



# LEGAL PLANNING GUIDE

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# Our History

Crescent Law Group (CLG) is a general practice law firm. CLG was formed in January 2023, by the existing members of the Law Office of Amanda Geary and Taylor A. Thomas, another local attorney. The Law Office of Amanda Geary opened January 2021, in the former location of the Law Office of Marcia L. LeMay. In September 2021, the office moved to the Lafayette Street Arsenal.

In October 2023, CLG opened its office at 24 Park Street in Canton. Though the main office has moved to Canton, the firm continues to operate and meet with clients in Ogdensburg as well.

The members of CLG are committed to aiding our North Country neighbors through both practice and community service. We are involved in a variety of organizations and industries.







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## Practice Areas

Our office can provide you with representation and assistance in the following areas. If you do not see your issue listed, feel free to contact our office to see if your matter is something we handle, or to request a referral to another law firm.

### Family

- Adoption
- Guardianship
- Divorce
- Custody
- Support

### Real Estate

- Purchases/Sales of Real Property
- Contract Review and Drafting
- Title Transfers
- Mortgages

### Estates

- Last Will and Testament
- Power of Attorney
- Health Care Proxy
- Estate Administration

### General Practice

- LLC Formation
- Traffic Infractions
- Violations
- Misdemeanors

# Our Staff



## Amanda

Amanda Geary received a Bachelor of Science in Political Science from Clarkson University in 2013, her Juris Doctor from Maurice A. Deane School of Law at Hofstra University in 2016, and was admitted to practice in the State of New York in 2018. She has experience working in a variety of legal fields, with considerable experience in family court matters. In addition to her work with CLG, Amanda teaches full-time at Clarkson University.



## Taylor

Taylor Thomas earned a Bachelor of Science in Psychology and Social Sciences from Clarkson University in 2016. She attended Syracuse University College of Law, where she gained experience in the Family Law Clinic and participated in the Pro Bono Scholars program. She obtained her Juris Doctor from Syracuse University and was admitted to the NYS bar in June 2019. Since her admission, Taylor has gained experience in a variety of legal matters.



## Kaylyn

Kaylyn O'Brien joined the firm in August 2022. Kaylyn received a Bachelor of Arts in Sociology from The University of New Mexico in 2018, and graduated with her Juris Doctor from Vermont Law and Graduate School in 2022. Kaylyn is currently working on a Master's Degree in Environmental Law and Policy. During her time attending Vermont Law School, Kaylyn gained experience as a member of the Environmental Justice Clinic, Journal of Environmental Law, while working part-time as a law clerk. Kaylyn is due to be admitted to the NYS Bar in September 2024.





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# Family Law

Family law in New York is a broad and complex field that encompasses various legal issues related to familial relationships. These include marriage, divorce, child custody, child support, spousal support, adoption, and domestic violence. Understanding the intricacies of family law in New York is crucial for individuals navigating these personal and often emotionally charged legal matters.



## Marriage and Domestic Partnerships

In New York, marriage laws stipulate that both parties must be at least 18 years old to marry without parental consent. Those aged 17 may marry with judicial approval and parental consent, but individuals under 17 cannot legally marry. The state recognizes both same-sex and opposite-sex marriages equally, following the landmark 2011 passage of the Marriage Equality Act.

## Divorce

Divorce in New York can be obtained on both no-fault and fault grounds. A no-fault divorce can be granted when a marriage has irretrievably broken down for at least six months. Fault grounds for divorce include cruel and inhuman treatment, abandonment, imprisonment, and adultery. New York follows an equitable distribution model, meaning marital property is divided fairly but not necessarily equally, based on various factors including the duration of the marriage, the income and property of each party, and the needs of any children.

## Child Custody and Visitation

Child custody determinations in New York prioritize the best interests of the child. The court considers several factors, including the parents' ability to care for the child, the child's primary caregiver, the child's wishes (if of sufficient age and maturity), and any history of domestic violence. Custody can be legal (decision-making authority) or physical (where the child lives), and it can be sole or joint. Visitation rights are typically granted to the non-custodial parent unless it is deemed harmful to the child.

## Child Support

Child support in New York is determined using a formula based on the parents' combined income and the number of children. The non-custodial parent is generally required to pay a percentage of their income, with specific guidelines: 17% for one child, 25% for two children, 29% for three children, 31% for four children, and 35% for five or more children. Additional expenses such as healthcare and childcare costs may also be factored into the support amount.

## Spousal Support

Spousal support, or alimony, can be awarded on a temporary or permanent basis in New York. Temporary maintenance is often awarded during the divorce process to help the lower-income spouse maintain the marital standard of living. Post-divorce maintenance considers factors like the length of the marriage, the age and health of both parties, the earning capacity of both parties, and contributions to the marriage, including homemaking and child-rearing.

## Adoption

Adoption in New York is a legal process that creates a permanent parent-child relationship between individuals who are not biologically related. The state allows for various types of adoption, including agency adoptions, private placements, step-parent adoptions, and adult adoptions. All adoptions require the termination of parental rights of the biological parents, either voluntarily or involuntarily, and a home study to ensure the suitability of the adoptive home.

## Domestic Violence

New York law provides robust protections for victims of domestic violence. Victims can obtain orders of protection that restrict the abuser's actions, such as prohibiting contact or requiring them to stay away from the victim's home and workplace. Family courts, criminal courts, and supreme courts can all issue these orders, depending on the circumstances.

