

The latest news, views, and announcements
Not intended as legal advice

INSIDE

Business Developments

Learn about everything that has been happening at Brennan & Rogers, PLLC over the last year.

Topics of Interest

We cover a wide range of topics, including changes to property tax laws affecting seniors, a new law affecting businesses and LLCs, and the basics of wills and trust-based planning.



Review Our Service!



Smilie G. Rogers, Esq., Licensed in Maine,
Massachusetts, and New Hampshire

Mary Kathryn Brennan, Esq., Licensed in Maine

James S. Mundy, Licensed in Maine

Michael A. Cahill, Esq., Licensed in Maine

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Business Developments

❖ **2023 Best of the Seacoast**



Brennan & Rogers, PLLC is the winner of Best Law Firm in the 2023 Best of the Seacoast Awards! We want to thank everyone who voted to help us defend our title for the third year in a row! We greatly appreciate the support!

❖ **Zoom Meetings**

We are holding meetings in person, and all our office staff has been vaccinated. Zoom meetings are still available for those who wish to continue practicing social distancing.

❖ **Meet Our New Attorney, James S. Mundy**

Please give a warm welcome to the newest addition to our team – James Mundy! James joined Brennan & Rogers in April and advises clients on estate planning and probate matters. James graduated from the University of Texas School of Law at Austin in 2006. He worked as an attorney in Alaska before moving to Maine in 2012. James has been recognized by his peers as a Rising Star in Super Lawyers from 2017 – 2020. James was an owner/partner at Whitney, Mundy & Mundy in South Berwick, Maine, for several years, and has significant experience as a real estate, estate planning, and probate attorney.



Property Tax Law Update

In our last newsletter, we reminded our clients over the age of 65 to apply for the Property Tax Stabilization Program for Seniors. This law was enacted in August 2022 and allowed Maine seniors to “freeze” the property taxes on their Maine residence indefinitely, as long as they re-applied annually to continue participating in the program.

Effective October 11, 2023, the Maine Legislature amended the Property Tax Stabilization Program for Seniors so that it would only apply to the fiscal year running from July 1, 2023 to June 30, 2024. If you applied in the first round of application, you effectively froze your taxes for the current fiscal year, but there will be no reapplication process and no further benefits under this program.


The Legislature has expanded two other programs designed to provide tax relief, the Property Tax Fairness Credit and the Property Tax Deferral Program. The Property Tax Fairness Credit provides up to \$2,000 either as a tax credit or direct payment to Maine residents who either rent or own a primary residence in Maine and who meet certain income requirements.

The Property Tax Deferral Program provides loans to Maine residents who are over the age of 65 or disabled and who qualify based on asset and income criteria, which is paid back after the owner dies or sells the home. More information on these programs is available at <https://www.maine.gov/revenue/taxes/tax-relief-credits-programs/property-tax-relief-programs>.

Social Security Increase

The Social Security Administration has announced that its beneficiaries will see an increase of 3.2 percent in their monthly Social Security checks beginning January 2024. This cost-of-living adjustment (COLA) is significantly smaller than the historic increase of 8.7 percent that went into effect at the beginning of this year.

If you are a Social Security beneficiary, you can get an estimate of how much more you will receive in 2024 by using the online My Social Security portal on the Social Security Administration website: <https://www.ssa.gov/myaccount/>.



MaineCare Long-Term Care

MaineCare is a program administered by the State of Maine that provides financial assistance to certain residents who need Long Term Care. The benefits cover a wide range of services, including assisted living, nursing facility care, and home-based services. The rules to qualify for the various MaineCare Long Term Care programs are complex, but the basic requirements are the applicant must: 1) be a Maine resident; 2) be 65 or older, blind, or disabled; 3) meet the medical level of care requirements; and 4) meet the income and asset eligibility requirements.


While clients might not think to contact an attorney after a health event or general decline in health, the high cost of care and the complexity of the application process have made legal assistance invaluable.

Our attorneys use sophisticated legal strategies to help clients qualify for various MaineCare benefits and can represent clients in the application process. They can also help clients with advance planning to avoid future costs of care before they arise through supplemental needs trusts, irrevocable trusts, and other estate planning documents.

MaineCare Penalty Divisor Update

Every year, the State of Maine determines the average cost of a nursing facility private rate in the State of Maine. This number is called the “penalty divisor” because the Maine Department of Health and Human Services (DHHS) uses it to determine the penalty period for a long-term care applicant who has transferred, given away, or sold any asset for less than fair market value (FMV) in the five years preceding the date of application. For 2024, the penalty divisor has increased from \$8,476 to \$10,739.

