

WINTER  
2006

# THE Advisor

INFORMATION TO TRUST; EXPERTS TO RELY UPON

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## Updating Your Estate Plan



As estate planning attorneys, a question that we often hear asked is, "How often should I update my estate plan?" As we begin a new year, it seems like an appropriate time to address this question. Your estate plan is only current if it meets your current needs and desires. Since every year brings a variety of changes to our lives, it is a good idea to review your estate plan on an annual basis.

There are numerous factors that may affect your estate plan. The purpose of this article is to facilitate your annual review by providing you with some of the factors that you should keep in mind as you review your plan.

### FAMILY CHANGES

After any change in your family dynamic, your estate plan should be updated to reflect the current status of your family. Such a change may include marriage or divorce, the death of a beneficiary or the birth or adoption of a beneficiary. A review of your family's circumstances should also include the consideration of any special needs that require additional planning. A spouse's mental capacity may be diminishing or a child may have special needs due to a physical or mental limitation.

### FINANCIAL CHANGES

Even if your current estate plan was made just a year ago, your financial situation may have changed. A soaring real estate market may have provided a new source of wealth for your portfolio, or changes in the stock market may have increased or decreased the size of your retirement plan. As our life expectancy continues to rise and we work longer, your estate plan may need to factor in additional income and newly acquired assets.

### GEOGRAPHICAL CHANGES

Any time you move from one state to another, your estate plan should be modified to accurately reflect your current state of residency. Each state has a different set of laws governing everything from healthcare and medical decisions to the administration of estates and trusts upon death. In addition, each state has its own set of tax laws that may impact your estate plan differently and sometimes lead to an unexpected result. For example, if you die domiciled in Florida, a state with no estate tax, but have an outdated New Jersey will, the state of New Jersey may claim that you were a New Jersey resident and subject your estate to New Jersey estate tax.

### TAX LAW CHANGES

On January 1, 2006, the federal estate tax exemption jumped from \$1.5 million to \$2.0 million where it is scheduled to remain until 2009 (assuming Congress does not make any more changes) when it is increased again to \$3.5 million. In 2010, the federal estate tax exemption is scheduled to be repealed for a one year period, and then reinstated in 2011 at 2001 rates (a federal estate tax exemption of \$1.0 million and a top tax rate of 55 percent).

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While the increased exemption, at least for the time being, is good news, the continuous fluctuation of our federal estate tax system will require a close monitoring of your estate plan in order to be sure that you are maximizing any tax benefits available to you and your family.

### PERSONAL CHANGES

Finally, even if you did not experience any life changing events this year, there are still other reasons to update your estate plan, including the possibility that you simply changed your mind. For example, maybe you initially left your beneficiary an outright bequest and the way that the beneficiary is handling money has led you to believe that the bequest should now be in trust. Perhaps you changed your mind about the person you have named as personal representative of your will or trustee of your trust.

### FOLLOWING THROUGH WITH YOUR ESTATE PLAN

An estate plan is only as good as its implementation. Did you re-title your assets into your trust? Does your IRA name the right person as beneficiary? Are you following the appropriate procedures for your irrevocable life insurance trust? You may have forgotten how your estate plan is supposed to work and need to have it explained to you again so that you can be sure it accurately reflects your current needs and desires.

By reviewing your estate plan on an annual basis you afford yourself the opportunity to reconsider your current plan in light of any changes that took place over the past year. The factors influencing your decisions at the time that you create your estate plan are likely to change, and when they do, it is important that your estate plan changes as well.

IN THIS  
*issue*

► *Updating Your Estate Plan*

► *Tax Law Changes for 2006*

► *Weathering the Storm*

► *Danielle H. Bratek Joins Firm*

► *The Long Term Care Safety Net is Disappearing*

► *Florida Homestead: Protecting your Investment*

## Tax Law Changes for 2006

As of January 1, 2006, the annual exclusion amount was increased to \$12,000. This allows an individual to gift up to \$12,000 per year to each and every beneficiary of their choice without the transfer being treated as a taxable gift and reducing their lifetime gift tax exclusion amount of \$1 million.

In addition, on January 1, 2006, the estate tax exclusion amount increased to \$2 million and the highest marginal estate, gift and generation-skipping tax rate was reduced to 46%. The chart shows the exclusion amounts and highest tax rates by year, assuming the law remains unchanged. Please contact our office if you have any questions as to how these changes may affect your estate plan.

