

WHITE PAPER | APRIL 2020

# Protection in the Time of Coronavirus



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# Introduction

## Smyth & Associates, P.A.

The widespread impact of the coronavirus and the potential severity of symptoms have proven a grave health risk to all individuals regardless of your age or physical condition. In more severe cases, hospitalization is often required. Updating your estate plan during these times is of critical importance.

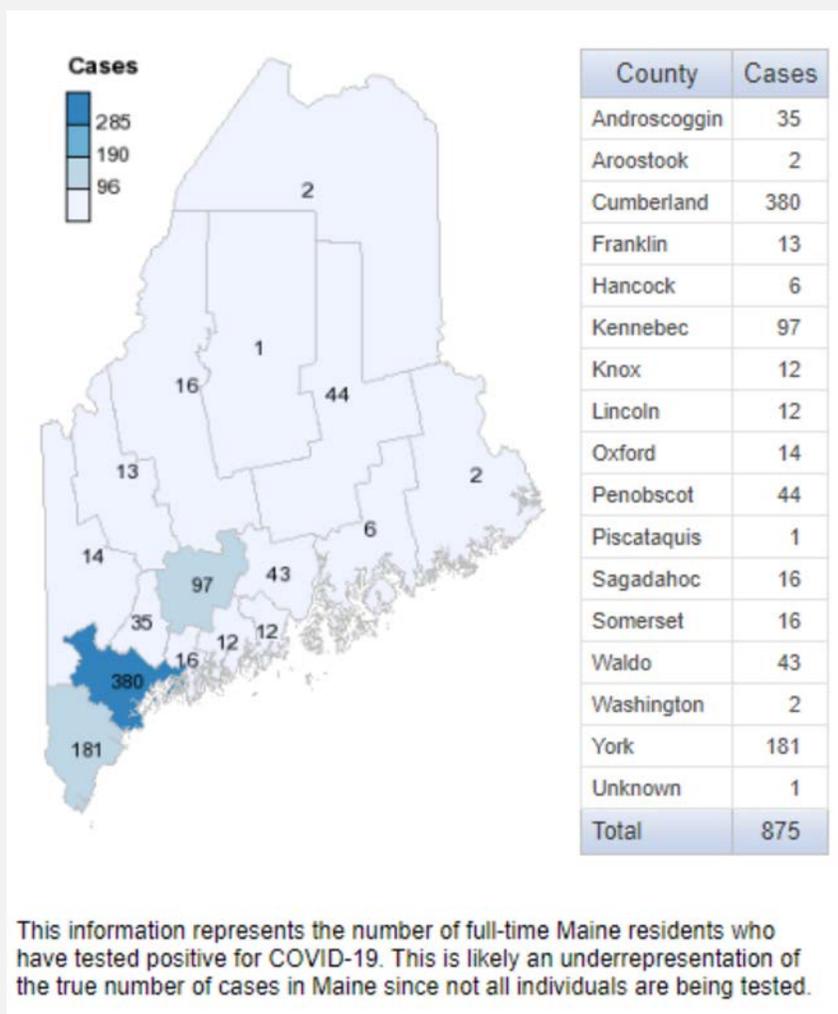
Attorney William J. Smyth has over 26 years of experience assisting clients with estate planning, elder law, asset protection, real estate law, and personal injury law matters. We serve clients in Maine, New Hampshire, and Massachusetts.

The Wuhan Coronavirus has had a devastating impact felt by all individuals on a global scale - and Maine is no exception. In these unprecedented times, individuals will continue to face profound and long-term uncertainty for what lies ahead.

## COVID-19 Cases in Maine

**STAT 1:**

As of April 20, 2020



All data pulled from <https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus.shtml>

**STAT 2:**

**Male**

**Female**

465 Cases - 53.1%

410 Cases - 46.9 %

### Female & Male Breakdown



While it's true that Wuhan Coronavirus typically impacts people who are older or those who have underlying medical conditions, people of all ages and health are affected by this pandemic.

- ▶ Nearly **55%** of confirmed cases in Maine are in people 59 and younger, with 35% younger than 49.
- ▶ **35** deaths in the state of Maine and 875 confirmed cases, as of April 20, 2020.



All data pulled from <https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus.shtml>

Perhaps now more than ever it is time to examine your personal affairs to prepare for the unexpected, regardless of familial situation or net worth. As part of this process, you should first review whether or not you have a basic estate plan in place, and if you do, whether it is up to date. As trusted estate planning and elder law attorneys to clients of all backgrounds, we are committed to helping educate our community on estate planning basics and important related items during this COVID-19 crisis.