## Conclusion

Family law in New York is designed to address a wide range of personal and sensitive issues, balancing the needs and rights of individuals with the overarching goal of fairness and the best interests of children. Navigating family law matters often requires the guidance of a skilled attorney who can provide tailored advice and representation.





# Real Estate Law

Real estate law in New York encompasses a wide range of legal matters related to the purchase, sale, and management of property. This field of law is essential for ensuring that property transactions are conducted fairly and legally, protecting the interests of all parties involved. Key areas of focus include property transactions, contracts, titles, and mortgages.

## Property Transactions: Purchase and Sale

Purchasing or selling property in New York involves a detailed process governed by state laws and regulations. The process begins with the negotiation of terms between the buyer and seller, often facilitated by real estate agents. Once both parties agree on the terms, they enter into a contract of sale. This legally binding document outlines the purchase price, property description, and other crucial details such as contingencies and closing dates.

New York requires both parties to be represented by attorneys, ensuring that all legal aspects of the transaction are properly handled. The buyer's attorney typically conducts a title search to verify the seller's legal ownership and to check for any encumbrances, such as liens or easements, that could affect the transaction. Title insurance is usually purchased to protect the buyer against future claims or disputes over the property.

## Contracts

Contracts are the cornerstone of real estate transactions in New York. The contract of sale must include essential elements such as the identities of the buyer and seller, the property's legal description, the agreed purchase price, and the terms of the sale. It may also contain various contingencies, such as financing, inspections, and the sale of the buyer's current home. These contingencies provide protection to the buyer, allowing them to back out of the contract if certain conditions are not met.

An attorney's review is crucial in the contract phase to ensure that all terms are clearly defined and legally enforceable. Attorneys help negotiate any modifications and address potential issues that could arise before the contract becomes binding. Once signed, both parties are obligated to fulfill their contractual obligations, unless a contingency clause provides a way out.

## Titles

The title to a property represents the legal ownership and the right to use the property. Ensuring a clear title is a fundamental part of any real estate transaction. During the title search, the buyer's attorney reviews public records to confirm that the seller holds clear title to the property and that there are no undisclosed encumbrances.

Title insurance plays a vital role in New York real estate transactions. It protects the buyer and the lender from potential losses arising from defects in the title, such as unpaid taxes, liens, or legal disputes over property ownership. There are two types of title insurance policies: owner's policies, which protect the buyer, and lender's policies, which protect the lender's interest in the property.

## Mortgages

Financing a property purchase typically involves securing a mortgage, a loan specifically designed for buying real estate. New York's mortgage process is regulated to ensure transparency and fairness. Prospective buyers must undergo a thorough application process, which includes providing financial information, credit history, and proof of income.

Once approved, the lender provides a loan estimate detailing the terms of the mortgage, including the interest rate, monthly payments, and closing costs. At closing, the buyer signs a promissory note agreeing to repay the loan and a mortgage document that secures the lender's interest in the property.

Mortgage-related laws in New York also include protections for borrowers. For instance, the state's foreclosure laws require lenders to follow specific procedures before foreclosing on a property, giving homeowners opportunities to remedy defaults and avoid losing their homes.

## Conclusion

Navigating real estate law in New York requires a comprehensive understanding of various legal aspects, including property transactions, contracts, titles, and mortgages. Each stage of the process is governed by specific regulations designed to protect the interests of buyers, sellers, and lenders alike. Engaging knowledgeable legal professionals is essential to ensure compliance with these laws and to facilitate smooth and successful property transactions.



# Estate Law

## What Does Long-Term Care Cost?

- The official average cost of one day of nursing home care (2019) is \$342.58. This amounts to over \$10,400 each month or over \$125,000 a year! And, to the surprise of many, Medicare and health insurance don't pay for this. There are helpful financial products persons can buy when healthy and before the need for care arises to help offset this cost. But for most seniors, these financial products are not enough, both in terms of how much they pay out and how long they last. Ask yourself what \$125,000 a year in unreimbursed long-term care costs would do to your retirement plan.
- So, what happens if someone's money runs out and he or she can no longer pay for needed long-term care? Medicaid, also called Medical Assistance, a federal program administered by each state, steps in. Medicaid will pay for long-term care for as long as needed and without any maximum payout limit. But impoverishment is the price for admission to the Medicaid program. For all but the very wealthy, prudent retirement and estate planning must include legal measures to protect against the catastrophic cost of long-term care by enabling one to qualify for Medicaid while preserving home and savings for loved ones.



## But what about Medicare?

Don't confuse this with Medicaid. Medicare is health insurance for the elderly (age 65 or older) and for younger persons who are disabled workers or their dependents. It pays for medically-necessary "acute," that is, short-term, care such as that provided by doctors and hospitals. It is operated and funded in full by the federal government, primarily through tax dollars and, to a lesser extent from premiums paid by recipients.

Medicare does pay for physician-prescribed rehabilitation services in a nursing home to a very limited extent, IF the following conditions are met.

- An immediately-prior 3-day hospitalization ("observation status" stays don't count)
- For a maximum of 100 days (usually terminated on or before 30 days)
- With a co-pay after day 20 of \$170.50 (2019) per day
- Private health insurance helps only to the extent of picking up Medicare deductibles and co-pays. The \$170.50 co-pay referenced above only applies for Plan C or better coverage. When Medicare ends private health insurance also ends. Now let's take a look at some helpful financial products. We will next examine two need-based public benefits programs, Veterans' benefits and Medicaid, including their eligibility criteria. Thereafter, we will answer some commonly-asked questions regarding Medicaid eligibility, followed by an illustration of some Medicaid planning legal strategies. Finally, we will suggest some important questions you need to ask before selecting an elder law attorney.