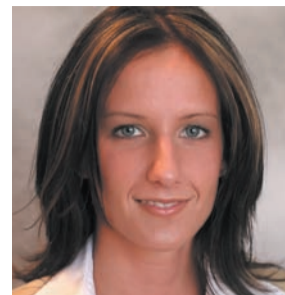
| CALENDAR YEAR   | EXCLUSION AMOUNT FOR ESTATES & GST | HIGHEST ESTATE, GIFT & GST RATE                           |
|-----------------|------------------------------------|---|
| 2005            | \$1.5 million                      | 47%   |
| 2006            | \$2.0 million                      | 46%   |
| 2007            | \$2.0 million                      | 45%   |
| 2008            | \$2.0 million                      | 45%   |
| 2009            | \$3.5 million                      | 45%   |
| 2010            | Estate Tax & GST Repealed          | 35% (Gift only)   |
| 2011 and beyond | \$1.0 million                      | 55% (Plus a surcharge for estates exceeding \$10 million) |

## Weathering the Storm

After the record-breaking storms of the past two years, we at Redgrave & Rosenthal LLP recognized the need for contingency planning to ensure that our office was protected in the event of a disaster. While no plan can ensure 100% protection, we want you to be aware of the following steps we have taken to protect your files and documents:

- Our building was constructed in 1996 to meet the specifications required after Hurricane Andrew. The windows and structure were built to withstand 120 mile per hour winds. We suffered no structural damage or flooding as a result of any of the storms, this year or last.
- For hurricanes exceeding category 1 strength, all files are removed from the outside offices and relocated to the interior of our office space for maximum protection.
- All original wills, trusts, tangible personal property memoranda, powers of attorney, health care advance directives, nominations of guardian and deeds which we maintain are stored in a locked fire-proof vault located in the interior of our office space.
- In early 2005, we began scanning executed copies of most major estate planning documents into our computer network.
- Daily, our computer network is backed-up to a highly secure, bunkered, Tier 1 Data Center in Georgia (which is in turn backed-up at five different locations nationwide) to ensure that all computer files are safe from destruction.

In the event of a disaster, the protection of your documents and your ability to access our office is of paramount importance to this firm. We are doing everything possible to improve the firm in that regard and will continue to use available technology to better serve and protect our clients during any crisis.



## Danielle H. Bratek Joins Firm

Redgrave & Rosenthal LLP is pleased to announce that Danielle H. Bratek has joined the firm. Her practice focuses on all facets of residential real estate matters including the sale, purchase and refinance of a home. In addition, she works closely with the Estate Planning Group to re-title real estate for estate planning purposes.

Danielle earned her J.D. from Nova Southeastern University in May 2004 and was admitted to the Florida Bar in September 2004. She graduated cum laude from Salisbury State University in 2000.

She is a member of the Florida Bar, the American Bar Association, the Palm Beach County Bar Association, the South Palm Beach County Bar Association and Stephen R. Booher Inns of Court. Danielle is a Florida Supreme Court Certified County Court Mediator.

## The Long Term Care Safety Net is Disappearing

*Sheldon Smythe\*, 84, helped his granddaughter cover the costs of her final year in medical school by paying the year's \$40,000.00 tuition to the school directly. The following year, he suffered a massive stroke and after three years of round-the-clock care, his funds began to run out. Mr. Smythe's son did what he promised he would never do - choose a nursing home. To compound the burden on the family, Mr. Smythe's son found out that his father would be ineligible to receive Medicaid benefits for his nursing home care because four years earlier he had helped his granddaughter finish medical school.\**

This is one of the major changes being considered by the U.S. House of Representatives as it prepares to return to session at the end of January 2006, to vote on the Deficit Reduction Act of 2005 (s.1932). The House had previously passed this bill, but because the U.S. Senate passed a slightly different version by a vote of 51-50, the House of Representatives must revote.

Within the 774 pages of this proposed Bill are drastic changes to the criteria for Medicaid eligibility for long term care. Consider the above vignette: Mr. Smythe did not pay for his granddaughter's medical school tuition for the purpose of obtaining Medicaid assistance. The new rules extend the look back period to five years for

all transfers, regardless of purpose or intent.

