



**KATHRYN S. WILLIAMS**

Admitted - N.H., M.A. & M.E.  
kwilliams@ksw-law.com

**JAMES W. HARDY**

Admitted - N.H.  
jhardy@ksw-law.com

57 Main Street - PO. Box 836  
Epping, N.H. 03042  
(603) 679-5223  
ksw-law.com

February, 2025

**Re: Annual Update from KSW Law**

Dear valued client,

We are writing to inform you of changes in the law and how you should update your estate plan to ensure it continues working for you and your family.

Please check our website [KSW-LAW.com](http://KSW-LAW.com), as much of this letter's information may be found there along with other resources discussing various estate planning topics in greater depth.

### **Right to Die Statute**

A death with dignity law is pending in New Hampshire, but has not yet been enacted. It passed the house, but the senate referred it for more study. Increasingly, states are adopting so called "right to die" laws that allow patients to get medical assistance to end their lives when suffering a terminal disease. We will continue to watch what New Hampshire does in this area. Maine has a death with dignity law, but Massachusetts does not.

### **Transfer on Death Deed**

Several months ago, RSA 563-D took effect, allowing New Hampshire property owners to now record a "transfer on death deed" identifying a beneficiary or sequence of beneficiaries to automatically assume a property upon the owner's death. While this new law has disadvantages (for example, naming a new beneficiary would require drafting and recording a new deed, which has costs and creates a public record), for many of our clients, especially those who wish to avoid the expense and complexity of trusts, the transfer on death deed option could be the perfect solution to evade probate administration for their real estate.

### **Powers of Attorney**

The New Hampshire legislature last substantially updated the financial power of attorney law in 2018, and if you have not already done so, please give us a call or send us an email to discuss this issue. If your power of attorney is from Maine or Massachusetts and you continue to reside there, please come in so we can assure those documents are up to date. If you have a document from a state in which you used to reside, it is important that we update to create a document in the state where you currently reside.

In the summer of 2019, New Hampshire adopted the Revised Uniform Fiduciary Access to Digital Assets Act, which provides a framework for permitting your power of attorney, or your executor or trustee upon your death, to manage your "digital assets," such as your email or social

media accounts. As these digital assets become increasingly important to our affairs, we advise our clients to amend their documents accordingly.

The New Hampshire legislature revamped the health care proxy law in the summer of 2021 and made significant changes to the "standard" form. It is important that those documents be updated as well.

Keep in mind that a power of attorney is often most needed in difficult and possibly emergency situations and is ultimately used to convince a stranger (a bank teller or a buyer of real estate, etc.) of someone's authority to make decisions on your behalf. Because of periodic changes in the law, the older your document is the greater the chances are that this hypothetical stranger will hesitate to rely upon your power of attorney and impede the orderly administration of your affairs. For this reason alone, we advise our clients to renew their powers of attorney whenever the legislature enacts a significant amendment in this area and regularly even without changes to the law. It is also important that you name a secondary power of attorney to make sure there is someone to assist you in the event the first person you have appointed is unable to do it.

When children turn 18 and become legal adults, their parents automatically lose the ability to manage their children's financial and medical decisions or even to be informed about their children's medical conditions by health care providers. It is important that young adults sign powers of attorney to make sure they get assistance if necessary. To facilitate getting these documents done, we offer discounted rates for the preparation of powers of attorney for the children of our clients who have recently turned 18.

Remember that someone acting as your power of attorney usually cannot access your trust accounts. As you get older and want your adult children to have access, it is a good idea to amend your trust and add them or one of them as a co-trustee with you.

## **Estate Taxes**

Although the current federal estate tax exemption is so large that most folks might think they need not concern themselves too much about it, no tax is permanent. The current law is due to expire this year unless Congress passes legislation to renew it. If the law is not renewed, the federal estate tax exemption (or amount a person can leave to their beneficiaries tax free) is projected to drop to \$7,000,000.00 per person or \$14,000,000.00 for a married couple. This would be a significant change, considering the current federal estate tax exemption is \$13,990,000.00 per person or \$27,980,000.00 for a married couple.

Of course, for many of our clients, it makes little difference if the law is renewed or not because they do not anticipate their assets will total more than the reduced exemption. For some people, however, who may possess significant assets, but less than the current exemptions, it will be important to monitor Congress's approach to the estate tax this year. If Congress does not vote to extend the current exemption amounts, some of our clients may want to consider making gifts in 2025 to take advantage of the current rate.

New Hampshire does not currently impose an estate tax. The federal government and some surrounding states (including Massachusetts and Maine) do impose an estate tax, however, which can have significant impacts on New Hampshire residents.

At the death of the first spouse, to the extent that spouse did not use his or her entire exemption, the surviving spouse acquires the balance of the other's exemption. Importantly,

surviving spouses cannot take advantage of his or her spouse's exemption unless an estate tax return is filed even though no taxes are owed at the time.

Federal law also allows lifetime gifts equal to the estate tax exemption. In addition, each person can give \$19,000.00 dollars per person, per year without being included in that person's lifetime gift tax exemption.

Many of our clients have estate plans originally drafted decades ago when the federal estate tax exemption was significantly less than it is today. Some of those plans may have included creating separate trusts for married couples. For those clients with such estate plans, we encourage you to consult with us so we can determine whether those older plans remain your best option.

