



FREE GUIDE · 2026 EDITION

# The Massachusetts estate planning *guide.*

Plain answers about probate, wills, trusts, the estate tax, and long term care, in eight short chapters.

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| <b>3</b> Living trusts      | <b>4</b> Funding          |
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# What is inside

Eight short chapters, each about five minutes. Read them in order, or start with the question on your mind.

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This guide is general information about Massachusetts law as of October 2026. It is not legal advice for your situation, and reading it does not make you a client of WisePath Estate Planning. Attorney advertising.

## CHAPTER ONE

# Probate in Massachusetts, explained

# 1

What the court does when someone dies, how long it usually takes, and which property passes outside it.



### KEY POINTS

- Probate is the court process for property a person owned in their name alone, with no joint owner or named beneficiary.
- In Massachusetts it runs through the Probate and Family Court under General Laws chapter 190B.
- Creditors generally have one year from the date of death to bring claims, so most estates stay open at least that long.

## What probate is

When someone dies, the property they owned has to be transferred to the people who inherit it. For property in the person's name alone, with no joint owner and no beneficiary named, that transfer usually goes through probate, a process run by the Probate and Family Court.

The court appoints a personal representative, often the person named in the will, to gather the property, pay debts and expenses, and distribute what is left. If there is no will, Massachusetts law decides who inherits.

## How it works in Massachusetts

Massachusetts follows the Massachusetts Uniform Probate Code, General Laws chapter 190B. Many estates use informal probate, handled by a court magistrate without a hearing when the paperwork is in order and no one objects. Others need formal probate, where a judge decides.

Estates with no real estate and personal property worth \$25,000 or less, not counting one car, can often use a simpler voluntary administration.

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## How long it takes, and what is public

Creditors generally have one year from the date of death to bring claims against the estate, so many estates stay open at least that long. Court filings, including a will once it is filed, are generally public records.

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## What passes outside probate

Some property goes straight to the people named, without the court:

- Property owned jointly with someone who survives you, when the title gives the survivor the whole
- Accounts with a named beneficiary, such as life insurance, retirement accounts, and payable on death accounts
- Property held in a funded trust

This is why the way property is titled matters as much as what a will says.

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## Questions people ask

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### Does having a will avoid probate?

No. A will tells the court what you want, but property in your name alone still goes through probate. A funded trust is one common way to avoid it.

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### Who pays the costs of probate?

Court fees, publication costs, and professional fees are generally paid from the estate before anything is distributed.

### Official sources

- [Massachusetts Probate and Family Court](#)
- [Massachusetts Uniform Probate Code, General Laws chapter 190B](#)

**Questions about your own situation?** We are glad to explain how this applies to you.

[Ask a question](#)[Start your plan](#)

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## CHAPTER TWO

# Wills and trusts: how they work together



What a will does that a trust cannot, and how a pour over will ties them together.



### KEY POINTS

- A will names a personal representative and, for parents, a guardian for minor children.
- Property passing under a will goes through probate. Property in a funded trust does not.
- Beneficiary designations, not your will, control accounts like life insurance and retirement plans.

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## What a will does

A will says who receives your property, names the personal representative who settles your estate, and lets parents nominate a guardian for minor children. To take effect, a will goes through probate.

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## Signing a will in Massachusetts

A Massachusetts will is signed by you and by two witnesses. Most are also made self proving with a notarized affidavit, which lets the court accept the will without tracking down the witnesses later.

## The pour over will

When a trust is the center of a plan, the will is usually a short pour over will. It directs anything left in your name alone into your trust, so everything ends up under the trust's terms. Property that pours over still goes through probate first, which is why funding the trust matters.

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## What neither document controls

Accounts with a named beneficiary, such as life insurance, retirement accounts, and payable on death accounts, go to the person named on the account. Jointly owned property usually goes to the surviving owner. Keeping these designations current is part of any plan.

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## Questions people ask

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### Can I name a guardian in my trust instead of my will?