# What Is Medicaid and Why Is It So Important?

Medicaid, also referred to as “Medical Assistance” is a state-operated program, in compliance with federal guidelines, that is co-funded by state and federal government. It was implemented in 1965 under federal law at the same time as Medicare.

Medicaid and Medicare are two separate programs. They were added as the health care component of the Social Security Act, which was originally passed in 1934, to provide for a program of Old Age (that is “retirement”) Survivors and Disability Insurance benefits (OASDI).

**COVERED SERVICES.** Medicaid provides medical services to the needy; specifically, to persons who are aged, blind, disabled or dependent children who cannot afford necessary medical care. Medical services under the Medicaid program are more broadly defined than in Medicare. Covered items include nursing facility services and, in some states, home health care. The cost of prescription drugs is also significantly less for persons who qualify for both Medicare and Medicaid. In other words, Medicaid is the only government benefit that pays for long-term nursing home care.

**MEDICAL QUALIFICATION.** Medicaid pays nursing home costs for someone who is “nursing facility clinically eligible” and who also satisfies financial criteria explained below. Specifically, the applicant must require substantial assistance with multiple personal care needs, such as bathing, dressing, continence, transferring, ambulating and feeding. This need must be on a long-term basis, not just for temporary rehabilitation. The local County Area Agency on Aging serving the region where the applicant is located makes that determination, based, in part upon a physician’s assessment. In some States that obtained an approved “Waiver” from the federal government, Medicaid is permitted to pay for home health care services in addition to nursing home care.

## Financial Eligibility – Unmarried Applicant



An unmarried applicant must have “countable assets”, referred to as “resources,” of not more than \$8,000 (\$2,400 for a person whose gross monthly income exceeds \$2,313). A countable asset is any asset not designated as exempt that an applicant can access for use in paying for care. This applies to assets held in a revocable living trust, which are legally titled in a trustee and not the applicant. It applies to the cash surrender value of a life insurance policy.

It encompasses the entire value of an irrevocable trust to the extent it’s available for an applicant’s support UNLESS special provisions are included. There is no limit to the amount of an applicant’s income except for someone whose income is so high as to cover the full cost of care. There is also a penalty in the form of a period of ineligibility for benefits for uncompensated transfers, that is, gifts, made within the 60-month period immediately preceding the date an application is filed.

## Financial Eligibility – Married Applicant

For married couples, assets of both spouses are counted, regardless of which spouse is owner. Transferring property from the “institutionalized spouse” to the healthy, “community spouse” does not reduce the amount of countable assets. Before a married applicant financially qualifies for Medicaid, the combined non-exempt countable assets of the couple must fall below a specified protected amount. That amount consists of the institutionalized spouse’s \$8,000 (or \$2,400) “resource limit” and the community spouse’s “community spouse resource allowance” (CSRA). The CSRA is one-half of the value of countable assets as existed on the first day of institutionalization that resulted in a continuous stay in a facility (or multiple facilities) of 30 days or more. There is a floor and ceiling to the CSRA.

**EXAMPLE 1.** John enters Happy Valley Nursing Home on April 9 and remains there permanently. The combined countable non-exempt assets of John and his wife, Mary, on April 9, totaled \$200,000. Half of that amount, \$100,000, is protected for Mary. John’s resource limit is \$8,000. John will qualify for Medicaid when the \$200,000 shrinks down to \$108,000.

**EXAMPLE 2.** Same as Example 1 except that the combined countable non-exempt assets amount to \$300,000. Mary cannot keep one-half, \$150,000, because that exceeds the legal maximum of \$126,420. John qualifies when the \$300,000 shrinks down to \$134,420 ( $\$126,420 + \$8,000 = \$134,420$ ).

**EXAMPLE 3.** Same as Example 1 except that the combined countable non-exempt assets amount to \$40,000. Mary keeps \$25,284, the minimum amount protected for her, even though it is more than one-half. John qualifies when the \$40,000 shrinks down to \$33,284 ( $\$25,284 + \$8,000 = \$33,284$ ).

## Financial Eligibility - Exempt Assets

The following assets accessible to an applicant or spouse do not count in determining how much an applicant or a married couple can keep and still qualify for Medicaid.

- Home – if spouse occupies\*
- One motor vehicle – unlimited value
- Furnishings & household goods – unlimited value
- Prepaid funeral & burial – reasonable amount limitation
- Spouse’s IRA, 401(k), etc. - unlimited value
- Clothing, jewelry and personal effects – unlimited value

\*If the equity value of a Medicaid applicant’s principal residence does not exceed \$585,000 (2019) it may be designated as exempt. But, if owned by the benefits recipient at death it is subject to a Medicaid estate recovery claim.

## Financial Eligibility - Gifting Penalty

A penalty is imposed in the form of a period of ineligibility for benefits if non-exempt assets are gifted during the 60-month period (look-back period) immediately preceding the application for benefits. The penalty is calculated by determining the total amount of gifts made by the applicant or spouse during the look-back period, and dividing that amount by the official average daily cost of a nursing home.

**EXAMPLE:**

\$10,500 (Gift) divided by

\$342.58 (Average daily cost of NH care in (2019) =  
30.65 = 30 days of ineligibility

PA “rounds down” the fraction: 30.65 = 30 days



# Financial Products That Pay For Long-Term Care

## Long-Term Care Insurance

Long-term care insurance (LTCI), as the name implies, is a form of casualty insurance that pays for long-term assistance with the everyday tasks and personal care needs described earlier. Medicare and health insurance DO NOT pay for these services. So, what is it, who gets it, how does it pay out, and what are its advantages and disadvantages?

