



**Lahti, Lahti & O'Neill, LLC**  
Estate Planning and Elder Law



Michael Lahti -- Steve O'Neill -- Mia Lahti

**One Richmond Square – Suite 303N  
Providence, Rhode Island 02906**

**Telephone: (401) 331-0808 Fax: (401) 223-5115**  
[www.llo-law.com](http://www.llo-law.com)

**New Bedford Office**  
651 Orchard Street, Suite 304  
New Bedford, MA 02744  
(508) 992-8677

**Cape Cod Office**  
72 Route 28, Suite 5  
West Harwich, MA 02671  
(508) 430-8677

**Providing Peace of Mind Since 1976**

*Estate Planning Solutions*

*Early Fall 2013*

**CONTENTS OF THIS ISSUE**

Five Fatal Flaws in Designating Beneficiaries .....	1
Introducing Emily M. Parker.....	2
Planning For The Family Vacation Home .....	3
What Does Your Estate Plan Have In Common With Your Beloved Old Car? ...	3
An Interview With Rose McPherson .....	4

**Five Fatal Flaws in Designating  
Beneficiaries for Life Insurance Proceeds**

By Stephen T. O'Neill

Naming beneficiaries of a life insurance policy seems at first blush an easy task. If a person is married, typically the spouse will be named primary beneficiary and the children contingent (sometimes called "alternate" or "secondary") beneficiaries. If a person is not married but has children, the children will typically be named as beneficiaries in equal shares. However, failure to thoroughly consider various "what ifs," or failure to periodically re-examine the status of the beneficiary designations, may thwart the policyholder's intentions.

Here are **five common mistakes** ("fatal flaws" was just an attention-grabber) made in naming beneficiaries of life insurance policies:

**1. Failure to review and update beneficiary designations**

The beneficiary named when a policy is obtained may not be the appropriate beneficiary at a later date. It is important to periodically review your beneficiary designations and update them as necessary to reflect changes in life circumstances

not only of the policyholder but also of the named beneficiaries. Life insurance arrangements, like the rest of your estate planning, should be reviewed every few years and upon important life events like births, deaths, retirement, startup or sale of a business, divorce, and significant changes in asset makeup.

**2. Failure to name a contingent beneficiary**

Many policy holders only name one person as the beneficiary of the insurance policy assuming he or she will outlive the beneficiary. However, if the policy holder outlives the beneficiary and does not update the beneficiary designation, the policy proceeds will be payable at death to the policyholder's estate and thus subject to probate court proceedings and to claims of the deceased policyholder's estate. Probate also means unnecessary delay, expense and publicity. So be sure you name not just a primary beneficiary but also contingent beneficiaries, and that you review the beneficiary arrangements every few years.

**3. Failure to provide for the contingency of a child predeceasing the policyholder.**

When children are named as primary or contingent beneficiaries of a life insurance policy, or for that matter when other loved ones (nieces and nephews for example) are so named, what will happen to a beneficiary's share of the proceeds at the insured's death if such beneficiary is then deceased? If the beneficiary designation form, either via a "check the box" selection or via an "Exhibit A" attached to the form, indicates that each beneficiary's share is to be paid in essence "to the beneficiary if living or if deceased to his or her 'issue per stirpes'," then the deceased beneficiary's

share will drop down a generation, and in fact if a member of that generation is also deceased, his or share will drop down another generation. That's the effect of the venerable and universally accepted legal term "issue per stirpes."

#### 4. Naming a minor as a beneficiary

Parents, especially single parents, often wisely obtain life insurance to provide for their children in case the parents should die before the children are grown and finished with school. But naming a minor child as a direct beneficiary is unwise. Naming a minor as the beneficiary of a life insurance policy will subject the life insurance proceeds to a court ordered guardianship of the minor child's share of the proceeds. Not only will thousands be wasted in court fees, attorneys' fees and fees for preparing periodic court-mandated accountings, but at age 18 the child will suddenly be entitled to receive the entire unconsumed balance of the policy proceeds. Goodbye money, hello Ferrari. The solution is to instead name as beneficiary a trust which benefits all the children, both minors and "majors." This allows the policy holder, without court involvement, to control (a) how the policy proceeds are used, (b) at what age the beneficiary(ies) are given access to the proceeds, and (c) what happens to the proceeds if a beneficiary deceases before the age at which such access is given.

