BRENNAN & ROGERS PLLC

Informed and compassionate legal care

Annual Client Relationship Service Newsletter

December 2024

The latest news, views, and announcements

Not intended as legal advice

INSIDE

Business Developments

Learn about exciting changes that happened at Brennan & Rogers, PLLC, during 2024.

Topics of Interest

We cover a wide range of topics, including changes to MaineCare programs affecting seniors, deed fraud, and the new law affecting businesses and LLCs.

2024 THE OFFICIAL COMMUNITY'S CHOICE AWARDS Best of the Seacoast WINNER

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Business Developments

- **2024 Best of the Seacoast Community's Choice Awards**
  We are thrilled to share some incredible news with all of you: For the fourth year in a row, our law firm has been named Best of the Seacoast! This is a huge honor, and we couldn't have achieved this without the amazing support of our clients, our dedicated team, and the wonderful seacoast community.

- **Our New Office Spaces**
  We are pleased to announce that our firm officially opened an office in Portland in January! Located at 254 Commercial Street, this office features two off-street parking spaces, making visits convenient and hassle-free. This expansion reflects our commitment to providing exceptional service and accessibility to our clients in the region. Our Portland office is open by appointment only.

  In September, our Kennebunk office moved upstairs to the fourth floor of the Lafayette Center to better accommodate our growing business needs and improve client comfort. Our new office is located close to the elevator, in Suite 403A. This office is open Monday through Friday from 9 to 5.

- **Your Feedback Matters- Google Reviews**
  At Brennan & Rogers, we are committed to providing exceptional service and guidance to our clients through every step of their estate planning journey. Whether you're planning for the future or managing a loved one's estate, your trust in us means everything.

  We're constantly striving to improve our services, and your feedback helps us do just that. One of the most powerful ways you can support us is by leaving a review on Google. Reviews provide us with valuable insights into what we're doing well and where we can improve. At the end of the day, your feedback directly helps us improve the quality of the service we offer and ensures we're meeting your expectations. Not only does this help us grow as a firm, but it also assists others who may be seeking trusted legal guidance for their own estate planning needs.

To leave a review, use your smartphone's camera or QR Code app and focus it on the QR Code to the right.

Alternatively, email kim@brennanrogers.com, and we will email you a link!

- **Meet Our New Staff Members**

We welcomed three new members to the Brennan & Rogers team in 2024:

Mackenzie Anderson Mackenzie grew up in Willington, Connecticut, before attending the University of New Hampshire for undergraduate and graduate studies. She holds a B.A. in both English and Spanish and a Master's in Secondary English Education. Mackenzie spent 16 years working in education, providing English Education at the high school level, as well as serving as the director of a small private school. In her transition to the Brennan & Rogers team, she looks forward to continuing to provide an essential service to other community members.

Joshua Doyle Josh joined Brennan & Rogers in April of 2024. He holds a Bachelor's degree in Communications with a concentration in Business Application, where he focused on Rhetorical Studies and Marketing. During his time at University, he worked as a Communications and Social Media intern at the Center for Health and Wellness. In the office, Josh assists with various administrative duties, such as drafting engagement agreements and attending to closing files. In his spare time, Josh enjoys reading, hiking, and spending time with family and friends.

Emily Ferland Emily, a resident of Somersworth, New Hampshire, is a recent graduate of Husson University. There, she received a Bachelor of Science in Legal Studies as well as certificates in Civil and Criminal Paralegal Studies. During her time at Husson, Emily was inducted into Lambda Epsilon Chi, a national honor society founded by the American Association for Paralegal Education.

❖ Externship at Brennan & Rogers

This fall, we had our first law student complete an externship with our firm. Kristen Renda is a student at Suffolk University Law School and a 2025 Juris Doctorate candidate. During her semester at our firm, she assisted with day-to-day operations and gained hands-on experience through shadowing our attorneys and drafting estate planning documents for our clients.