## Pool of money

Someone with LTCI has a pool of money that's available to pay for care at home or in a facility, including an assisted living facility as well as for nursing home care. The Declarations page at the front of the policy that summarizes its features, will indicate a maximum daily benefit that pays out for a maximum number of days. It will also typically indicate the "elimination period," usually, a 30, 90, or 180 days waiting period after eligibility not covered by the policy before benefits commence.

Sometimes the maximum payout is less for care in assisted living and less still for care at home. So, for example, someone, let's call him John, might buy a policy that pays out a maximum of \$200 a day for up to three years.

John has a \$219,000 pool of money. He might use it all up in three years or it might last much longer if the cost of his care at home or in assisted living is less than \$200 per day. LTCI policies will have riders attached that specify additional extra benefits. These include a "waiver of premium" rider that excuses payment of further premiums while someone is receiving an LTCI benefit; an inflation rider that provides for built-in increases in the maximum daily pay-out; and others.

**Chronically-ill individual.** Medical criteria to qualify for LTCI are set forth in Section 7702B of the United States Internal Revenue Code. This specifies the benefit trigger. One must qualify as a "chronically-ill individual" to begin receiving benefits to pay for long-term care. Specifically, the person, as certified by a licensed medical professional, must have one of the two following impairments:

- (a) inability to perform two or more activities of daily living without substantial assistance; for example, bathing, dressing, toileting, eating, transferring (for example, moving from bed to chair), and ambulating (moving about); OR
- (b) severe cognitive impairment requiring round-the-clock supervision.

**Reimbursement or Indemnity.** Most LTCI policies pay out on a reimbursement basis, where the insured pays out-of-pocket for the care, submits proof of payment to the insurance company, and then gets reimbursed. Alternatively, some policies pay out the maximum monthly benefit automatically to the insured regardless of whether the full benefit is needed.



## Advantages

Greater Bang for your Buck. LTCI is priced strictly on the cost of protecting against a risk. Unlike life insurance products that provide a long-term care benefit as an alternative to a death benefit, it is pure insurance, with no investment feature. The same amount of premium for LTCI will purchase greater protection than available from life insurance.

Partnership LTCI., in “partnership” with insurance companies, allows a Medicaid applicant to increase his or her resource limit (\$8,000 or \$2,400, depending on income level) dollar for dollar for the amount of benefits paid out by LTCI policies that carry specified provisions. To illustrate how this works:

**EXAMPLE:** John has \$200,000 of excess resources that prevent him from qualifying for Medicaid to pay for his nursing home care. His nursing home costs \$400 per day. His LTCI pays a maximum of \$200 per day. After 500 days of care John has \$100,000 left. His LTCI has paid out \$100,000 and he has paid out another \$100,000 of his \$200,000 excess resources. John qualifies for Medicaid benefits to pay for his care and may keep his remaining \$100,000 of excess resources.

**NOTE:** If the LTCI benefit that pays out is less than the actual cost of care, then John’s savings will be less than the total amount of the available LTCI benefit. In the example above, since the maximum daily benefit payable by the LTCI (\$200 per day) is only one-half of the actual daily cost of care (\$400 per day) the extra assets John saves amount to only one-half of the total \$200,000 pool of money available from the LTCI.

## Disadvantages

**EXPENSIVE.** LTCI premiums, unlike other forms of casualty insurance, such as home owners’ insurance, carries a fixed premium for the duration of coverage. But there is a big exception: Policies issued by a company can be raised on all insureds, across the board, if permission is granted by the State insurance department. That has become a common occurrence. The increases have been staggering. Insurance makes sense when a manageable risk is spread out over a large pool, such as is the case with home owners’ insurance. But the pool for LTCI is relatively small, the number of insureds who actually put in claims is relatively large, and the amount paid out on most claims is usually very high.

Moreover, a prolonged period of depressed interest rates has reduced the amount of income that insurance companies generate from premiums, thus adding to the pressure for them to increase premiums. Many seniors who purchased LTCI and are retired, living on a fixed income and savings, have had to terminate their insurance or, in some cases, reduce the amount of their coverage.

**LIMITED AVAILABILITY.** As the saying goes “you can’t buy fire insurance when your house is on fire.” Likewise, someone who’s at heightened risk for requiring long-term care at some time in the future even if not presently needed, will not be able to buy LTCI. Persons diagnosed with Alzheimer’s Disease or other forms of cognitive impairment, or who have Parkinson’s Disease, severe osteoporosis, stroke history, or other similar conditions will not satisfy the medical underwriting criteria needed to buy LTCI.

**LIMITED DURATION.** When the “pool of money” runs out, the insurance coverage ends. There was a time when one could purchase LTCI to run for the life of the insured. Such policies are no longer being issued.

**USE IT OR LOSE IT.** This is the flipside to the advantage of getting more bang for your buck. Someone fortunate enough to live for many years and not ever need long-term care will not have a residual benefit such as with life insurance, which will pay out a death benefit. Some consumers want a residual benefit if they don’t ever need long-term care.

**LIKELY NOT COVER FULL COST OF CARE.** As noted earlier, when the pool of money provided by LTCI is used up, then coverage ends. The risk of outliving the benefit payable applies to all financial products. That’s why reliance upon financial products is not enough. Prudent planning will include legal measures to qualify for Medicaid in the event financial products don’t pay out enough or terminate.