#### 5. Naming a beneficiary who receives needs based government benefits

Naming a person with special needs who receives needs based government benefits as the beneficiary of a life insurance policy may cause the beneficiary to lose his government benefits. If the policy holder wants to provide for the special needs person, creating a special needs trust and naming the special needs trust as the beneficiary can protect the assets for the beneficiary. The proceeds in the trust are used to supplement the government benefits instead of eliminating them. Creating the trust with the special needs person as the beneficiary also eliminates gifting issues and family conflict issues that often occur when a sibling or other family member is named as the beneficiary of an insurance policy whose proceeds are intended to be used for the person with special needs.

#### Fantastic Fix for Five Fatal Flaws: A Living Trust Centered Estate Plan

All of these mistakes can be avoided by designating your Living Trust as sole beneficiary and designing the trust so that every one of the above five mistakes can be avoided. (In some cases, usually in estates with death tax concerns, an Irrevocable Trust should be named as beneficiary and as owner of a policy or policies.)

*This is part I of a three part series on Designating Beneficiaries. In future Issues we'll discuss (1) Designating Beneficiaries for IRAs and Qualified Plans and then (2) Designating Beneficiaries for Non-Qualified Annuities.*

## Emily M. Parker

Lahti, Lahti & O'Neill, LLC is pleased to welcome Emily M. Parker to the firm. Emily started her full-time position in September, 2013, and will be working in elder law and estate planning. She took the Massachusetts and Rhode Island bar exams in July and hopes to be licensed to practice law this winter when the results are released.



Emily obtained her law degree from Syracuse University College of Law in May of 2013. She is also a graduate of Colby College where she majored in English, and spent additional time playing the violin. She spent a semester abroad at the University of Edinburgh in Scotland, as well as January term programs in Senegal and India, teaching the violin and English.

Emily worked as a Student Attorney at the Syracuse Tax Clinic providing legal assistance to locals with controversies with the I.R.S. In addition, she spent a summer working as a Pension and Tax Law Intern with South Brooklyn Legal Services. Her interest in elder law was solidified when she was a research assistant for a professor in law school her second year.

As Editor-in-Chief of the Syracuse Journal of International Law and Commerce, Emily wrote a note comparing how the U.S. and England guide attorneys dealing with clients with diminished capacity issues. Before discovering her passion for elder law and estate planning, she worked for the U.S. Attorney's Office in the Southern District of New York as a summer legal intern, and spent two years before law school as a criminal defense paralegal at the Law Offices of Adam D. Perlmutter in New York City.

Please join us in welcoming Emily M. Parker to Lahti, Lahti & O'Neill, LLC.

### Introductions

***Lahti, Lahti & O'Neill is always grateful to receive referrals from our clients and professional colleagues. If you know of anyone interested in our estate planning or elder law services, please have them contact us for a free consultation.***

*Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication is not intended or written to be used for, and may not be used for, the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.*

*This Newsletter should not be construed as legal advice but rather as general guidance on matters as to which you may wish to consult with a qualified professional advisor.*

## Planning for the Family Vacation Home

Few issues are debated more passionately than how to leave the family vacation home. Families are emotionally attached to such properties, as they frequently involve many happy memories. Successfully designing an estate plan with such properties can be challenging.

Primary issues that we face as planners involve: How can we get such properties down to the next generation with little or no tax exposure? How can we protect such properties from potential nursing home costs? How can we ensure that the transfer of ownership will occur efficiently, free of probate and the time and costs associated with probate? How can we protect the family from potential liability of co-owning property...especially if such property is rented?

More subtle issues center around family dynamics, and taking a realistic approach as to how the family will use the property at the next generational level. In many families the parents' role is essentially that of a benevolent dictator; with the parents controlling how, when, and why the property gets used, and, very importantly, paying the bills. Consideration must be given, however, to how the next generation will handle the sharing of use, paying the expenses and upkeep, and providing for leadership as families expand.

When the parents die and the property is now owned at the next generation, conflicts can quickly present. Sometimes a dominant personality will use the property an inordinate amount of time. Sometimes there are differing opinions about whether the property should be rented out to help pay the carrying costs. Sometimes there may be outright resentment by a child who is paying bills, but unable or not interested in using the property. And, very importantly, there may be well-deserved angst about liability exposure in connection with co-owning the property.

These issues usually call out for some form of governance at the next generational level. In some ways it is using a legal "mechanism" (perhaps a trust or limited liability company "LLC") to fill in the role of "benevolent dictator" that the parents had been playing.

The trust or LLC can provide a roadmap as to who can use the property, and when. Instructions frequently detail how bills are to be paid, and the consequences for not paying for bills. (For instance, if a child repeatedly refuses to pay his or her share of the bills, perhaps such child's use of the property is suspended until appropriate contributions are made. Or, perhaps if such non-payments continue, the child can be "forced out," or "bought out.") These mechanisms may also accomplish the goal of protecting family members from liability. The LLC, especially, provides personal asset protection to the members of the LLC. And, lastly, the property can be kept in a family "bloodline."