Social Security Increase

The Social Security Administration has announced that its beneficiaries will see an increase of 2.5% in their monthly Social Security checks beginning January 2025.

If you are a Social Security beneficiary, you can get an estimate of how much more you will receive in 2025 by using the online My Social Security portal on the Social Security Administration website: https://www.ssa.gov/myaccount/.

Changes to QMB and DEL

The QMB and Drugs for the Elderly and Disabled (DEL) programs under MaineCare have eliminated their asset tests effective July 1st, 2024. The income limits remain in place at $2,322 for an individual and $3,152 for a couple. QMB is a benefit that pays Part B monthly premiums, plus Medicare coinsurance and deductibles. It may also pay Part A premiums. DEL is a discount drug program for individuals who are aged 62 or older, or those who have a disability and are not eligible for MaineCare under any other coverage group.

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. In June 2024, the penalty divisor increased from $10,739 to $11,363.

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 during which 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. If you are thinking of giving any assets,

including your primary residence, to another person, please set up an appointment with one of our elder law attorneys to discuss the implications of such a transfer before taking any action.

Choosing a Trustee

A Revocable Trust can be a powerful estate planning tool. However, making it work requires a capable Trustee. While many people choose to serve as the initial Trustee of their own Revocable Trust, a successor Trustee is needed upon their resignation, incapacity, or death.

The successor Trustee is often either a trusted family member or friend (Family Trustee) or a bank or trust company (Corporate Trustee). There are many important considerations when determining whether to select a Family Trustee or a Corporate Trustee. While this list is not comprehensive, these considerations should include: the value and nature of the assets, the expected duration of the Trust, the complexity of the administration, the relationship between the Trustee and the beneficiaries, the cost of administration, restrictions in administration, and how grief may impact a potential Trustee's ability to act.

Though a Corporate Trustee may ultimately be the best choice when weighing these considerations, it is important to confirm with the nominated Corporate Trustee that you have properly named the correct entity. You should also confirm whether they will have any requirements or limitations (such as requiring the Trust to only work with certain brokers to manage assets), how they will assess when to make discretionary distributions, and if there are any assets that they are disqualified from managing (such as real estate). Confirming this information during your lifetime makes it simpler to amend the Trust if you uncover any concerns.

Deed Fraud

Deed fraud is, unfortunately, becoming a real issue for many landowners. Deed fraud is a scam involving the use of forged documents and fake identification papers to sell another person's real property. The scammer "sells" the property to an innocent buyer (who is not involved in the scam) and runs off with the proceeds from the sale. Often, these transactions involve vacant land with no mortgages or other liens attached to the property. The "seller" usually makes up some excuse as to why they cannot meet with the realtor in person and demands a quick closing. Many fraudulent transfers involve closings that are conducted remotely so the "seller" does not have to appear in person, and the transfer can be completed as quickly as possible.

This past spring, the Maine Legislature considered a bill (LD 2240/SP 960) called "An Act to Implement Protections Against Deed Fraud", but it was pushed to the next legislative session. The bill proposed new provisions that would make this type of act a Class B crime, create additional requirements for the notarization of deeds, require the real estate broker to maintain a surety bond, and require the real estate broker to perform due diligence in confirming the identity of the seller. We will closely follow this legislation and will update our clients via our monthly newsletters as the bill progresses.

Maine landowners can sign up for a free fraud alert service in the following counties:

- **Cumberland County: Property Fraud Alert (uslandrecords.com)**
- **Hancock County: https://records.hancockcountymaine.gov/PublicRecordsNotificationLive/Subscribe**
- **Knox County: https://searchiqs.com/fraudalert/?CC=MEKNO**
- **Lincoln County: https://searchiqs.com/fraudalert/?CC=MELIN**
- **Oxford County: https://searchiqs.com/fraudalert/?CC=MEOXE**
- **Penobscot County: https://penobscotdeeds.com/ALIS/WW400R.HTM?WSIQTP=SY40DC**
- **Piscataquis County: https://searchiqs.com/fraudalert/?CC=MEPIS**
- **Sagadahoc County: www.propertyfraudalert.com**
- **Waldo County: https://searchiqs.com/fraudalert/?CC=MEWAL**
- **Washington County: https://searchiqs.com/fraudalert/?CC=MEWAS**
- **York County: https://searchiqs.com/fraudalert/?CC=MEYOR**