Guardianship nominations for minor children are made in a will, which is one reason a trust based plan still includes one.

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### If my will and my beneficiary form disagree, which wins?

For that account, the beneficiary form generally controls.

### Official sources

- [Massachusetts Uniform Probate Code, General Laws chapter 190B](#)

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## CHAPTER THREE

# What a revocable living trust does

# 3

Control while you live, a smooth handoff afterward, and the things a trust cannot do.



### KEY POINTS

- You usually serve as your own trustee and keep full control. You can change or cancel the trust at any time.
- When you die or can no longer manage, the successor trustee you chose steps in without a court case for the property the trust holds.
- A revocable trust does not cut your income taxes, and it does not shield savings from creditors or nursing home costs.

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## The basic idea

A revocable living trust is an arrangement you create to hold your property. You sign a trust agreement, name yourself as trustee, and name a successor trustee to take over later. The property is then put in the name of the trust.

While you are alive and well, very little changes. You buy, sell, and spend as before. Revocable means you can amend the trust or revoke it completely.

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## What it does well

- Avoids probate for the property the trust holds
- Lets your successor trustee manage things if you become unable to, without a court appointed conservator
- Keeps the details private, since the trust is generally not filed in court

- Lets you set terms, such as holding a child's share in trust until an age you choose

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## What it does not do

Because you keep control, the law treats the property as still yours. A revocable trust does not reduce income taxes, does not protect your savings from your own creditors, and does not shield savings from nursing home costs. Those goals involve different tools and different timing.

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## Couples and taxes

Married couples may use one joint trust or separate trusts. The choice can turn on the Massachusetts estate tax, family circumstances, and simplicity, and it is one of the decisions worth discussing with an attorney.

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## The step that makes it work

A trust only controls property that is actually in it. Moving property into the trust is called funding, and it is the step most often left undone. [The guide to funding your trust](#) explains how it works.

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## Questions people ask

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### Do I lose control of my property?

No. As trustee of your own revocable trust you keep full control, and you can change the terms whenever you want.

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### Do I still need a will?

Yes. A short pour over will catches anything left outside the trust and names a guardian for minor children.

### Official sources

- [Massachusetts Uniform Trust Code, General Laws chapter 203E](#)

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## CHAPTER FOUR

# Funding your trust: the step people miss



How each kind of property gets into a trust, or points to it, and what happens to anything left out.



### KEY POINTS

- A trust only controls property that is titled in its name or that names it as beneficiary.
- Your home moves into the trust by a new deed recorded at the registry of deeds.
- Retirement accounts are not retitled. They use beneficiary designations instead.

## Why funding matters

Signing a trust is the first step. Funding is the second: putting your property in the trust's name, or naming the trust to receive it. Property left in your name alone may still go through probate, even with a well drafted trust.

## How common property is handled

- Your home: a new deed transfers it to you as trustee, recorded at the registry of deeds. In Massachusetts a homestead declaration may also be recorded again so the protection continues.
- Bank and investment accounts: retitled in the trust's name, or set to pass to the trust at death, depending on the institution.
- Retirement accounts such as IRAs and 401(k) plans: not retitled, since changing ownership can trigger taxes. The beneficiary designation is updated instead, and whether to name the trust is a decision to make with your attorney.

- Life insurance: the beneficiary designation is updated as the plan calls for.
- Household belongings: an assignment of personal property places them in the trust.

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## Keeping it funded

Funding is not a one time event. When you buy a home, open an account, or refinance, the new property should be titled the same way. A short funding checklist, reviewed every year or two, keeps a plan working.

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## Questions people ask

### Does refinancing undo funding?

Sometimes a lender asks for the home to be deeded out of the trust to close a refinance. If that happens, it should be deeded back afterward.

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### Do I need to retitle my car?

Practices vary. A car is often handled another way rather than retitled. Your attorney can explain what fits your plan.

### Official sources

- [Massachusetts land records](#)

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## CHAPTER FIVE

# Powers of attorney and health care proxies

# 5

Who acts for you if you cannot, for money and for medical decisions, and what happens without these documents.