DHHS calculates the “penalty period” for nursing facility residents by dividing the amount of the gift by the penalty divisor. The resulting number will be the number of months that the applicant will not be eligible for benefits.



The penalty period begins on the date of the application rather than the date of the asset transfer. Certain transfers, such as those between spouses, are exempt from this rule, but all transfers must be handled with extreme care and caution.


Supplemental Needs Trusts

A supplemental needs trust or special needs trust (SNT) is established for the benefit of an individual with disabilities (the beneficiary). It is intended to maximize the beneficiary's resources without negatively impacting the beneficiary's eligibility for means-tested public benefits, such as Supplemental Security Income (SSI) and Medicaid. Someone other than the beneficiary, called the Trustee, manages the assets in the trust and is responsible for distributing trust assets for the benefit of the beneficiary in a manner that supplements, but does not supplant, the beneficiary's government benefits. The beneficiary should never serve as Trustee. There are two main types of SNTs: First Party SNTs and Third Party SNTs.

A First-Party SNT, also known as a self-settled SNT or a d4a trust, is a type of SNT established by an individual who receives or expects to receive government benefits. That person is both the creator (Settlor) of the trust and the beneficiary of the trust as the person creates this SNT for their own benefit. A First-Party SNT is most commonly used when the individual with benefits receives an inheritance or a legal settlement that would otherwise disqualify them from qualifying or continuing to qualify for public benefits.

First-Party SNTs must be irrevocable, meaning they cannot be modified or terminated after creation, ensuring the beneficiary cannot revoke the trust after the funds are transferred. First-Party SNTs also require a Medicaid payback provision. Essentially, the state's Medicaid program must be named as the remainder beneficiary of the trust, and any funds remaining in the trust at the beneficiary's death are used to reimburse the State.

Third-Party SNTs are established by someone other than the beneficiary. These are commonly used by family members as part of their estate plan as a way to provide for a loved one without affecting public benefits. Third-party SNTs can be incorporated into a will or inter vivos trust, or they can be created as a stand-alone instrument. SNTs created under a will or another person's living trust do not get funded until after the death of the person who created it. A stand-alone SNT can be funded at any time and allows for lifetime gifting from multiple people



who wish to provide for the beneficiary. The Third-Party SNT can also be a beneficiary of an estate plan, so gifting upon death is available as well.

The Third-Party SNT can be either irrevocable or revocable, so long as the beneficiary does not hold the power to revoke the SNT. The State does not need to be named as a remainder beneficiary upon the death of the primary beneficiary.

Revisiting Agent Selections in Your Estate Plan


Every estate planning document appoints one person or more to act as your agent and carry out your wishes, make decisions, or take actions for your benefit. Generally, the more authority and discretion granted to the agent in your estate planning documents, the more helpful that agent can be in implementing your plan.

In many cases, you will no longer be able to supervise or control what your agent does on your behalf or on behalf of your estate. This lack of direct supervision, coupled with the broad authority of the agent, means that you must trust your agents implicitly to be honest, decisive, and efficient. Your documents should also name enough backup agents with the same qualities in case something happens to your initial agent; this helps to avoid the need for court proceedings to appoint someone to act.

Our relationships with the people around us and their suitability to be a good agent tend to change more quickly than any other factor requiring updates to your estate plan. For that reason, we recommend that review your current plan to make sure that all of your agents are still suitable. Conversely, if your children have become adults since you last updated your plan you might also consider whether they are suitable agents to add to your plan.

Corporate Transparency Act

If you have an LLC or business corporation, or if you are thinking about forming one in the future, you should be aware of a recent federal law called the Corporate Transparency Act (CTA). The CTA was established by the Anti-Money Laundering Act of 2020 as part of an overall effort to track the beneficial ownership of legal entities. Under the new law, the United States Treasury Department's Financial Crimes Enforcement Network (FinCEN) will establish and maintain a national registry of beneficial owners of "reporting companies," which would include



Maine limited liability companies, business corporations, and many other types of entities, even if they are just a family business or designed to hold real estate. Implementation goes into effect January 1, 2024.