Additionally, the FBI has issued the following tips for landowners and those in the real estate industry:

Tips for Landowners

- Set up title alerts with the county clerk's office, they will email if something comes up. (Not all counties offer this service.)
- Set up online search alerts for your property.
- Drive by the property or have a management company spot-check it.
- Befriend the members of the community or neighbors to warn you if they see anything suspicious.

- Pay taxes through escrow.
- Ask the local police department if they offer checks, alerts, etc.

Tips for the Industry

- Avoid remote closings, if at all possible.
- Ask for in-person identity checks. If this is not possible, ask for other video proof of life.
- Ask for a copy of the most recent tax bill or other piece of mail, in addition to an ID.
- Look up the phone number by reverse search or through the phone carrier. Watch for international VOIP.
- Check the email addresses and names. Fraudsters have been known to recycle them.
- Pay attention to the age of the seller, accents, excuses.
- Send a certified letter to the address of record on the tax bill.
- Call verifying public notary to confirm they attested to the documents.
- Spread the word in your professional network to help your colleagues avoid falling for the same scam.

The 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 went into effect on January 1st, 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.

For entities created after January 1st, 2024, reporting is required within 30 days of formation. For entities that existed prior to January 1st, 2024, reporting is required by January 1st, 2025. Additionally, reporting requirements for dissolved entities add further complications. The Treasury Department has taken the position that if an entity was formally and irrevocably dissolved prior to January 1st, 2024, reporting is not required. But there are questions about what is meant by "formally and irrevocably dissolved." FinCEN takes the position that this means "filing dissolution paperwork with its jurisdiction of creation or registration, receiving written confirmation of dissolution, paying related taxes or fees, ceasing to conduct any business, and winding up its affairs (e.g., fully liquidating itself and closing all bank accounts)." It appears that an administrative dissolution or suspension (such as dissolution by failure to file an annual report or failure to pay a filing fee) generally does not qualify as a formal and irrevocable dissolution, and these entities would be required to file.

If you believe you have an ownership interest in any such qualifying reporting company, make it a priority to visit https://fincen.gov/boi, where you can file your report online or consult with your corporate attorney, CPA, or other professional to determine the impact the CTA may have on you and your business interests. Failure to comply with reporting requirements may result in significant civil and criminal penalties; violators face a civil penalty of up to $500 per day for violations that have not been remedied, a fine of up to $10,000, and imprisonment for up to two years. Unfortunately, our firm is not able to assist clients with filing these reports.

New Hampshire Transfer on Death Deeds

In February 2024, New Hampshire took a significant step in modernizing estate planning by enacting the Uniform Real Property Transfer on Death Act. This legislation allows property owners to designate beneficiaries who will automatically inherit their real estate upon their death using a Transfer on Death Deed (TODD), effectively bypassing the often lengthy and costly probate process. As estate planning becomes increasingly important for individuals seeking to secure their legacy and simplify property transfer, understanding this new law is crucial for New Hampshire residents.

In order to be valid, a New Hampshire TODD must:

- Meet the requirements set forth in RSA 477:3;
- Bear the title "Transfer on Death Deed";
- State that the transfer to the designated beneficiary is to occur at the transferor's death; and
- Must be recorded prior to the transferor's death within 60 days following the date of execution at length in the registry of deeds for the county in which the real estate lies.