## “Hybrids” – Life Insurance

Many alternative forms of life insurance are evolving that permit an owner to convert the death benefit into a long-term care benefit the owner can tap into while alive to pay for care in the event of incapacity. These types of life insurance policies are referred to as “hybrids,” since the death benefit can be converted into a lifetime benefit.

# Some Common Questions

## “I’ve added my kids’ names to my bank account. Is it a countable asset?”

Yes. The entire amount is counted unless you can prove some or all of the money was contributed by the other person who is on the account. It’s counted because you can withdraw the entire amount even though someone else’s name is on it. However, if a jointly owned asset, such as a certificate of deposit, U.S. Savings Bond, or brokerage account, cannot be accessed unless the other co-owners give their consent, and they refuse to consent, then the asset is unavailable and therefore, doesn’t count. But, beware, if the asset is unavailable, adding the kids as co-owners may result in a transfer penalty.

## “My wife is entering a nursing home. Must I disclose all of our assets?”

Yes. But don’t worry. Federal law guarantees the right of a nursing home resident to legally protect assets via Medicaid planning. Proper planning enables one to obtain needed care while protecting assets for loved ones. But such a plan must ensure that benefits eligibility commences when other sources of payment are exhausted.

## “Will my kids be liable for the cost of my nursing home care if I go broke?”

No, provided you qualify for Medicaid benefits immediately after your funds exhaust. That won’t happen if you engage in an improper pattern of gifting or fail to timely and properly document and file your Medicaid application (the most common reason for denial). However, in some states, children who knowingly or even unintentionally violate Medicaid requirements can and have been held liable for the cost of their parents’ nursing home care.

## “How can I ensure that my mother gets good nursing home care?”

Many important factors affect the quality of care in a nursing facility. These include staffing levels, specifically, the ratio of staff to residents, and frequency of visits from family and friends. Many problems can be avoided or minimized with frequent and regular visits by friends and loved ones. Seek the assistance of a qualified geriatric care manager (GCM) in selecting the right nursing home and monitoring care on a regular basis.

## “Can’t I Just Give My Assets Away?”

Many people wonder, can’t I give my assets away? The answer is, maybe, but only if it’s done just right. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In some states, for example, every \$342.58 given away during the 60-month period immediately preceding the filing of a Medicaid application creates a one-day period of ineligibility. Stated in other words, every \$10,420.14 gifted creates a one-month penalty. So even though the federal Gift Tax law allows you to give away up to \$15,000 per year per person without gift tax consequences, those gifts could result in a period of ineligibility for state Medicaid. Though some families do spend virtually all of their savings on nursing home care, Medicaid often does not require it. There are a number of strategies which can be used to protect family financial security.

## “Will I Lose My Home?”

Many people who apply for Medicaid benefits to pay for nursing home care ask this question. For many, the home constitutes much or most of their life savings. Often, it’s the only asset that a person has to pass on to his or her children.

Under Medicaid regulations, the home is an excluded resource unless holding an equity value in excess of \$585,000. This means that it is not taken into account when calculating eligibility for Medicaid. But this exclusion is illusory. After a Medicaid recipient dies, federal law requires states to attempt to recover previously paid benefits from the recipient’s probate estate. This is referred to as “Estate Recovery.” Generally, the probate estate consists of assets that the deceased owned in his or her name alone without beneficiary designation.



About two-thirds of the nation's nursing home residents have their costs paid in part by Medicaid. Obviously, the Estate Recovery law affects many families. The asset most frequently caught in the Estate Recovery web is the home of the Medicaid recipient. A nursing home resident can own a home and receive Medicaid benefits without having to sell the home. But upon death if the home is part of the probate estate, the state may seek to force the sale of the home in order to reimburse the state for the payments that were made.

Fortunately, various legal strategies exist to protect one's home. These include transfers to Medicaid trusts, full or partial interest sales to family members in exchange for Promissory Notes, and gift transfers to protected persons, such as community spouses, caregiver children, and disabled children.





# Veterans' Benefits That Pay For Long-Term Care

The Veterans' (VA) Pension program, one of a broad array of veterans' benefits, offers important financial assistance to those veterans and their surviving spouses who need care at home or in a facility and who incur substantial out-of-pocket costs for assistance with everyday tasks and personal care needs. The medical criteria for eligibility closely resemble those applicable to financial products. Nursing home residents and many persons in assisted living facilities will satisfy those requirements. While these benefits will not prevent someone who requires long-term care in a nursing home from avoiding impoverishment, they can go a long way toward minimizing or at least closing the gap between one's income and the cost of care at home or in an assisted living facility.

## Financial Assistance

- Married veteran: \$ 2,230 (2019) per month (maximum)
- Unmarried veteran: \$1,881 (2019) per month (maximum)
- Widows of eligible veterans: \$1,209 (2019) per month (maximum)

## Service Requirements

- 90 days active duty
- One day during wartime
- Discharge other than Dishonorable

**FINANCIAL CRITERIA – INCOME.** Unreimbursed medical expenses, after a 5% co-pay, are deducted from income. An applicant whose out-of-pocket care costs equal or exceed his income qualifies for the maximum monthly benefit listed above.

**FINANCIAL CRITERIA – NET WORTH.** Significant changes went into effect on October 18, 2018. Eligibility requirements were tightened. However, much of the ambiguity that previously hindered VA planning was eliminated.

