Spring 2005

The Advisor

INFORMATION TO TRUST. EXPERTS TO RELY ON.

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REDGRAVE & ROSENTHAL LLP

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What's New in a New Name

We are pleased to announce that the name of our law firm has changed to Redgrave & Rosenthal LLP. Our firm consists of five attorneys, six paralegals and four administrative assistants devoting their practice exclusively to estate planning, Elder Law and trust and estate matters. We believe we have one of the largest practices in these areas of law throughout South Florida. All of the attorneys and staff members that you previously worked with on estate planning, trust and estate matters continue to be part of our firm. We welcome the opportunity to assist you in the future.

The practice of law has evolved primarily into two types of law firms, the very large firm that represents clients in all areas of the law, and the small firm that concentrates and excels in one area of law. We have chosen to become a boutique estate planning, trusts and estates law firm that currently practices in the areas listed to the right.

We can assist you with all of your legal needs, as we have developed relationships with other high quality attorneys and law firms that specialize in areas of law outside of our practice areas. Please feel free to contact us for a referral.

Left to Right:
A. Richard Redgrave
Shelly Wald Schwartz
Arthur R. Redgrave
Sherri A. Greenblatt
Alan B. Rosenthal

Areas of expertise at Redgrave & Rosenthal LLP:

Estate Planning

1. Revocable Trusts
2. Wills
3. Irrevocable Trusts
4. Life Insurance Trusts
5. Family Limited Partnerships
6. Limited Liability Companies
7. Dynasty Trusts
8. Charitable Trusts and Foundations
9. Durable Powers of Attorney
10. Health Care Advance Directives
11. Living Wills
12. Tax Planning
13. Asset Protection Planning and Asset Protection Trusts
14. Grantor Retained Annuity Trusts
15. Sales to Intentionally Defective Grantor Trusts

Estate Administration

1. Estate and Trust Administration
2. Probate
3. Federal Estate and Gift Taxation
4. Generation Skipping Taxation
5. Fiduciary Income Taxation
6. Fiduciary Liability

Elder Law

1. Long Term Care Planning
2. Asset Protection/Medicaid Planning
3. Guardianship
4. Disability Planning
5. Special Needs Trusts
6. Medicaid Irrevocable Trusts
7. Medical Assistance Eligibility
8. Review of Long Term Care Insurance Policies
9. Review of Residential Housing Contracts

Miscellaneous

1. Residential Real Estate
2. Small Business Formation
3. Marital Agreements
4. Residence Agreements

How to Provide for Heirs

Today the vast majority of our clients create a revocable trust to provide for the distribution of their assets upon their death to their intended beneficiaries. The benefits are numerous and include privacy, avoiding probate, timely distribution of assets, and avoiding a guardianship over assets during lifetime, in the event of a disability.

Upon death, most clients choose to have their trusts provide for an outright distribution of their assets to their beneficiaries, i.e. their children, grandchildren, or just friends, and then the trust terminates. By doing so, their beneficiaries fail to benefit from a major advantage available to them from a Florida revocable trust.

Individuals encounter problems, usually unintended and unexpected, throughout their lifetime. There are divorces, lawsuits with judgments entered, business failures resulting in bankruptcy, and other unfortunate circumstances. Once a beneficiary has received an outright distribution from a trust, that inheritance is subject to all of these pitfalls of life.

Instead of the outright distribution, what if the revocable trust provided that the assets remained in a trust for the beneficiary's lifetime? Now the assets in the trust for the beneficiary are shielded from creditors, spouses and all others trying to get to them. At first glance, holding assets in trust may appear to be overly restrictive on the beneficiary, but this need not be the case. Florida law allows the beneficiary to be his or her own trustee. Thus, if the trust provides that the beneficiary, who is also the trustee, shall receive all of the income (interest and dividends) and can invade the principal, all of the assets become essentially available to the beneficiary at his or her own request. These same assets, however, are not available to the beneficiary's creditors. If the trust provides for broad investment powers, then the beneficiary as trustee can accomplish nearly all of his or her own investment and spending objectives within the trust and the assets remain protected. As an example, the beneficiary could buy a vacation home within the trust and use that vacation home for his or her personal enjoyment. At the same time, by maintaining the title to the vacation home in the trust, the beneficiary keeps it safe from creditors.