### KEY POINTS

- A durable power of attorney names an agent for financial matters, and it keeps working if you become incapacitated.
- A Massachusetts health care proxy names an agent for medical decisions when your doctor determines you cannot make them yourself.
- Without these documents, a family may need to ask the Probate and Family Court to appoint a conservator or guardian.

## Durable power of attorney

A power of attorney lets you name an agent to handle your financial affairs: paying bills, managing accounts, dealing with insurance, and signing on your behalf. Durable means it continues if you become incapacitated, which is exactly when it is needed.

## Health care proxy

Massachusetts uses a health care proxy, under General Laws chapter 201D, to name a health care agent. Your agent makes medical decisions only when your attending physician determines that you cannot make or communicate them yourself, and is expected to follow your wishes as best they know them.

A HIPAA authorization is a companion document that lets the people you choose receive your medical information, so they can stay informed and help.

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## Writing down your wishes

Massachusetts does not have a living will statute, but you can still write down your wishes about end of life care to guide your agent. For people with serious illness, a clinician can complete a MOLST form, a medical order that travels with the patient.

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## If there are no documents

If you cannot act and have not named agents, your family may need to petition the Probate and Family Court for a conservator to manage money or a guardian to make personal and medical decisions. That process takes time and is public.

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## Choosing your agents

Choose people you trust who can act calmly and are reachable when needed. Name a backup for each role, and tell the people you choose where your documents are.

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## Questions people ask

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### Can my spouse automatically make decisions for me?

Not for everything. Naming your spouse as your agent is how you make that authority clear.

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### When does a power of attorney stop working?

It ends at death. After that, the personal representative or successor trustee takes over.

### Official sources

- [Health care proxies, General Laws chapter 201D](#)
- [Massachusetts MOLST](#)

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## CHAPTER SIX

# Naming a guardian for your children

# 6

Who would raise your children, who would manage their money, and why those can be different people.



### KEY POINTS

- Parents can nominate a guardian for minor children in their wills. The Probate and Family Court makes the appointment.
- Without a nomination, the court decides among the people who come forward.
- Raising a child and managing a child's inheritance are separate jobs, and a trust lets you choose a different person for each.

## Why it matters

If both parents die or cannot care for their children, someone must be appointed to raise them until they turn eighteen. A will is where parents nominate that person.

## How appointment works

The Probate and Family Court makes the appointment and generally honors the parents' nomination when it serves the child's best interest. Without a nomination, the court decides among relatives and others who come forward, which can take time and invite disagreement.

## Raising a child, and managing money

The guardian raises the child. Managing the child's inheritance is a separate job. Without a trust, money left to a minor may need a court appointed conservator and is turned over outright at eighteen. A trust lets you choose a trustee to manage the money and decide the

ages when your children receive it.

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## Choosing well

Consider values, age, health, location, and the relationship your children already have with the person. Name a backup, and talk with the people you choose before you name them.

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## Questions people ask

### Can I name a couple as guardians?

Yes, though it helps to think about what happens if the couple separates. Some parents name one person, with the other as a backup.

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### Can I change my choice later?

Yes. You can update your will whenever your circumstances or your choices change.

### Official sources

- [Massachusetts Uniform Probate Code, General Laws chapter 190B](#)

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## CHAPTER SEVEN

# The Massachusetts estate tax, in plain terms



Who owes it, how the \$2,000,000 threshold works, and why married couples plan differently in Massachusetts.



### KEY POINTS

- Massachusetts has its own estate tax, separate from the federal tax, and it reaches far more families.
- For deaths in 2023 and later, an estate of \$2,000,000 or less owes no Massachusetts estate tax.
- Massachusetts does not let a surviving spouse use the first spouse's unused exemption, which is why couples often plan with two shares.

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## Two estate taxes, very different reach

The federal estate tax applies only to very large estates. The Massachusetts estate tax starts much lower, so it can matter for families who own a home, retirement savings, and life insurance.