The net worth threshold above which eligibility will be denied includes all income as well as assets owned or otherwise accessible by a veteran (and spouse if married) available for the applicant's support. Transfer penalties were introduced as noted below. The net worth limit is annually adjusted for inflation. The limit established in 2019 is \$126,420.

**TRANSFER PENALTY.** Gifts made by an applicant or spouse in the 36-month period immediately preceding the date of application for benefits will incur a penalty in the form of a period of ineligibility for benefits. One month of ineligibility will be imposed for every \$2,230 gifted, up to a maximum of 60 months. In other words, gifts made more than 36 months prior to application will not be penalized, no matter how large. Gifts made less than 36 months prior to the date of application will be penalized, but not for a period of more than 60 months. So, anyone gifting \$133,800 or more and who thereafter applies for VA benefits less than 36 months later, will incur a 60-month period of ineligibility.

**PLANNING MEASURES.** Creative estate planning, including properly-timed gifts, outright or to a properly-structured trust, will enable a savvy veteran to qualify for VA benefits while preserving assets for loved ones in amounts far in excess of the net worth limit. But beware: many persons who qualify for this VA benefit will eventually require nursing home care. These benefits will not be enough to prevent impoverishment. Consequently, prudent VA benefits eligibility planning will incorporate measures to ensure that Medicaid eligibility is not later denied because of steps taken to obtain VA benefits. Such planning will integrate VA and Medicaid eligibility strategies with traditional retirement, estate, and tax planning measures.



*Last Will and*

with, an adult residing at 1 High Street  
and Testament. I revoke all w



# Wills, Trusts & Estates

## Estate Planning

Estate planning is the process of preparing and arranging all personal and financial matters at the time of your death. This process involves the counsel of a lawyer and other professional advisors, who are familiar with your goals and concerns, your assets and how they are owned, and your family structure. The device by which this is typically done, a will, is the legal document that coordinates the distribution of your assets after death and can also appoint guardians for minor children. Drafting a will is important to have, as it is the means by which you may communicate your desires clearly and precisely. When the will takes effect, the administration of the estate occurs and the estate is raised which allows the appointed executor/administrator to manage and distribute the assets of the estate. An estate is all the property and property rights, even assets tied to liabilities, that you own. These assets continue after your death and ownership must be transferred as a decedent may not own property. A decedent's estate that has a properly executed will dictating the allocation of the assets will go through the probate process and the assets will be managed and distributed according to the wishes of the decedent in his/her will. On the other hand, an estate that does not have a properly executed will must go through the intestate process and the allocation of the estate is determined by state law.

## The Benefits of Having a Will

A will provides for the distribution of certain property owned by you at the time of your death, and generally you may dispose of such property in any manner you choose. Dying without a will can cause extra stress for your relatives and increases the chances that distribution of your estate is mismanaged. Drafting and executing a will can help to ensure that your final requests are realized and your estate is distributed in the way you want. Perhaps more importantly, having a will can make the administration of the estate simpler and easier for the executor (the person appointed by the decedent to manage and distribute the assets owned at death) of the estate.

## The Role of Trusts In Estate Planning

A trust is an entity or an agreement through which the grantor/donor transfers property to a trustee to hold in accordance with the provisions of a written trust instrument, for the benefit of a third party, called the beneficiary. The trustee may be one or more persons or a corporate trust company or bank. These legal arrangements allow for more flexibility with the ownership and management of assets and therefore enable the grantor to achieve personal goals that would not be achieved otherwise. When a trust is executed, the trustee becomes the legal owner of the trust property, and the beneficiaries are the equitable owners of the trust property. A person may be both a trustee and a beneficiary of the same trust.

A testamentary trust is a trust that is created by a will. In such circumstances, the trust arrangements and provisions are contained in the will. If the trust is created during your lifetime it is called a living trust or an inter vivos trust, and the trust provisions are contained in a trust agreement or declaration. The living trust or inter vivos trust, rather than a will, will then dictate what will happen to the trust property after death. A living trust can alleviate the need to appoint a guardian or conservatorship and can be an instrument by which you may retain control over your assets in the event of physical or mental incapacity.

Trusts are often used in estate planning to take advantage of favorable tax treatment, to place conditions on the use or distribution of assets, or to allow the heirs to take possession of assets without a probate proceeding. Trusts are also often used for the benefit of children in case both parents die before all their children have reached an age deemed by the parents to indicate sufficient maturity to handle property. In these situations, typically a trust is created to hold assets in a single undivided fund to be used for the support and education of minor children according to their respective needs, with eventual division of the trust among the children when the youngest has reached a specified age.



# Power of Attorney – The Most Important Legal Tool In Long-Term Care Planning

## Why Have a Power of Attorney?

Contrary to what many believe, neither a spouse, adult child, nor other close family member or friend has legal authority to handle one's financial affairs, unless authorized to do so by a statutorily-compliant written and signed power of attorney. It might be too late for an incapacitated person to sign a power of attorney that will be recognized as legally valid, depending upon the extent of physical and cognitive impairment. Obviously, this can pose major problems for an incapacitated person who enters a nursing home and needs to implement legal measures to avoid impoverishment, or who needs to fund a trust, change a Will or take other steps to create or modify an estate and long-term care plan. Until recently, the same problem existed as regards health care decision-making and still exists to a lesser extent based upon changes to the law that grant some limited health care decision-making authority to immediate family members.

## Not All Powers of Attorney Are Alike

To compound the problem discussed above, the overwhelming majority of powers of attorney in existence today are not adequate for use in protecting one's home and savings in the event long-term nursing home care is needed. Just as with trusts, not all powers of attorney are the same. Authority to make gifts, change beneficiary designations, create and fund trusts, add or remove owners from bank accounts and investments, and perform other extreme measures must be expressly and carefully stated in the power of attorney document. Otherwise, urgent legal measures cannot be implemented.

