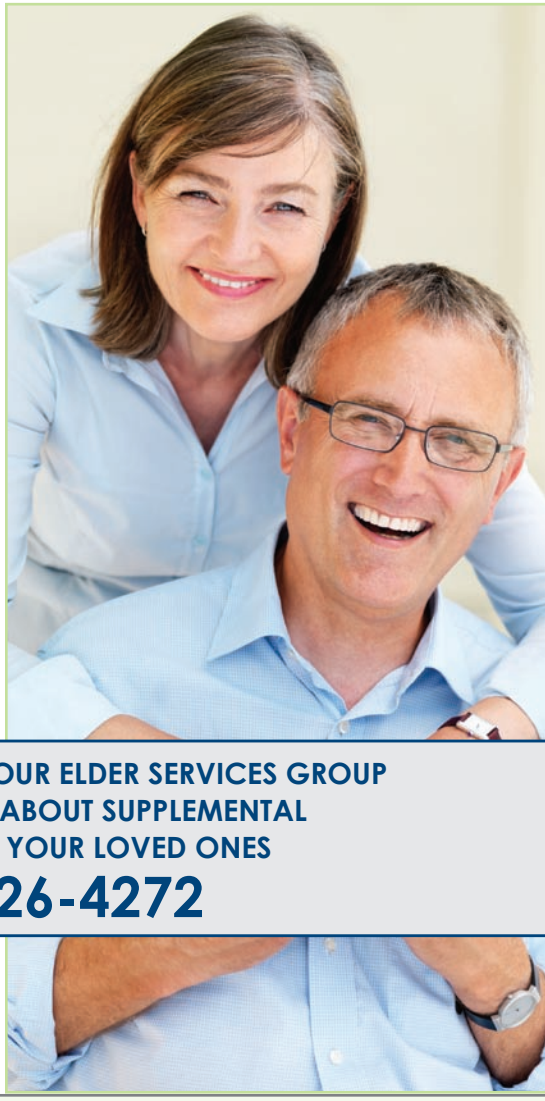
THE ADVISOR
INFORMATION TO TRUST. COUNSELORS TO RELY UPON.
SPRING 09

TACKLING TODAY'S SPECIAL NEEDS CONCERNS

In today's trying economic times, there comes an added worry of how to pay for a disabled loved one's care when our own investment and retirement plans are shrinking and the government sees fit to further tighten the outlay of assistance to help our most needy citizens. For many during bright economic times, the intent was to leave a portion of the estate in a special needs trust for the benefit of the disabled loved one. In this fashion, their loved one would be able to access government assistance for food, shelter and healthcare while making funds available to supplement that care and provide as best a quality of life that may be obtained.

With poor economic times, those "extra" funds have dried up resulting in an increased concern of how to provide that quality of life without completely draining retirement accounts and shortchanging other heirs, especially if they should pass away before the downturn ends. One option that should be considered is life insurance. If a parent dies before they are able to recoup the funds that would have funded the special needs trust, a life insurance policy could provide those lost funds. Much like a life insurance policy payable to an Irrevocable Life Insurance Trust meant to provide the funds for an estate tax bill, a life insurance policy payable to an Irrevocable Special Needs Trust for the benefit of the disabled heir can replace the loss of funds or supplement the funds meant to supplement that heir's care.

Our Elder Services Group is available to discuss options to replace those lost earmarked funds.



CONTACT OUR ELDER SERVICES GROUP FOR MORE ABOUT SUPPLEMENTAL FUNDS FOR YOUR LOVED ONES

561-226-4272

BUSINESS OWNERS

ASSET PROTECTION AND SUCCESSION CONSIDERATIONS FOR BUSINESS OWNERS

Business owners devote time and energy "working in" their business to improve business operations and profitability; however, they often neglect to "work on" their business by not addressing asset protection and succession issues. Business owners should consider the following: 1) how to own C Corporation or S Corporation stock to minimize exposure to creditors and, 2) how to implement business agreements designed to protect and enhance business value from the "inside" of the corporation while providing for seamless succession.