To understand the importance of this, consider what sometimes happens when these issues are not well thought

out. For example, what if the parents simply transfer the family property to their children as "equal tenants in common." As such, the children are free to dispose of their interest in any way they please. That being the case, if any of the children have "I love you wills" and die without adding special provisions in their wills to deal with the family vacation property, then such child's spouse may co-own this special family property. For most families the thought of an in-law owning a piece of the family property is unpleasant. This could have been easily solved by only permitting passage of the property "in trust" for the surviving spouse, or perhaps only allowing transfers to ancestors or descendants in the bloodline.

In summary, some of the most rewarding work we do is helping clients pass these special properties down to their descendants. Please contact us should you wish to discuss the different ways such property can be left to future generations.

---

## Question: What Does Your Estate Plan Have In Common With Your Beloved Old Car?

### Answer: The Need for Continued Maintenance.

Just because your estate plan is signed, sealed and properly funded, don't think you can forget about it for the next ten years. Normal every-day events can and will affect your estate plan. Part of your overall planning should be to meet with your estate planning attorney on a regular basis, to have your plan reviewed and updated. A regular basis could be every two to three years.

Following is a series of potentially life-altering events that could affect your estate plan. Their occurrence should be brought to the attention of your estate planning attorney:

- Having a new child, or adopting a new child.
- A change in your marital status.
- A new daughter-in-law or son-in-law in the family.
- A change in health for you, your spouse or your children.
- Inheriting substantial assets.
- A change in the tax code
- Buying or selling a business.
- Acquiring sizable new assets.
- A set back in personal finances.
- A change in your permanent residency
- Your Powers of Attorney have become stale.
- Your Executor dies or becomes incapacitated.
- Retiring.
- Winning the lottery. Good luck!

Lahti, Lahti & O'Neill, LLC offers complimentary estate plan reviews every three years. If you feel too much time has passed without a proper estate planning review, call your LL&O estate planning attorney today.



## **An Interview With Legal Assistant Rose McPherson**

*Interviewed By  
Brian McCarthy*

**1. I understand that before joining Lahti, Lahti & O'Neill, LLC you were with the Massachusetts Army National Guard. Can you tell us about that? By the way, thank you for your service.**

Thank you. I enlisted in the National Guard in 2005, during my senior year of high school. After basic training I returned back home and worked full time while "drilling" one weekend a month with the 772nd Military Police Company out of Taunton, Mass until we deployed to Iraq in 2009. My contract ended in 2011, and I have been working full time and going to school ever since.

**2. After the Army, did you receive any special training to be a Legal Assistant?**

I attend Bristol Community College in Fall River, MA. I am currently three courses shy of an Associate's degree in office administration with a legal concentration.

**3. How long have you been with Lahti, Lahti & O'Neill, LLC?**

September 30th was my 2nd year anniversary.

**4. Has your experience in the National Guard helped you in your current work? Can you give us an example?**

In the Army I trained to be a supply specialist, but spent most of my time as a personnel clerk where I learned a

lot of my secretarial skills. I became quite the expert at dismantling paper jams, and that is always an important skill in any office.

**5. What do you like best about being a Legal Assistant?**

What I like best about being a Legal Assistant are the people I get to meet. In Estate Planning and Elder Law, I get to meet a lot of retired people with great stories. Usually they're really enjoying this stage in life and just getting things in order for their families.

**6. Describe what you do during a typical day at Lahti, Lahti & O'Neill, LLC.**

One can never say there is a such thing as a typical day here, but most days involve greeting clients, opening files, being a witness for signings, assisting with closings, getting things ready for seminars, ordering supplies and assisting the attorneys and paralegal as much as I can. Two of my major responsibilities are answering the phone and scheduling, so I am who you'll get if you call for an appointment!

**7. What do you do with your free time?**

When I'm not working at Lahti, Lahti & O'Neill, I like to stay busy and usually fill my time with babysitting or school. On the off chance I do have actual free time, I spend as much of it as I can with my family and friends, or just reading and relaxing at home with my cat, Spuds.

**8. Do you miss the National Guard?**

No, I am far too happy with a hot shower every morning, and living without 5:00 AM wake ups.

*Brian McCarthy is an independent marketing consultant*

### **Request a Speaker**

To arrange a complimentary educational seminar regarding Estate Planning & Elder Law for a group of 25 or more people, please call our Providence office at (401) 331-0808.