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## The threshold

For people who die in 2023 or later, an estate of \$2,000,000 or less owes no Massachusetts estate tax. Above that amount, tax is due, and a credit now applies so the tax no longer jumps suddenly at the threshold the way it did under the old rules.

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## What counts

The estate generally includes everything you own at death: your home, investments, retirement accounts, and life insurance you own, even though some of those pass outside probate.

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## Married couples

Property passing to a surviving spouse is generally not taxed at the first death. But Massachusetts has no portability, so the first spouse's \$2,000,000 exemption is lost unless the plan uses it. A credit shelter trust, sometimes called a family trust, is a common way to preserve it for the family.

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## Questions people ask

### Does Massachusetts have a gift tax?

No, but lifetime gifts can still affect estate tax calculations, so large gifts are worth discussing first.

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### Do retirement accounts count?

Yes. They are part of the taxable estate even though they pass by beneficiary designation.

### Official sources

- [Massachusetts estate tax, General Laws chapter 65C](#)
- [A guide to estate taxes, Massachusetts Department of Revenue](#)

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## CHAPTER EIGHT

# Long term care and MassHealth: where to start



Why the rules feel confusing, a few facts worth knowing, and who to talk with.



### KEY POINTS

- MassHealth, Massachusetts' Medicaid program, can pay for nursing home care for people who qualify medically and financially.
- Gifts made within the look back period, generally five years, can delay eligibility.
- A standard revocable trust does not keep savings from counting toward MassHealth limits.

## Why it feels confusing

Long term care brings together medical needs, money, and government rules at a stressful time. Eligibility depends on income, assets, and timing, the rules are detailed, and the application asks for years of records. Many families do not know where to start, and that is normal.

## A few facts worth knowing

- MassHealth looks at what you own and what you have given away. Transfers for less than fair value within the look back period, generally five years, can cause a period of ineligibility.
- Property in a revocable trust counts as yours.
- The home has special rules, especially when a spouse still lives there.

- After death, MassHealth may seek repayment from an estate for benefits it paid. This is called estate recovery.

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## Who to talk with

We think MassHealth applications are best handled by people who work on them every day. We often refer families to Silver Lining Solutions in Topsfield, a team that prepares and follows MassHealth applications for long term care. They are not a law firm.

For the legal side, including your estate plan and how its documents work, we are here.

### About Silver Lining Solutions

WisePath and Silver Lining Solutions refer families to each other. Neither pays the other for referrals, and you are free to choose anyone.

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## Questions people ask

### **Will my estate plan protect my house from nursing home costs?**

A standard estate plan is not designed to do that. Protection strategies have their own rules and timing, and they deserve a careful conversation before any decision.

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### **When should we start an application?**

Timing matters, and the right time depends on the facts. People who handle applications every day can explain the options for your situation.

### Official sources

- [MassHealth](#)

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### Ask a questionStart your plan

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# Ready to put a plan *in place*?

Every WisePath fee is flat and in writing before you pay anything.

The essentials, a will, a power of attorney, and a health care proxy, are \$500, or \$750 for a couple. Trust plans start at \$3,000.

## Talk it through

A 30 minute consult on Zoom with attorney Jeffrey T. Stinson.

[wisepathlegal.com/consult](https://wisepathlegal.com/consult)

## Come to a free seminar

An evening of plain answers, hosted by Salem Five.

[wisepathlegal.com/salemfive](https://wisepathlegal.com/salemfive)

## Start your plan

Answer the guided interview on your own time.

[wisepathlegal.com](https://wisepathlegal.com)



## Scan to book a consult.

Thirty minutes on Zoom, with the flat fee in writing.

WisePath Legal LLC, doing business as WisePath Estate Planning, is a Massachusetts law firm. Jeffrey T. Stinson, Esq. is the attorney responsible for this guide. It is general information, not legal advice, and no attorney client relationship is formed until an engagement letter is accepted. Attorney advertising.