Under current rules, Mr. Smythe would be penalized by Medicaid for transferring funds, resulting in ineligible status for benefits for twelve months from the date of the transfer. Under the new rules, Mr. Smythe would be ineligible from the time he needs the benefits, not the time the gift was made.

To compound Mr. Smythe's son's frustrations, he is advised by the Department of Children and Families that his father is ineligible to receive benefits, not only because of the transfer, but also because the equity in his home is too high. Due to the recent appreciation in the real estate market, Mr. Smythe's home is now worth

\$700,000.00. Under current rules, a person's homestead is completely exempt. The new rules propose to limit the exemption. If the equity in a person's home exceeds \$500,000.00 (which may be increased by individual states to \$750,000.00), that person is ineligible for benefits.

These are just a few of the drastic changes that will affect us and our loved ones as we assess our long term care needs. Redgrave & Rosenthal's Elder Services Group led by Board Certified Elder Law Attorney, Sherri A. Greenblatt, is available to discuss these and other changes as they apply to your specific situation.

\* Names have been changed to protect client identity.

## Florida Homestead: Protecting your Investment

Florida's homestead laws are unique and can be confusing. Generally, real property is considered homestead when the owner utilizes it as a main residence. The protection covers up to 160 contiguous acres outside a municipality, or one-half of an acre of continuous land within a municipality, and includes improvements, such as a house.

Various legal consequences turn on whether or not real property is homestead. By constitutional and statutory provisions, there are three areas where the Florida homestead laws are especially meaningful.

### PROTECTION AGAINST CREDITORS

If the real property qualifies as homestead, it is generally exempt from a forced sale by creditors both during lifetime and after death. There is no dollar limitation - any property, whether it be valued at \$25,000 or \$25,000,000, can be protected.

The Florida Constitution provides that the Florida residence is exempt from forced sale under process of any court. There are three exceptions which could trigger a forced sale:

1. Failure to pay real estate taxes and/or easements
2. Unpaid obligations for the purchase, improvement or repair
3. Unpaid obligations for contracted labor

### DISPOSITION OF PROPERTY

The sale or devise of homestead property may be restricted if the owner is married or has minor children.

The owner of homestead property, joined by the

spouse, if married, is permitted to mortgage, sell or gift the property without restriction. The homestead is not subject to devise if the owner is survived by a spouse or minor child. Where there are no minor children, the property can be devised to the spouse. If the owner of the homestead is survived by a spouse and lineal descendants, the surviving spouse receives a life estate and the remainder passes to the lineal descendants.

### FLORIDA REAL ESTATE TAX: EXEMPTIONS

If the real property qualifies, there will be a \$25,000 homestead exemption on the assessed value. In order to qualify for the exemption, the property must be owned as of January 1, must be owner-occupied and permanent residency in the State of Florida must be established.

By filing for this protection, the annual assessed value of the property cannot be increased more than 3% or the National Consumer Price Index (CPI), whichever is less. Please note that this Save Our Homes Cap limits the assessed value, and not the amount of taxes paid.

Filing an application for a new homestead exemption is the responsibility of the homeowner. The application must be filed with the county property appraiser's office on or before March 1 of each year. After the initial application is granted, a homestead receipt will be sent on an annual basis, indicating automatic renewal. Acceptance of the receipt implies that the homeowner continues to use the property as his permanent residence, that the property is not being rented, and that he maintains Florida residency.

To apply, the tax assessor will require a copy of the

deed or a tax bill showing the property description and ownership, a Florida driver's license and Florida voter registration card or declaration of domicile dated prior to January 1.

In addition to the basic exemption, there are others which can be obtained; exemptions and criteria for eligibility may vary by county:

- \$25,000 Senior Citizen Exemption. (income restrictions apply and must be applied for on an annual basis)
- \$5,000 Veteran's Disability Exemption.
- \$500 Widows / Widower's Exemption.
- \$500 Disability Exemption for totally or permanently disabled residents.
- \$500 Exemption for Blind Persons.
- "Granny Flat" Exemption.
- Historic Property Exemption.

### FOR ADDITIONAL INFORMATION VISIT THE FOLLOWING WEBSITES:

- Palm Beach County Property Appraiser:  
<http://www.pbcgov.com/papa/>
- Broward County Property Appraiser:  
<http://www.bcpa.net/>

To ensure that you are receiving the benefit of the homestead laws or if you have additional questions regarding how homestead affects you, please contact our office.