Under Florida law, a trust could last up to 360 years, although most individuals choose a far shorter term. Commonly, a parent will allow a child to determine how the trust is to be distributed to the grandchildren upon the child's death and quite often the child will then elect to afford the same protection for his or her children by retaining the assets in further trust and giving the grandchildren lifetime protection. Hence, you might hear these trusts referred to as "dynasty trusts."

Are there disadvantages to creating such a trust? Not really. Once you amend your trust to create a trust for your beneficiaries, no further documentation is needed. Unfortunately, today we live in a very litigious society. This type of trust can insure that your assets will be distributed to your intended beneficiary If you feel such a trust could further your estate planning objectives, please contact one of our attorneys to further explore precisely how it can be tailored to your unique circumstances.

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But I Have
Insurance

We insure our lives, our homes, our cars, why not our long term care? The cost of home health care as well as the cost of a life care facility continues to skyrocket. For those who are able to do so, the purchase of a long term care insurance policy is imperative. But beware, the devil is in the details.

Insurance is available to defray, in whole or in part, the cost of long term care. Most of us wish to remain at home for as long as possible and hopefully, never enter a nursing home. The cost of remaining at home may exceed $10,000.00 a month. Home health care costs are not covered by standard health insurance. These out of pocket expenses can be avoided, however, through the purchase of the proper type of insurance policy.

Unfortunately, many people wait too long to make a decision on the purchase of Long Term Care insurance, believing that they will be able to obtain such coverage when it becomes necessary. Just like we cannot wait until a hurricane is in the "box" to purchase or upgrade our homeowner's insurance, we cannot wait until health issues have been diagnosed to purchase long term care insurance. By then, it is too late to purchase the coverage which could have saved our estates and our heirs hundreds of thousands of dollars.

If you have had the foresight to purchase long term care insurance, do you know what your policy covers? Human nature dictates that once we buy insurance of any type, we rarely give it a second thought until we need to make a claim. This is a dangerous course of action. Long term care insurance policies, just like any other policy, should be examined on a regular basis, at least every two years, to determine whether the intent behind the purchase remains and whether the policy will still cover what you think it covers.

"Comparing the long term care insurance policy with the actual cost of care is a rude awakening."

As we age, long term care insurance becomes more and more important as we wish to protect ourselves and our loved ones against the ever increasing cost of home health care, assisted living care and nursing home care. The policies we purchased within just the past five years, will defray the cost of care, but may not defray it as much as we thought. Unfortunately, the fine print is rarely explained. You may not realize that such policies have strict health requirements both at the moment of purchase and at the time of making a claim. In addition, the benefit amount you believed to be more than sufficient at the moment of purchase, barely dents the home health care or nursing home bill.

Most people do not become aware of the insufficiency of their policy, until it is time to utilize the policy and then they are faced with not only deciphering the long term care insurance policy, but also the home health care or life care facility contract. Comparing the long term care insurance policy with the actual cost of care is a rude awakening.

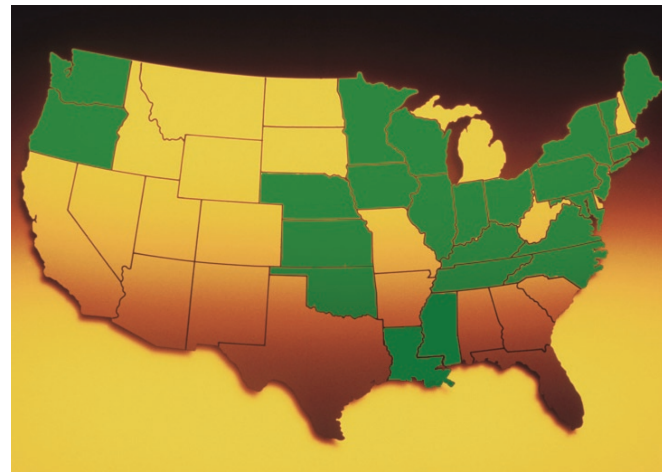
At Redgrave & Rosenthal LLP, we are experienced in reviewing long term care insurance policies so that our clients have a full and complete understanding of how the policies work, what the requirements are and what the level of benefit is in real terms. If you have a long term care policy, you must understand its terms. If you plan to purchase such a policy, you must understand the terms before you sign. Let us review the contracts you have already signed as well as the contracts you intend to sign. We will help you avoid surprises.