(CONT. ON NEXT PAGE)

120 EAST PALMETTO PARK ROAD, SUITE 400 • BOCA RATON, FLORIDA 33432 • PH 561.347.1700 • FAX 561.391.9944
www.redgraveandrosenthal.com

Please note that effective January 1, 2009, the Firm's mailing address should now reflect Suite 400

(ASSET PROTECTION FROM PREV. PAGE)

A business owner who owns S corporation or C corporation stock should consider the asset protection benefits of converting or merging the corporation to a new Limited Liability Company ("LLC"). Generally, the asset protection benefit of an LLC is a judicial remedy known as a "charging order" which protects the owner's interest in the LLC from his or her personal liabilities. If a creditor obtains a charging order, the creditor is limited to the rights of an assignee of a membership interest in the LLC. If a distribution is made from the LLC, the creditor is entitled to receive a proportionate distribution. However, the creditor has no voting rights and thus, cannot force a distribution, liquidate the LLC, or otherwise manage the business.

The basic legal documents that should be considered by business owners to protect business value include a Non-Compete and Confidentiality Agreement, Buy-Sell Agreement, and perhaps even a Deferred Compensation or Bonus Plan for key employees. Few events can ruin the value of a small business as a key employee or associate leaving the business, starting a similar enterprise, and departing with trade secrets, confidential information or even customer lists. Business owners should require their employees to sign Non-Compete and Confidentiality Agreements to prevent this from occurring. If the terms of such an agreement are considered reasonable under state law, the agreement should be enforceable.

A Buy-Sell Agreement accompanied by proper planning should provide the exiting owner a fair value for his or her ownership interest while providing the remaining owner a means to purchase the exiting owner's interest without depleting the business of cash flow and its value. It is crucial that planning be done to ensure there are sufficient funds available to implement the buy-sell provisions when triggered. Funding at an owner's death with life insurance may be the easy part. More problematic may be how to buy-out a departing owner's interest in the event of disability, retirement or voluntary termination, especially if a portion of the business' cash flow must be devoted to that purpose. Further, once in place, a Buy-Sell Agreement should periodically be updated to reflect changes in the business value and the owners' objectives.

The basic legal documents that should be considered by business owners to protect business value include a **Non-Compete and Confidentiality Agreement, Buy-Sell Agreement**, and perhaps even a **Deferred Compensation or Bonus Plan** for key employees.

It is crucial that planning be done to ensure there are sufficient funds available to implement the buy-sell provisions when triggered.

Finally, business owners should consider putting into place a deferred compensation or bonus plan designed to reward key employees who meet certain performance targets. A well planned deferred compensation arrangement can serve two purposes. First, the plan should be designed so that employees are rewarded for achieving benchmarks that not only protect but increase the business value. Second, such agreements, for example through gradual vesting schedules, should place "golden handcuffs" on valuable employees by making it difficult for a key employee to leave the business without forfeiting certain benefits.

A detailed discussion of the aforesaid legal documents is beyond the scope of this article. However, asset protection, retaining employees, and succession planning are three important considerations in protecting your business.

IF YOU HAVE QUESTIONS REGARDING THESE ISSUES, WE ARE ALWAYS AVAILABLE FOR FURTHER CONSULTATION.

561-347-1700

SPRING CLEANING? DON'T FORGET ABOUT YOUR ESTATE PLAN

As you declutter your house, you may consider reviewing your estate plan to ensure that it still works as originally intended. Generally, it is recommended that clients should review their estate plan with an attorney every one to two years since all estate plans require continuing maintenance. In particular, changes in personal, family and financial situations can significantly impact the effectiveness of an estate plan. Likewise, changes in the law itself such as the new tax provisions (see article below) can interfere with the intent of the original plan.

