

McCormick, Murtagh Marcus & Almgren

ATTORNEYS AND COUNSELORS AT LAW

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EDWARD G. McCORMICK

PRACTICE AREAS

Residential Real Estate

Commercial Real Estate

Business & Corporate Law

Elder Law

Estate Planning

*Estate Administration
& Probate Law*

Municipal Law

*Land Use, Zoning &
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DO I NEED A HEALTH CARE PROXY?

By: Edward G. McCormick, Esq.

WHAT IS A HEALTH CARE PROXY?

A Health Care Proxy is a legally binding document, which allows another person, selected by you, to be your Agent to make medical or health care decisions when you are incapacitated or unable to communicate your wishes.

Every person has the right to accept or decline medical care, and, so long as you are able to communicate to a medical authority your wishes, those wishes must be honored. If you are unable to communicate your wishes, your Agent's authority becomes effective and he or she will be able to make medical decisions for you, for as long as you are unable to do so. If you regain the ability to communicate your wishes, the authority of your Agent ceases.

WHO SHOULD I SELECT TO SERVE AS MY HEALTH CARE AGENT?

You should select a person whom you trust to follow your wishes as to what medical care you want and do not want. You should select a trusted person who will not make medical care decisions based on his or her wishes or values, but rather one who will carry out *your* wishes.

HOW DO I CREATE A HEALTH CARE PROXY?

Massachusetts law requires that a Health Care Proxy must be in writing and must be witnessed by two people, who are 18 years of age or older. You can obtain an update Health Care Proxy from your attorney, which addresses the new Health Care Privacy Act.

Once you have signed a Health Care Proxy, you should give a copy to your Agent, all immediate family members, or any person with whom medical authorities would confer if you were involved in a medical emergency. In addition, you should discuss your wishes with your Agent and give your Agent specific instructions.

WHAT IF I DO NOT HAVE A HEALTH CARE PROXY?

In the event you become incapacitated and unable to communicate with your doctors and you have not signed a Health Care Proxy, it may become necessary for your family members to file a petition with the Probate Court in order to have a legal guardian appointed to make medical decisions for you. The petition for guardianship is a lengthy and expensive process with no guarantee that a court will be willing to grant a guardianship for such purpose.

If you had a Health Care Proxy in place, the medical authorities would have taken instructions from your Agent, just as if those instructions were coming from you. The present Health Care Proxy statute allows you to include any specific directions regarding end of life situations that you desire.

A Health Care Proxy is a very important component of Estate Planning. You should give serious consideration to appointing a trusted person as Agent and discuss your wishes regarding your medical care with your Agent. We, at McCormick, Murtagh Marcus & Almgren can assist you in preparing your Health Care Proxy and other estate planning documents.



PAULA K. ALMGREN

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CAN ONE MEMBER OF A MARRIED COUPLE QUALIFY FOR MEDICAID AND STILL KEEP ALL OF THE COUPLES ASSETS AND INCOME?

By: Paula K. Almgren, Esq.

David and Alice have been married 52 years. David has advanced Alzheimer’s and he can no longer be cared for at home. Alice came to see me after their family doctor told her she needs to place David in a nursing home. She told me that they both grew up during the depression and have always tried to save something each month. Their assets, totaling \$120,000.00, not including their home, are as follows:

Savings Account	\$ 35,000.00
CD	\$ 65,000.00
Money Market	\$ 17,000.00
Checking Account	\$ 3,000.00
	\$120,000.00

David gets a social security check for \$900.00 each month; Alice’s check is \$300.00. Alice is worried because nursing homes in Berkshire County cost about \$6,500.00 per month and their entire life savings will be gone in about 1 ½ years. Alice is also afraid she will not be able to pay her monthly bills, because a neighbor told her that the nursing home will be entitled to all of David’s social security check.

I have good news for Alice. It is possible that she will get to keep everything ... all of their assets and all of her and David’s income ... and still have the state Medicaid program (called MassHealth in Massachusetts) pay David’s nursing home costs.

If Alice applied for Medicaid to the Division of Medical Assistance (DMA) on her own, or with the help of someone from the nursing home, but without the help of an Elder Law attorney, and did things strictly according to the way the DMA tells her, she would be able to keep about ½ of the couples assets, or \$60,000.00, as her **Community Spouse Resource Allowance (CSRA)**. Alice would have to spend-down their remaining \$60,000.00 on David’s care before he would qualify for MassHealth. Alice will also be entitled to a minimum monthly income, presently \$1,562.00.

With the proper legal advice, Alice will be able to keep all of her own monthly income of \$300.00, all of her husband’s monthly income of \$900.00, for a total of \$1,200.00. Because Alice is entitled to a minimum monthly income of \$1,562.00, she has a shortfall of \$362.00 per month. Through a timely appeal to the Board of Hearings at the DMA, Alice can keep the remaining \$60,000.00 in assets that she would have otherwise had to spend-down. **Alice is entitled to keep their entire savings, both her and her husband’s income, there is no spend-down, and Medicaid will pay for David’s nursing home care.**

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Homeowners:

Do you have a Declaration of Homestead to protect your home from creditors?