Incorporating a transfer on death deed into your estate plan can provide peace of mind, knowing that your wishes for property distribution will be honored efficiently and effectively. As New Hampshire residents navigate their estate planning options, this new law represents a valuable tool for ensuring a seamless transfer of real estate to loved ones. If you're considering how a TODD could benefit your estate planning strategy, we encourage you to contact us. Our team of experienced estate planning professionals can help you assess whether this option is a good fit for your unique circumstances. Let us guide you through the process and ensure your wishes are clearly documented and effectively executed.

Secure Act 2.0 Final Regulations

In July of this year, the IRS issued final regulations regarding the Setting Every Community Up For Retirement Enhancement Act of 2022 (SECURE 2.0), which became law on December 29th, 2022. Secure 2.0 made major changes to the federal laws that apply to retirement savings accounts. These regulations mostly follow the proposed regulations released two years ago, but there were some clarifications. The final regulations had an effective date of September 17th, 2024. Although the IRS allowed a reasonable, good faith standard during the transitional period, compliance with the new rules is required beginning January 1st, 2025

Important changes relate to Required Minimum Distribution (RMD) Rules for qualified retirement accounts (including IRAs), such as changing the mandatory starting age for RMDs to 73 and eventually increasing the starting age to 75, effective January 1st, 2033. This means the applicable ages for RMDs based on birth year are as follows:

If you were born before July 1st, 1949: 70 ½
If you were born after July 1st, 1949, but before January 1st, 1951: 72
If you were born after January 1st, 1951, but before January 1st, 1959: 73
If you were born after January 1st, 1960: 75

There is an ambiguity related to the applicable age for those born in 1959, as the current regulations indicate an applicable age of both 73 and 75. The IRS has issued *proposed* regulations to address this issue and set the applicable age for those born in 1959 to 73, however, this has not been finalized as of yet.

SECURE and SECURE 2.0 have also drastically changed how different classes of beneficiaries are treated upon the death of the plan participant. Two such classes are Designated Beneficiaries and Eligible Designated Beneficiaries.

A Designated Beneficiary is any individual designated as a beneficiary under the plan. All Designated Beneficiaries must deplete the inherited assets by December 31 of the year of the 10th anniversary of the initial plan participant's death ("10-Year Rule"). There are also special rules involving RMDs based on whether or not the plan participant began taking their RMDs prior to their death. If the plan participant dies prior to taking any RMDs, the Designated Beneficiary does not have to take any RMDs, but in the 10th year, the entire account must be distributed. If the plan participant dies after taking RMDs, the Designated Beneficiary must continue taking RMDs pursuant to a rule known as the "at least as rapidly" or "ALAR" rule; however, the Designated Beneficiary can use their life expectancy to calculate the amount of the RMD rather than taking the plan participant's former RMD amount, but in the 10th year the funds remaining in the retirement account must be distributed. Here are some examples:

- Bob dies in 2025 at age 85. He had a traditional IRA and, at the time of his death, was taking RMDs. Bob named his adult son as the beneficiary. The son is a Designated Beneficiary and will have to take RMDs for the inherited IRA using his own life expectancy to calculate the RMD amount. The remaining inherited IRA balance must be withdrawn by the end of the 10-year period following the year of Bob's death.

- Susan dies in 2025 at age 55. Her adult son is the beneficiary of her traditional IRA. Susan was not required to take distributions before her passing, so RMDs have not

begun. Her son, as a Designated Beneficiary, is not required to take any yearly RMDs, but he will need to withdraw the entire balance by the end of the 10-year period following the year after Susan's death.

Eligible Designated Beneficiaries include the surviving spouse, a child (including a stepchild, adopted child, or eligible foster child) who has not yet reached the age of 21, a disabled individual, a chronically ill individual, or an individual who is not more than ten years younger than the plan participant. Unlike a Designated Beneficiary, an Eligible Designated Beneficiary can take distributions from the IRA over the course of their life expectancy, meaning an Eligible Designated Beneficiary is not subject to the 10-year payout rule. Similar to a Designated Beneficiary, an Eligible Designated Beneficiary must take RMDs if the plan participant died after they began taking RMDs; however, there are special rules when a surviving spouse or a minor child is the beneficiary. Here are some examples:

- George dies at age 80. George was married to Martha at the time of his death, and she was the beneficiary of his IRA. Martha must take any amount required to reach George's RMD, if he hadn't already done so, for the year of his death. As the surviving spouse, Martha is entitled to elect to be treated as the original plan participant and, therefore, she is entitled to stretch distributions and to recalculate future RMDs based on her own life expectancy.