## Why Are Most Powers of Attorney Inadequate?

There are various reasons for bad powers of attorney. Many lawyers apparently do not know about a change in the law that invalidated a particular provision commonly found in many older power of attorney documents.

That provision purported to empower the “agent” the person who is appointed to act on behalf of the “principal” (the person signing the document) to do whatever his principal can legally do. That provision is no longer legal. Another often fatal flaw in many powers of attorney is the absence of language authorizing an agent to make “gifts” of the principal’s assets. Most of those that do, fail to specify in sufficient detail the extent of authorized gifting or, worse still, limit gifting to the federal gift tax annual exclusion of \$15,000 per year per person (in 2019). Such a limitation is unnecessary for all but the very wealthy. Gifting beyond these limits, outright or in trust, occurs frequently in Medicaid planning. Still other lawyers seek to limit an agent’s authority in order to protect against an agent’s possible financial abuse. These lawyers do not engage in Medicaid planning and fail to see the importance of inserting provisions necessary to make it possible. A dishonest agent will steal regardless of any restrictions in the power of attorney.

Effective long-term care planning requires a power of attorney document, referred to as a “durable general power of attorney,” that authorizes an agent to take whatever action his principal legally could do if able to, consistent with what the agent knows or should reasonably know are the principal’s estate planning desires. Accordingly, DO NOT appoint anyone as your agent if you are not fully confident that person will be honest, capable of doing a good job, and if honest and capable, will diligently perform his duties rather than neglecting to do so. If no such person can be found, then consider using a revocable living trust, discussed earlier, as an alternative. An agent bears great responsibility, is required to keep an accurate record of receipts and disbursements, and might need to provide assistance for many years.

## What About Health Care?

Proper long-term care planning will include a comprehensive health care power of attorney, preferably a separate document from the durable general power of attorney, and separate from a Living Will. A health care agent should perform three broad functions:

- Make health care arrangements;
- Authorize or refuse medical treatment in the event the principal is unable to make or communicate those decisions; and
- Enforce a Living Will

Health care arrangements typically include accessing medical records, discussing treatment options with medical personnel, getting second opinions, hiring and firing physicians or other medical personnel, and arranging for entry into hospitals, and long-term care facilities. Empowering a selected person or persons to authorize or refuse medical treatment ensures that such decisions will remain under the control of family or other trusted individuals and not be dictated by a facility or other health care provider.

## Living Will

A “Living Will” is a statement of desired treatment options in the event of terminal illness of a patient who cannot make or communicate health care decisions. A properly drafted Living Will makes clear the desire to receive whatever treatment is necessary to get well but further indicates that in the event of end-stage terminal illness, medical treatment be limited to comfort measures. Stated otherwise, the Living Will should communicate that medical treatment that merely prolongs the dying process is not desired.

## A Few More Things To Know About Powers of Attorney

You can revoke your power of attorney at any time. Make sure to notify any financial institutions involved with your affairs regarding the cancellation as well as your agent. Also, you can still continue to handle your affairs. The person you appoint as agent will step in only if and when needed. You can appoint multiple agents, each of whom can act alone if the others are unavailable. You can name a successor agent in your power of attorney to step in if the primary agent resigns.



# General Practice

General practice law in New York encompasses a broad spectrum of legal services, addressing various needs from business formation to handling traffic violations. Two significant areas within general practice law include the formation of Limited Liability Companies (LLCs) and the management of traffic infractions. Understanding these aspects is crucial for individuals and businesses seeking to navigate New York's legal landscape effectively.

## LLC Formation

Forming a Limited Liability Company (LLC) in New York is a popular choice for entrepreneurs due to the flexible structure and liability protection it offers. An LLC combines the limited liability features of a corporation with the tax efficiencies and operational flexibility of a partnership.

### Steps to Form an LLC in New York:

1. **Name Selection:** The first step in forming an LLC is choosing a unique name that complies with New York's naming requirements. The name must include "Limited Liability Company" or an abbreviation like "LLC" or "L.L.C." Additionally, it should not be similar to any existing business names registered in the state.
2. **Articles of Organization:** The next step is filing the Articles of Organization (Form DOS-1336) with the New York Department of State. This document includes basic information about the LLC, such as its name, the county in which it will operate, and the name and address of the registered agent.
3. **Publication Requirement:** New York law mandates that new LLCs publish notices in two newspapers for six consecutive weeks. These publications must be in the county where the LLC's principal office is located. After publication, an Affidavit of Publication must be filed with the New York Department of State along with a Certificate of Publication (Form DOS-1708).
4. **Operating Agreement:** While not required to be filed with the state, an Operating Agreement is essential for outlining the management structure and operational guidelines of the LLC. This internal document can include details on member roles, voting rights, and profit distribution.
5. **EIN and Taxes:** Finally, obtaining an Employer Identification Number (EIN) from the IRS is necessary for tax purposes and hiring employees. New York LLCs must also register with the New York State Department of Taxation and Finance to comply with state tax obligations.

## Traffic Infractions

Traffic infractions in New York range from minor violations, such as speeding, to more serious offenses, like driving under the influence (DUI). Handling these infractions properly is crucial as they can result in fines, points on a driver's license, increased insurance rates, and even license suspension.