Regarding our neighboring states, Maine has an estate tax exemption of \$6,800,000.00 and Massachusetts recently increased its estate tax exemption to \$2,000,000.00. Merely by owning real estate in these states, these taxes may impact your estate even if you are a New Hampshire resident at the time of your death. For this reason, should you own real estate in states other than New Hampshire, you should consult with our office on this matter.

The volatility in this area requires vigilance and regular consideration of your plan estate plan and is among the reasons we encourage our clients to review their plan at least every 5 years or so.

## **Long Term Care**

Many people worry about the cost of long term or nursing home care. There are limited options to preserve assets in this area as the state and federal government do not presently prioritize preserving the wealth of someone in need of expensive care toward the end of their lives.

Importantly, ordinary revocable trusts — which constitute the vast majority of trusts we prepare for our clients — DO NOT protect assets in the event a client requires long term care. Although irrevocable trusts, which people often confuse with revocable trusts, do offer some protection in some states, they do not work well in New Hampshire. One of the best options for our clients concerned about this issue is often purchasing long term care insurance.

There are other methods used to preserve assets including gifts, but the rules surrounding such gifts are difficult. When an individual applies for Medicaid to cover the costs of long term care, the state reviews the applicant's past five years of financial records and will penalize the applicant for any gifts made within that period. There are proposals to extend this so-called "look back" period even further. There is a carveout to the look back period if an adult child lives with a parent for two years prior to the parent's application for Medicaid and provides care to the parent during that period. Under such circumstances, the parent's house can often be transferred to the child without penalty. Additionally, a person can compensate caregivers, including family members, without penalty provided certain conditions are met.

For married couples, when only one spouse requires long term care, there are more ways to preserve assets for the spouse who remains at home. A spouse can retain up to \$157,920.00 dollars, income (even from the other spouse of \$2,555.00 up to \$3,948.00) and the home up to an equity value of \$730,000.00. However, when the remaining spouse or a single person enters a nursing home, all assets except \$2,500.00 to \$7,500.00 (this amount varies slightly by state) must be spent on care before the person will qualify for Medicaid.

The law in this area changes rapidly and often so regular discussion and advice is important. We have written a guide to estate planning and that book is posted on the website. It contains all the current numbers for assets and income for the Medicaid qualification process.

## **Corporate Transparency Act**

For clients who have LLCs or corporations, starting in 2024, there is a law that required you to register with US Treasury. The law was litigated in 2024 and put on hold. The Supreme Court has now lifted the suspension of the law and all entities should now file. Please contact us if you need help with the filing.

## **General Housekeeping**

As time passes, we recommend our clients reconsider whom they have appointed to roles of authority. For clients with children you opted not to empower when you originally drafted your estate plans, it may be appropriate to revisit that decision as your children continue to mature. Alternatively, if you are concerned about possible conflict within your family after your death, it might be wise to name a neutral authority as executor or trustee. You may also want to ensure your beneficiaries understand your wishes before your passing, and we are happy to attend beneficiary/family meetings to afford everyone the opportunity to ask questions.

It is also important that you always know where your originals (as opposed to copies) are stored and that they remain safe. These original documents have special importance and can usually be identified by the fact that they were signed with blue ink and have raised notary seals.

If you have a revocable trust and wish for your estate to avoid the often frustrating, costly, and time-consuming probate process, you **MUST** diligently title your assets to your trust during your lifetime. Simply creating a trust and naming it the beneficiary of your will **DOES NOT** avoid probate. To avoid probate, your assets (bank accounts, deeds, car titles, investment accounts, insurance policies, etc.) must either be titled in the name of your trust or your trust must be named as the beneficiary. To do this, you must work directly with the institution (bank, investment company, etc.) that maintains the asset. Regarding assets with recorded titles (most vehicles and real estate), the recorded title must be in the name of the trust. We are happy to assist with the deed transfers, and please contact our office if you have any questions on this topic.

We have recently created a booklet in which you can record important information from account numbers to passwords to pet instructions to friend's contact information and much more. If you would like a copy, let us know so one may be provided.

We hold seminars on estate planning topics at places like your local library. Please check the website for dates and locations on upcoming seminars in your area. If you are interested in hosting a seminar at your library or club, please contact us.

We still offer annual retainer agreements so that you can have an annual meeting with us and do routine updates for a single annual charge. We highly encourage you to do this as it ensures that we look at things every year and react to changes as necessary.

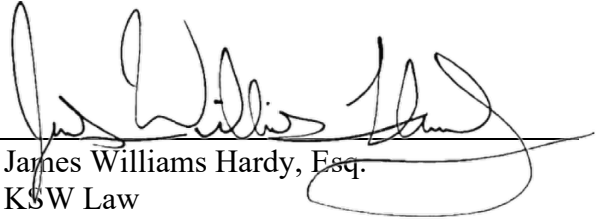
As always, it is our honor to serve as your advisors and we look forward to seeing you and assisting you in the upcoming year.

Sincerely,



---

Kathryn Swain Williams, Esq.  
KSW Law  
PO Box 836  
Epping, NH 03042  
(603) 679-5223  
kwilliams@ksw-law.com



---

James Williams Hardy, Esq.  
KSW Law  
PO Box 836  
Epping, NH 03042  
(603) 679-5223  
jhardy@ksw-law.com