

As estate and long term care planners, the request we hear most often is "How can I stay in my home as long as possible?" It is our job as planners to assist you in obtaining all of the needed services to allow you to accomplish this goal with your financial resources. The following programs are available in Berkshire County and may be beneficial to help you remain in your home while getting needed services:

Community Choice. The Community Choice Program ("CCP") is a MassHealth program for low-income residents who qualify for nursing home care, but would rather live at home. CCP provides medical care and support services. Services include personal care, housekeeping, chores, laundry, home health aides, skilled nursing, companion services, home delivered meals, grocery shopping, transportation, wander response system, respite care and transitional services. To qualify for CCP, you must be at imminent risk of entering a nursing facility or currently be in one. The total cost of the services you require at home must be less than the cost of your care at the facility. To be medically eligible for CCP, you must need at least one skilled nursing or therapist service daily (e.g. nursing evaluation, physical therapy, intravenous support, or sterile dressing care), or need a nursing service at least three times per week, plus assistance with two Daily Living Activities (e.g. bathing, dressing, toileting, standing, walking, eating, etc.). This program has income and asset limitations: for 2009, your income can be no higher than \$2,022 per month and your countable assets cannot be greater than \$2,000. Your spouse's income and assets are not counted for this program.

Adult Family Care. Adult Family Care is for elderly adults or adults with disabilities who cannot live alone. This program is particularly useful as it pays caregivers, including certain family members, to provide meals, twenty-four hour supervision and companionship, and personal care assistance. A caregiver can receive \$23.50 to \$49.00 per day tax-free (up to \$18,000.00 per year) from MassHealth depending on the level of care needed. Healthcare and social services providers will train caregivers and provide ongoing support. Your caregiver must live with you, and cannot be your spouse or another relative legally responsible for you.

Massachusetts Home Care Program. The Massachusetts Home Care Program is a state program that provides a full range of services to people 60 or older, including medical services, personal care services, day care services, homemaker services, shopping services, laundry services, meal delivery services, nutritional counseling, transportation, maintenance services for the home, companion services and emergency services. This program also includes an Enhanced Community Options Program for senior citizens who are medically eligible for nursing care facilities, but want to remain at home. Seniors in the Enhanced Community Options Program receive two to three times the services of the standard home care services. As this program is not part of MassHealth, you will be responsible for a co-payment based in part on your income level.

If you think one of these programs may be right for you or a loved one, please contact McCormick, Murtagh & Marcus to discuss the specific eligibility requirements and how we can assist in other planning strategies to keep you in your home.



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THE IMPORTANCE OF AN ATTORNEY WHEN YOU ARE BUYING A HOME

Buying a home may be the biggest single investment you ever make. While signing a Purchase and Sale Agreement for a home can feel exhilarating, it can feel as though you've signed your life away at the same time. Unfortunately, that second feeling can become all too real for homebuyers who either do not understand the documents they are signing, or do not realize the financial implications. Hiring a qualified real estate attorney early in the process can help you avoid the mistakes that, once made, can be difficult, if not impossible, to correct.

Your attorney will review the Purchase and Sale Agreement and negotiate any desired or recommended changes to the Agreement, coordinate all contingencies, assist you in dealing with any issues that may arise during a home inspection, search the title of the property, help clear any title problems that may arise, issue title insurance, calculate and prorate adjustments (including fuel, real estate taxes, water and sewer charges, transfer station fees, etc.), review the Deed, and prepare the Settlement Statement, as well as represent you at closing. If you are securing financing for the purchase, your attorney shall also prepare, obtain and review the loan documents that are required by your lender, as well as explain to you the terms and conditions of the loan documents. In addition to these standard services, a real estate attorney may also provide additional services needed throughout the home buying process, including zoning and environmental permitting, and the creation of trusts or other entities to hold title.

McCormick, Murtagh & Marcus has specialized in both residential and commercial real estate law since 1933. We look forward to assisting you with all your real estate needs.



McCormick, Murtagh & Marcus
is proud to announce
that Kathleen M. McCormick
has been named partner.