In this whitepaper we will explore your different planning options for addressing coronavirus and making sure your family, assets, wealth and health are protected - including an advance health care directive / living will, a durable power of attorney for finances, a last will and testament, a revocable living trust, and Medicaid planning for long-term care.

# Advance Health Care Directive



An Advance Health Care Directive allows you to designate an “agent” to make healthcare decisions on your behalf in the event of incapacitation.

Powers you can give to your AHCD include access to medical records, the ability to make decisions regarding medical procedures, forced feeding, health insurance, the hiring or firing of medical professionals giving you treatment, and whether or not to resuscitate.

Without an AHCD, no one will have legal authority to make healthcare decisions on your behalf until a court appoints a guardian, which involves costly and time consuming court proceedings when time is of the essence.

## LIVING WILL

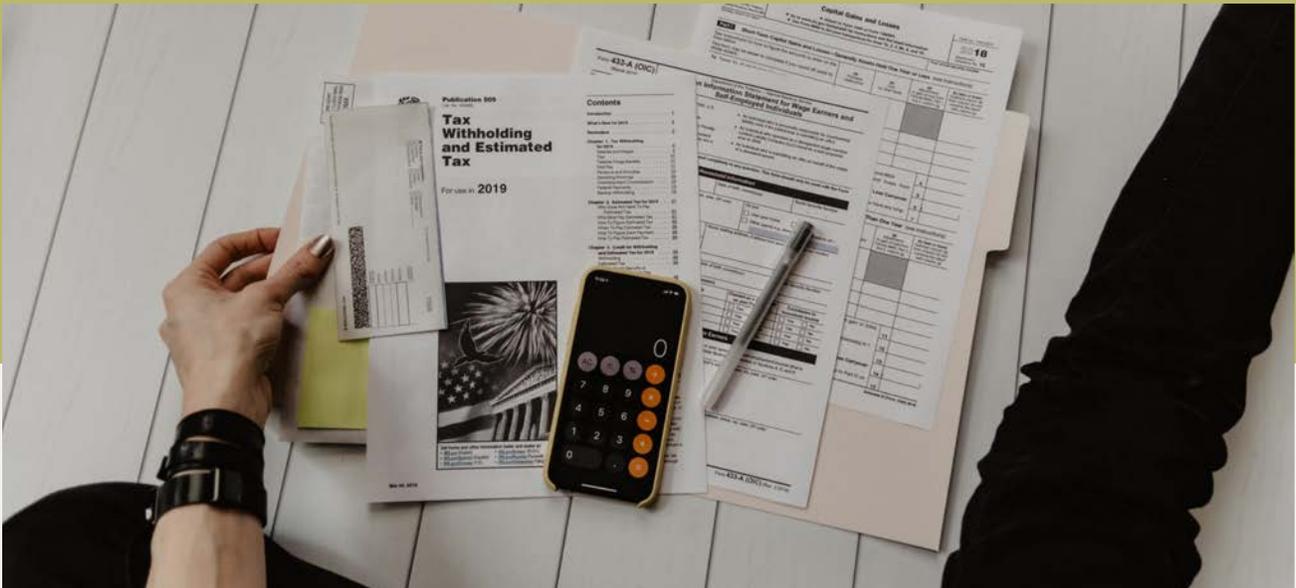
A living will is a document that allows you to define your end-of-life care wishes. It will detail your desires regarding medical treatment in the event that you are no longer able to express your consent at the end of your life when there is no realistic hope of recovery.

These advance declarations regarding the continued administration or withdrawal of life sustaining treatment in end-of-life situations helps protect your loved ones from having to make these decisions for you. The proper implementation of a living will not only allows you to express your wishes, but it also removes the burden of this immensely difficult decision from your loved ones. A living will is often combined into your Advance Health Care Directive.

Some decisions outlined in a living will include receiving treatment to relieve pain, life support procedures be withheld like CPR, the use of a breathing machine, dialysis, surgery, chemotherapy, and radiation, and whether or not you would want tube feeding.

## DURABLE POWER OF ATTORNEY

A durable power of attorney allows you to direct an “agent” to manage your financial and property affairs in the event of incapacitation. Some powers you can give a DPOA include the management of your banking, paying your bills, filing your taxes, managing real estate investments, handling your credit cards, and additional estate planning needs should you need them.