The CTA requires so-called “reporting companies” to file reports identifying a company’s beneficial owners. Reporting companies must submit to FinCEN the personal identifying information of persons who have “substantial” control over the business or who own 25% or more of the equity in the business. This means every reporting company will have at least one person to report, regardless of its ownership structure. The required information in each report includes 1) the full legal name of the reporting company and all trade or d/b/a names 2) the street address of the principal place of business 3) The jurisdiction of formation 4) the full legal names of all beneficial owners 5) the dates of birth of all beneficial owners 6) The residential addresses of all beneficial owners and 7) copies of government-issued IDs.


The CTA requires that a beneficial owner must be a natural person, not an entity. If you have an ownership interest in any such qualifying reporting company, make it a priority to consult with your attorney, CPA, or other professional to determine the impact the CTA may have on you and your business interests.

Mortuary Trusts (Prepaid Burial Contracts)

Effective October 25, 2023, the Department of Health and Human Services increased the limit of prepaid burial contracts from \$12,000 to \$18,000. This means that an irrevocable mortuary trust with a balance of \$18,000 or less will be considered exempt and will not be counted as an asset for the purposes of determining MaineCare Long-Term Care eligibility. The use of an irrevocable mortuary trust is beneficial in most spend-down plans, and this increase allows more assets to be saved by the applicant and their family. The Department must also increase the exempt amount each year based on the Consumer Price Index beginning in 2025.

Changes to Laws Governing Retirement Savings

The Setting Every Community Up For Retirement Enhancement Act of 2022 (SECURE 2.0) became law on December 29, 2022, and made major changes to the federal laws that apply to retirement savings and accounts. Some of these changes are already in effect, and others will be rolled out over the next 10 years.



Some of the changes relate to Required Minimum Distribution (RMD) Rules for qualified retirement accounts, which include IRAs and 401(k)s:


- the mandatory starting age for RMDs was increased from 72 to 73 and will increase to 75 effective January 1, 2033.
- Beginning in 2024, pre-death RMDs will not be required for Roth accounts.
- High earners to make catch-up contributions to qualified retirement plans on an after-tax basis beginning in 2024.
- If you are currently repaying student loans, SECURE 2.0 may allow your employer to make matching contributions to your qualified retirement account.

SECURE and SECURE 2.0 have also drastically changed how different classes of beneficiaries are treated upon the death of the plan participant. These changes are complex, but the key takeaway is that participants must be much more careful in making beneficiary designations, especially if any intended beneficiary is not the participant's spouse. It is always a good time to revisit your beneficiary designations or discuss other impacts of SECURE 2.0 with your plan administrator, financial advisor, or CPA.

If you have significant assets in an IRA, 401(k), 403(b), or a similar retirement plan, you should also consider whether a direct transfer to a beneficiary upon your death is appropriate due to their age or other factors, such as a disability or receipt of government benefits. If your estate plan involves planning for retirement accounts, such as an IRA trust, we recommend reviewing your plan to ensure it will still accomplish your goals under SECURE 2.0 and related regulations.

2024 Gift and Estate Tax Updates Exclusion

The United States Internal Revenue Service has not yet announced the annual gift tax exclusion (previously \$17,000 per recipient) or the updated lifetime estate and gift tax exemption (previously \$12,920,000 per individual).



Maine has not yet announced the estate tax exclusion amount for 2024, which was previously \$6,410,000 per individual. Massachusetts, however, has announced an increase in its estate tax exclusion to \$2,000,000 per individual.

Regardless of the 2024 exclusion amount, everyone should be aware that the law that doubled the federal estate tax exemption in 2017 will sunset at the end of 2025. Without action by Congress, the estate tax exemption starting in 2026 will be approximately \$7,000,000 per person, or \$14,000,000 per couple, or around half of the current levels.

Interested in Exploring More Topics of Interest?

You can find our annual newsletter from last year as well as our archive of newsletters going back to 2019 on our website, www.brennanrogers.com, under the “Resources” tab on the upper right. Past newsletters addressed a range of topics, including:

- ❖ **Guardianships**
- ❖ **Social Security Benefits**
- ❖ **Comparing Traditional Medicare and Medicare Advantage Plans**
- ❖ **Supplemental Needs Trusts (SNTs)**
- ❖ **Revocable Transfer on Death Deeds (TODDs)**
- ❖ **ABLE Accounts**
- ❖ **And Much More!**

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<https://g.page/r/CdtElf4ZT1WUEBM/review>

❖ **Check out our Legal Blog!**

We maintain an active blog titled [Planning for Life's Transitions](#). It touches on a variety of topics that we come across every day. Please let us know if you have any questions.

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