SOME PRACTICAL TIPS TO CONSIDER:

- **Keep your will, trust, health care directive, and power of attorney up-to-date (pay particular attention to your personal agent and/or beneficiary designations)**
- Keep your will in a safe location
- Keep past tax returns, financial and bank statements, insurance policies and other relevant paperwork organized and in a place where a family member can access them
- Make sure your will has a 'Tangible Personal Property Memorandum' attached to designate personal items to your loved ones
- **Take advantage of the worthwhile estate planning techniques available to reduce or eliminate your gift and estate taxes while protecting your assets**

WE ENCOURAGE OUR CLIENTS TO CONTACT OUR OFFICE TO DISCUSS HOW RECENT CHANGES MAY HAVE IMPACTED THEIR ESTATE PLAN.

2009 TAX UPDATE

Amidst the turmoil of the recent economy, a number of changes in the Tax Code have gone relatively unnoticed. Therefore, it seems both timely and relevant to review the current tax laws and to discuss what to expect in the future.

Effective January 1, 2009, the estate tax applicable exclusion amount was increased to $3,500,000. This means that with proper planning each individual is able to shelter $3,500,000 from the Federal estate tax upon their demise. Any amounts in excess are taxed at a rate of 45%. In 2010, the estate tax is scheduled to be temporarily repealed before returning in 2011 with a $1,000,000 exclusion and 55% tax rate.

Therefore, the issue of what to do with the estate tax after 2009 has been the subject of much debate in Congress with neither party being able to agree on a compromise. However, the uncertainty regarding the future of the estate tax may soon be resolved.

Although the estate tax was not a prominent issue during the Presidential campaign, the election of Barack Obama will have a significant impact on the future of the estate tax. Reports indicate that the new administration intends to freeze the estate tax at the 2009 levels and that Congress will act to block the scheduled repeal in 2010. With the 2009 numbers likely being extended to 2010 and beyond, the focus of estate planning can shift to other opportunities.

A further noteworthy change in the tax laws is the increase in the gift tax annual exclusion amount to $13,000. Combined with the current low interest-rate environment, this presents unprecedented opportunities to transfer wealth at minimal tax cost. Gifts, loans, Charitable Lead Trusts and Grantor Retained Annuity Trusts offer different strategies that may be appropriate depending on your circumstances.

CONVERTING YOUR FLORIDA LIMITED PARTNERSHIP TO A LIMITED LIABILITY LIMITED PARTNERSHIP (LLLP) OFFERS GREATER PROTECTIONS

If you are the general partner of a Florida Limited Partnership (sometimes referred to as a Family Limited Partnership and created for estate planning purposes) we want to make you aware of an important change to the Florida Limited Partnership law which may be very beneficial to you.

All Limited Partnerships must have at least one General Partner. General Partners have unlimited joint and several liability for the obligations of the Partnership. This means General Partners are personally liable for the obligations or liabilities of the Partnership, whether those obligations or liabilities arise out of contract or tort.

If the Partnership defaults on a debt or loses a lawsuit, the General Partner can be held personally responsible to pay the Partnership obligation.

However, pursuant to F.S.A. 620.187, if a Limited Partnership elects to be treated as a "Limited Liability Limited Partnership" (LLLP, for short), the General Partners are protected from liability and will not be held personally liable for obligations of the Partnership.

We recommend to those clients who are General Partners in Florida Limited Partnerships to make the election to convert their Limited Partnership to a LLLP. The election to a LLLP provides the General Partners with greater protection from Partnership creditors We believe making this conversion is prudent even if a Limited Liability Company ("LLC") or Corporation is the General Partner of the Limited Partnership. Please feel free to contact us if you have questions or would like to discuss this further.