## LAST WILL AND TESTAMENT

A last will and testament is a document that allows you to nominate a guardian and conservator for minor children, designate how your property will be distributed upon your passing, and appoint a personal representative to administer your estate.



Must be validated through probate courts.



Must be signed and witnessed properly.

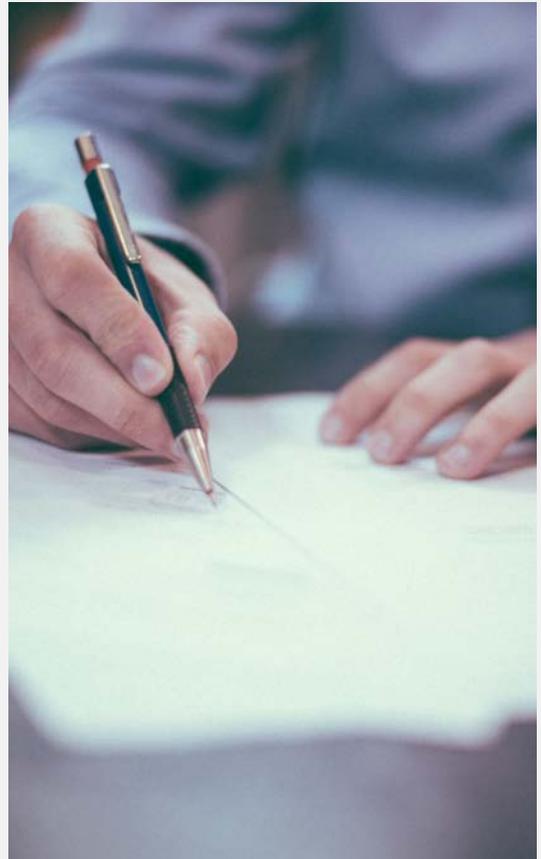


Must be updated to ensure current wishes are fulfilled.

## REVOCABLE LIVING TRUST

A revocable living trust serves the same important function as a last will and testament, i.e. directing the distribution of your assets when you die, but a revocable living trust does this without the need to go to court, saving your estate time and money. A revocable living trust also allows you to leave your assets to your beneficiaries in ways that protect them from divorce and creditors or from their own less than responsible behavior. It can also be used to leave your assets to your beneficiaries in ways that will not cause them to lose any benefits that they are entitled to receive from government programs.

A revocable living trust provides additional benefits, such as allowing you to provide instructions for your care and the management of your finances and property during any periods of incapacity. Further, a revocable living trust can be used to help you maintain privacy regarding your finances and estate plan.



## MEDICAID PLANNING

Qualifying for Medicaid benefits can help you protect your assets from the high costs of long-term care. Medicare does not cover extended long-term care nursing home costs. However, Medicaid is a government program that will pay for nursing home care if you qualify.

The rules regarding eligibility for Medicaid are complex and rigid. If you make a mistake, it can be costly. Having an experienced team help with your long-term care application is paramount. Planning in advance for Medicaid can also save you thousands that might be lost if you wait until the Medicaid is needed and you are forced to pay in the interim.

## STEPS TO TAKE IMMEDIATELY

Now is the time to make sure you and your family have the proper documents in place, so your trusted person can handle legal, financial, and health-care decisions for you if you cannot do so yourself.

You can also take these few easy steps to protect yourself from potential infection as you get your estate planning in order:

- Take advantage of internet capability. Of course we would all love to see our loved ones, but the safest route is to stay home at a safe distance. You can keep in close contact outside of physical presence. If you have a good phone or internet connection, you can meet with others via phone or video conference.
- Meet with an attorney virtually. We are able to send and receive documents via email. We can stay connected “virtually” so that in most cases, you can get everything up to (but not yet including) signing, without leaving home. For the time being, we only see clients in our office to witness them signing their estate planning documents. We take every precaution that the CDC recommends. We are conscientious about strict infection-control protocols, physical distance and frequent sanitizing of surfaces. For now, you will be welcomed with warm smiles (behind face masks) instead of the usual handshakes and hugs.
- Although we cannot visit our clients and friends in hospitals and nursing homes, most facilities have people on hand who will witness and notarize signings. They also have internet connectivity that we can use to facilitate the estate planning process. Given the current situation, it is more important than ever that vulnerable people have updated estate planning documents in place that reflect their wishes.

We can help prepare these important documents and guide you through the decision-making process. Please call us or visit our website for information.

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