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Using the above approach and others, married couples can generally protect all of their marital assets for the care of an ill spouse either in their home or in a nursing home.

The law in Massachusetts does not intend to impoverish one spouse because the other needs care in a nursing home – you just need the right guidance and direction.

Different rules apply where both spouses are at home with one needing care; where both spouses are in a nursing home; or in the case of widows or unmarried individuals. We, at McCormick, Murtagh Marcus & Almgren can help you formulate a plan that is best suited to meet your family’s personal, financial, and health care needs.



DANA E. MARCUS

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Corporate Clients:

Are you in compliance with the new Massachusetts Business Corporations Act?



DO YOU NEED A LAWYER FOR A CLOSING?

By: Dana E. Marcus, Esq.

Whether you're buying or selling, or putting a mortgage on your home (except for some home-equity loan products where the lender handles the transaction in-house), you will need the assistance of a lawyer.

In a sale, your lawyer will prepare the purchase and sale agreement or review the agreement if it was prepared by someone else and suggest any desired changes to the agreement; calculate and pro rate items to be adjusted at closing including fuel, real estate taxes, water and sewer charges, transfer station fees, etc.; obtain payoff figures of your mortgage(s) and secure and record Discharge(s) of the mortgage(s); prepare and review all closing documents; attend the closing, and record the closing documents and disburse funds from closing. In addition, your lawyer will assist in resolving any questions about the title to the property and wetland and environmental issues, including Title 5, the statewide regulations that govern septic systems.

If you're buying, the lawyer will review the purchase and sale agreement and negotiate any desired changes to the agreement; search the title, resolve any title issues and secure title insurance (an owner's title policy for you, and a loan policy for the lender if you're borrowing any portion of the purchase price and the property is being put up for collateral); obtain a Municipal Lien Certificate (a certificate from the city or town in which the property is located that provides assessed valuation and the current taxes, and discloses any past due taxes, together with interest and penalties); calculate and pro rate items to be adjusted at closing including fuel, real estate taxes, water and sewer charges, transfer station fees, etc.; prepare and review the loan documents that are required by your lender; attend the closing, and record closing documents and disburse funds from closing. In addition, your lawyer will assist in reviewing the zoning by-laws and obtaining any permits necessary for your intended use of the property; create a Trust, Limited Liability Company, or other "vehicle" to hold the title to the property; and resolve wetland and environmental issues.

If you're mortgaging a property that you already own, your lawyer will provide some of the services outlined above in the "Buyer" paragraph. These services include the title search and lender's title insurance, document preparation, closing the loan, disbursing the funds, and recording the documents.

We, at McCormick, Murtagh, Marcus & Almgren have been providing these services to our clients since 1933, and we'd be more than happy to answer any questions you may have. We look forward to working with you on a closing, when the opportunity arises.





KATHLEEN M. McCORMICK

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MECHANIC'S LIENS- HOW IMPORTANT IS A CONTRACT?

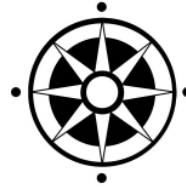
By: Kathleen M. McCormick, Esq.

A contract is essential to protect the rights of a Contractor and Subcontractor. The new changes in the Massachusetts Mechanic's Lien Statute benefit Contractors and Subcontractors and broaden the scope of labor and materials subjected to lien protection, simplify the process for recording liens and settling disputes, and generally increase the likelihood of prompt payments to Contractors. But many Contractors and Subcontractors are not able to reap the rewards of this new statute because they do not start with the basic requirement-- a contract.

The first step in protecting your lien rights is to enter into a contract prior to commencing work. The contract does not need to be complex but it must be in writing and enforceable in Massachusetts in order to satisfy the statute. Though business is often done on a hand shake, this will not allow you to secure a lien for the work that you completed if a problem arises.

According to the changes in the statute, the work does not have to relate to a building or a structure, as it did before, but it also affords landscapers, parking lot surfacers, and utility contractors the same lien rights once only afforded to building contractors. Though the statute broadens the scope subject to lien protection, it has also created a strict and complicated timeline to secure liens before losing protection. The timeline requires action within 60 to 90 days, depending on the circumstances, to ensure the Contractor or Subcontractor secure lien rights. Due to this strict and short timeline, it is imperative to stay on top of billing to determine if it will be necessary to secure a lien to ensure payment. As soon as you sense a problem, you should take the needed steps to ensure you are protected under the statute - but remember you must start with a contract.

We, at McCormick, Murtagh Marcus & Almgren can assist you in drafting a contract to meet your business needs and the new changes in the Mechanic's Lien Statute.



TO OUR CLIENTS, FRIENDS & BUSINESS ASSOCIATES

**In conjunction with The Southern Berkshire Chamber of Commerce
"Business After Hours"**

**MCCORMICK, MURTAGH MARCUS & ALMGREN
ATTORNEYS AND COUNSELORS AT LAW**

Cordially invite you to our Open House

PLEASE JOIN US FOR COCKTAILS AND HORS D'OEUVRES

**THURSDAY, JULY 14TH 2005
4:30PM TO 7:30PM**

**WILLIAM CULLEN BRYANT HOUSE
390 MAIN STREET
GREAT BARRINGTON**