Owning Real Estate
LLCs and Decoupling

Do you own real estate in New York? How about Massachusetts, Maryland or Maine? These are just a few of the states that may impose an estate tax on your estate, even if there is no Federal Estate Tax due! Often, we can assist you in avoiding this tax by creating a Florida Limited Liability Company (LLC) as discussed below. If we cannot avoid the tax by use of this LLC, or if you do not wish to set up this LLC, your estate plan should still be reviewed to determine if there can be a more tax efficient formula that should be used. Here's why we need to review your plan in either event:

As you may already know, in 2001, the law pertaining to estate tax changed dramatically. Under the prior law, the Federal government provided a tax credit (which is more beneficial to the taxpayer than a deduction) for taxes that were paid to the states for state estate taxes. One change after the 2001 law is that this credit is being phased out and a deduction will take its place starting this year. For the majority of Floridians, this change will leave them unaffected because Florida is a "coupled" state, meaning it only taxes estates to the extent that the Federal government would give the estate a credit. Therefore, even though Florida received estate tax, the estate paid no extra tax, because the estate paid that much less to the Federal government. Since the credit for tax will be phased out, Florida will stop collecting estate tax for those who die in 2005 and beyond. Florida is unlikely to become a "decoupled" state because that would require a constitutional amendment voted on by its residents.

For many, however, the changes in federal law increase estate tax liability. Those who own property in "decoupled" states may be faced with an unexpected tax bill because either (1) the state's laws were structured in a way that the state continued assessing the same amount of tax, even though the available credit was reduced, hence the term "decoupled" or (2) a state has enacted a law to protect its revenue as a result of this federal change. In either event, a tax that was previously only paid to the states, is now paid to both the states and the Federal government. Therefore, even though you live in a "coupled" state, if you own real property in a "decoupled" state, or in a state that becomes "decoupled", that "decoupled" state may tax you nonetheless.



Green indicates the states that have some type of estate tax, inheritance tax or both.

(Compiled from research done as of December 2004.)

Surprising to many, there may be no reduction in the amount of state estate tax due for an encumbrance on that property such as a mortgage. For example, if you own a $1,000,000 condominium in New York that has an $800,000 mortgage, your estate is still taxed on the full $1,000,000. Therefore, if you pass away with a net estate of $1,500,000 after taking into account your liabilities including mortgages and there is no federal estate tax due, this $200,000 of equity in New York could trigger $28,000 in New York taxes while your estate would owe nothing to the Federal government.

To avoid the tax in many states we are able to create a Florida LLC to own the property and remove the property from state taxation altogether. In other states we may not be able to avoid this tax or it may be questionable whether we can avoid the tax in this manner. In the latter case, we must still consider how to rework the formula for a husband and wife which determines how much of your estate is transferred to a credit shelter trust and how much of your estate is transferred to your spouse or marital trust. No longer can we automatically determine that the most effective estate tax plan is the standard formula that fully funds the credit shelter trust to the maximum amount permitted by federal law. Thus, it will be important to reexamine your estate plan, even if you decide not to take advantage of avoiding the estate tax by using an LLC.

As you can imagine, these issues require a comprehensive analysis of your assets and your estate plan. When considering the impact of not properly planning for this tax change, it becomes evident that all the time, effort and expense of proper planning are financially prudent. Please contact us if you own real estate in any state other than Florida to determine if we can help you avoid paying more estate tax than necessary.

Your Health Care Directive
May Not Work

Your designated Health Care Surrogate may not be able to perform the duties he or she would have otherwise been able to perform if your Health Care Directive has not been drafted to comply with the Health Insurance Portability and Accountability Act (HIPAA). Under the law, your health care provider (doctor, hospital, etc.) may not disclose health information to your Health Care Surrogate unless your Health Care Directive contains specific language tailored to comply with the consent provisions of HIPAA. Any health care provider who releases protected health information risks being subjected to fines.

"We strongly recommend that you execute a new Health Care Advance Directive."

Our new Health Care Advance Directive complies with the requirements of HIPAA. At your request, we will review your current Health Care Directive to ensure that it complies with HIPAA. If it does not comply or was prepared by our firm prior to April 2003, we strongly recommend that you execute a new Health Care Advance Directive. A failure to comply with HIPAA means that you run the risk of your Health Care Surrogate not being able to care for you at a time when you need the surrogate most.