FOREIGN ACCOUNT HOLDERS BEWARE

The Department of Treasury has provided that failure to file the appropriate forms relating to all foreign accounts by June 30th of each year risks penalties of $10,000 for each non-willful violation as well as possible criminal prosecution. Non-willful violations encompass any action by the taxpayer, short of intentional violations, that results in a late filing. The IRS is prepared to argue that a taxpayer who claims to merely have ignorance of the obligation has still run afoul of the $10,000 penalty for each year of noncompliance. National publications have reported that the Department of Justice will increase enforcement for egregious scenarios in this area, essentially making an example of the delinquent taxpayer. It is important to note that Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, requires taxpayers who have financial interests in, or signature authority, or "other apparent authority" over any foreign bank accounts to file this form. "Other apparent authority" is defined as "any person who can exercise control or disposition over a foreign account". We strongly encourage anyone with such accounts to contact us with any questions or concerns.

NEWS & NOTES

PEGGY S. FELDMAN

The Firm is pleased to announce that Peggy Feldman has joined the probate, estate and trust administration group as an associate. Prior to her arrival, Ms. Feldman practiced estate and trust administration and guardianship law in New York.

Ms. Feldman received her J.D., from St. John's University School of Law where she was published in the New York International Law Review. She received her undergraduate degree from the honors program at the University of Delaware.

Ms. Feldman currently serves on the Probate and Guardianship Committee of the South Palm Beach County Bar Association and is a member of the Palm Beach County Bar Association, American Bar Association and the Florida Association for Women Lawyers.

Ms. Feldman is currently a member of the Florida and New York bars.

SUSAN C. HAUCK

The Firm is pleased to announce that Susan Hauck has been appointed as the new Client Relations Liaison. In this role, Susan will expand and lead all client care activities including scheduling prospective client meetings; greeting and welcoming clients; facilitating annual client care check ups; creating and maintaining a comprehensive relationship overview form for each client to enhance communication internally; and monitoring client satisfaction through exit interviews. Susan brings to the role a strong client-oriented background, including more than 3 years as Arthur Redgrave's executive assistant and 5 years as a paralegal. The addition of this position reflects the Firm's strong commitment to ensuring our clients receive the best and most professional treatment in a timely manner.

CONGRATULATIONS TO OUR FLORIDA REGISTERED PARALEGALS

The Firm would like to extend its heartfelt thanks and most deserving congratulations to our staff members who have recently been certified as Florida Registered Paralegals. Barbara J. Schulman, Janet M. Mostyn, Jodi Greenfield, Jennifer L. Koewing, Victoria Ann DeJesus, Susan C. Hauck and Lynne Tammany have all completed the requirements of this new program launched by The Florida Bar and approved by the Florida Supreme Court.

The program is intended to increase paralegal professionalism and competence. Florida Registered Paralegals must meet certain education and experience requirements to be eligible and must successfully complete a competency exam to be approved. Thereafter, the paralegals are governed by an established code of ethics and must fulfill continuing legal education requirements to maintain the designation.

The Firm encourages all its employees to pursue continuing legal education in order to provide our clients with the finest legal service. The designation as a Florida Registered Paralegal is a testament to their hard work and commitment to their profession. Please join us in recognizing and congratulating their achievement.

OUR ATTORNEYS

ARTHUR R. REDGRAVE
Board Certified Wills, Trusts, Estates
Direct Dial 561.362.0383
aredgrave@redgraveandrosenthal.com

ALAN B. ROSENTHAL
Ph 561.347.1700
arosenthal@redgraveandrosenthal.com

SHERRI GREENBLATT
Board Certified - Elder Law
Direct Dial 561.362.9408
sgreenblatt@redgraveandrosenthal.com

A. RICHARD REDGRAVE
Direct Dial 561.362.5683
rredgrave@redgraveandrosenthal.com

RYLAND F. MAHATHEY
Direct Dial 561.362.9821
rmahathey@redgraveandrosenthal.com

PEGGY S. FELDMAN
Direct Dial 561.347.6980
pfeldman@redgraveandrosenthal.com

JILL R. GINSBERG
Direct Dial 561.362.7167
jginsberg@redgraveandrosenthal.com

www.redgraveandrosenthal.com

REDGRAVE & ROSENTHAL LLP
ATTORNEYS AT LAW

120 EAST PALMETTO PARK ROAD, SUITE 400
BOCA RATON, FLORIDA 33432