- Jack dies at age 35, single, with a minor daughter named as the beneficiary of his IRA. Jack's daughter is an Eligible Designated Beneficiary. She must take RMDs beginning in the following year. When Jack's daughter reaches the age of 21 ("the age of majority", she is no longer considered a minor and loses her Eligible Designated Beneficiary status. She must withdraw the remaining balance of the inherited IRA by December 31st of the 10th calendar year after reaching the age of majority, meaning the entire remaining balance must be distributed by December 31st of the year in which she reaches age 31 (not by her 31st birthday).

The foregoing is a general informational overview. The new rules are complex and we are still adapting to them. The key takeaway is that plan participants must be much more careful in making beneficiary designations, especially if any intended beneficiary is not the plan 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 a Will or Trust that including see-through trust planning, you should consider having your documents reviewed.

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.

ABLE Account Update

An ABLE account is a savings and/or investment option for people with disabilities. An ABLE account permits a person who receives means-tested governmental benefits to have access to funds that would otherwise normally disqualify them from those benefits. Pursuant to the ABLE Age Adjustment Act, the age of ABLE eligibility will increase to age 46, effective January 1st, 2026. The age of onset is currently set at 26, and it is expected that this increase will expand the number of people eligible for ABLE by approximately six million, including one million veterans. If you believe you may qualify for ABLE based on this expansion, we recommend requesting more information from Bangor Savings Bank, the institution that administers the Maine ABLE program.

2025 Gift and Estate Tax Exclusion

The United States Internal Revenue Service announced the annual gift tax exclusion will be $19,000 in 2025 (previously $18,000 per recipient). The lifetime estate and gift tax exemption amount is $13,990,000 (previously $13,610,000 per individual).

Maine has not yet announced the estate tax exclusion amount for 2025, which was $6,800,000 per individual in 2024. The Massachusetts estate tax exclusion remains at $2,000,000 per individual. New Hampshire does not have an estate tax.

Regardless of the 2025 exclusion amount, everyone should be aware that the law that doubled the federal estate tax exemption in 2017, the Tax Cuts and Job Act (TCJA), will sunset at the end of 2025. Without action by Congress, the estate tax exemption will be approximately $7,000,000 per person, or $14,000,000 per couple, or around half of the current levels beginning

in 2026. Although it is hard for experts to predict what exactly may happen with the higher exemption, it seems likely that many provisions of the TCJA will be extended due to the Republican control of the White House and Congress. One of the Republican campaign platforms promised that certain provisions of the TCJA, including the estate tax exemption, would become permanent. There is even the possibility that the estate tax will be repealed entirely, as this was something considered as part of the initial tax overhaul.

No matter what happens with the exemption, planning is still important. We may no longer be as concerned about the 2026 sunset, but the tax system will undoubtedly continue changing with each new year and each future administration.

2024 Maine Probate Exemptions and Allowances

For estates of decedents passing in 2024, the exemptions and allowances under the Maine Probate Code are as follows:

- Homestead Allowance - $27,900
- Exempt Property - $18,600
- Family Allowance - $33,500

These amounts used to be only paid out if a spouse or child made a claim against the estate. Recently, however, the statute was revised and now they are mandatory unless the Will expressly provides that other amounts are being made in lieu of those mandatory shares. This means that every Will before the enactment of the new statute in March of 2023 needs to be revised.

2024 Small Estate Affidavit

For estates of decedents passing in 2024, the value of an estate collectible by utilizing a small estate affidavit is $49,700. This affidavit helps small estates avoid probate.

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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