### Common Traffic Infractions:

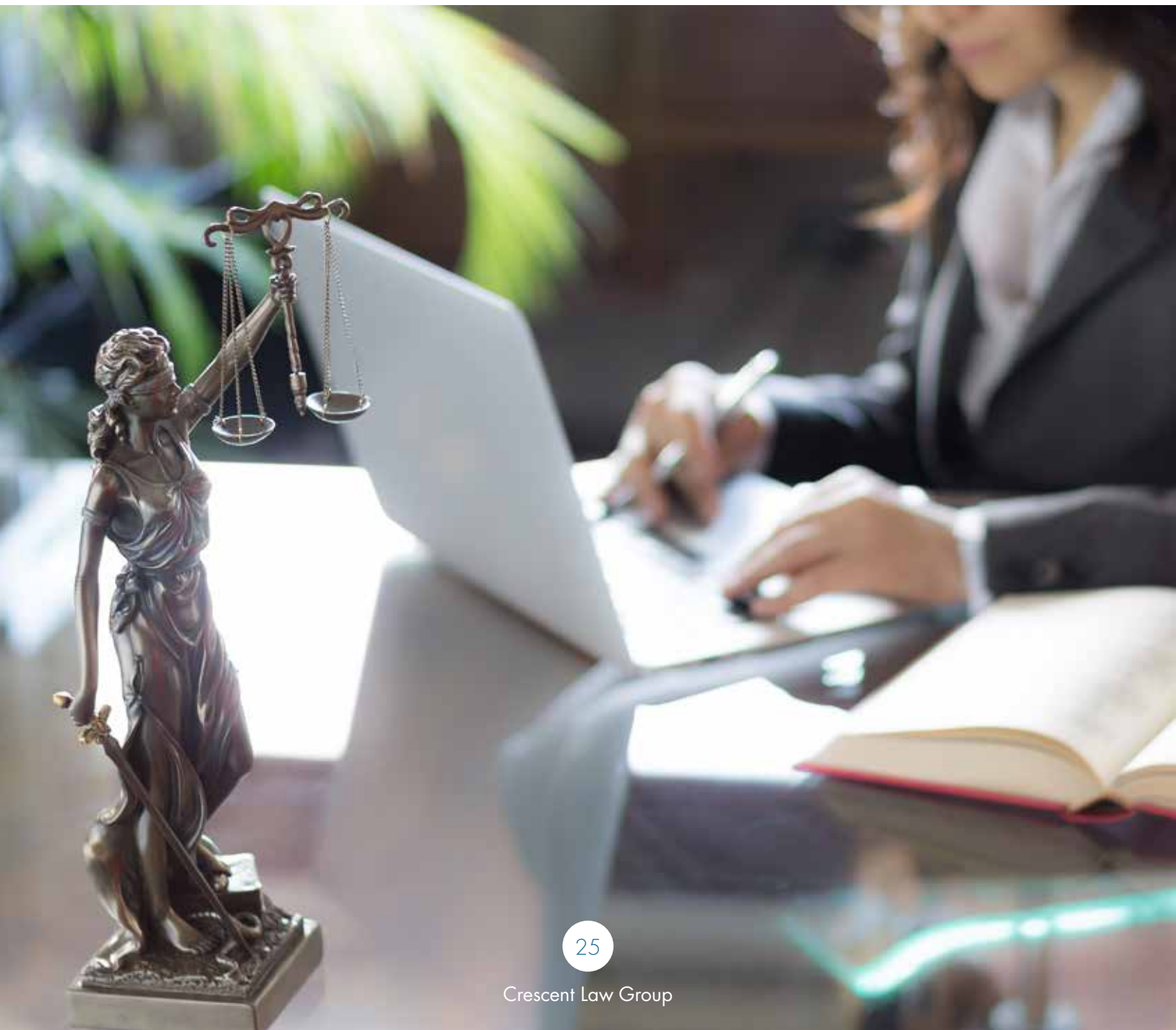
1. **Speeding:** Speeding tickets are among the most common traffic infractions. The penalties depend on the speed over the limit, with higher speeds resulting in steeper fines and more points.
2. **DUI/DWI:** Driving Under the Influence (DUI) or Driving While Intoxicated (DWI) are serious offenses that carry severe penalties, including fines, license suspension, and possible jail time. New York has a zero-tolerance policy for drivers under 21 with any detectable alcohol in their system.
3. **Reckless Driving:** This is considered a misdemeanor and involves driving in a manner that shows a willful disregard for the safety of persons or property. Penalties can include fines, points on the license, and possible jail time.
4. **Cell Phone Use and Texting:** New York law prohibits the use of handheld electronic devices while driving. Violations can lead to fines and points on the driver's license.

## Handling Traffic Infractions:

- Legal Representation: Hiring an attorney can significantly affect the outcome of traffic infraction cases. An attorney can help reduce fines, points, and even get charges dismissed.
- Plea Bargaining: In some cases, negotiating a plea bargain can result in reduced charges or penalties. This is often facilitated by a lawyer familiar with local traffic laws and court procedures.
- Traffic School: For minor infractions, attending a traffic school can sometimes result in the dismissal of the ticket or reduction of points on the driver's license.

## Conclusion

General practice law in New York covers a wide array of legal services, including the formation of LLCs and the handling of traffic infractions. Properly navigating LLC formation involves several critical steps to ensure compliance with state laws, while managing traffic infractions effectively can mitigate potential legal and financial repercussions. Engaging knowledgeable legal professionals in these areas can provide invaluable assistance, ensuring that legal requirements are met and rights are protected.







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