



# Estate Planning Update

## 2010 Client Seminar

### Presented by: Cummings & Lockwood LLC

Cummings & Lockwood LLC • Collier Place II • 3001 Tamiami Trail North • Naples, FL 34103  
239.262.8311 Phone • 239.263.0703 Fax

Cummings & Lockwood LLC • The Brooks Grand Plaza • 8000 Health Center Boulevard •  
Suite 300 • Bonita Springs, FL 34135 • 239.947.8811 Phone • 239.947.8025 Fax

# Federal Estate Tax Legislation Update

# History of Estate Tax Exemptions and Rates

| YEAR      | EXEMPTION | TOP RATE |
|-----------|-----------|----------|
| 1916      | \$50,000  | 10%      |
| 1917      | \$50,000  | 25%      |
| 1918-1923 | \$50,000  | 25%      |
| 1924-1925 | \$50,000  | 40%      |
| 1926-1931 | \$100,000 | 20%      |
| 1932-1933 | \$50,000  | 45%      |
| 1934      | \$50,000  | 60%      |
| 1935-1939 | \$40,000  | 70%      |
| 1940      | \$40,000  | 70%      |
| 1941      | \$40,000  | 77%      |
| 1942-1976 | \$60,000  | 77%      |
| 1977      | \$120,000 | 70%      |
| 1978      | \$134,000 | 70%      |
| 1979      | \$147,000 | 70%      |
| 1980      | \$161,000 | 70%      |
| 1981      | \$175,000 | 70%      |
| 1982      | \$225,000 | 65%      |
| 1983      | \$275,000 | 60%      |

| YEAR      | EXEMPTION   | TOP RATE |
|-----------|-------------|----------|
| 1984      | \$325,000   | 55%      |
| 1985      | \$400,000   | 55%      |
| 1986      | \$500,000   | 55%      |
| 1987-1997 | \$600,000   | 55%      |
| 1998      | \$625,000   | 55%      |
| 1999      | \$660,000   | 55%      |
| 2000-2001 | \$675,000   | 55%      |
| 2002      | \$1,000,000 | 50%      |
| 2003      | \$1,000,000 | 49%      |
| 2004      | \$1,500,000 | 48%      |
| 2005      | \$1,500,000 | 47%      |
| 2006      | \$2,000,000 | 46%      |
| 2007      | \$2,000,000 | 45%      |
| 2008      | \$2,000,000 | 45%      |
| 2009      | \$3,500,000 | 45%      |
| 2010      | REPEAL      | 0%       |
| 2011      | \$1,000,000 | 55%      |

# Our Founding Fathers



Homer S. Cummings  
1870-1956



Charles D. Lockwood  
1877-1949

## Federal Estate Tax - Recent State of Affairs

| Year | Exemption Amounts | Maximum Rate |
|------|-------------------|--------------|
| 2001 | \$675,000         | 55%          |
| 2002 | \$1 million       | 50%          |
| 2003 | \$1 million       | 49%          |
| 2004 | \$1.5 million     | 48%          |
| 2005 | \$1.5 million     | 47%          |
| 2006 | \$2 million       | 46%          |
| 2007 | \$2 million       | 45%          |
| 2008 | \$2 million       | 45%          |
| 2009 | \$3.5 million     | 45%          |
| 2010 | Temporary Repeal  | 0%           |
| 2011 | \$1 million       | 55%          |

## Federal Gift Tax

Lifetime Gifting Exemption \$1 million

Annual Gift Tax Exclusion \$13,000

Maximum Gift Tax Rates:

| <b>Year</b> | <b>Maximum Rate</b> |
|-------------|---------------------|
| 2001        | 55%                 |
| 2002        | 50%                 |
| 2003        | 49%                 |
| 2004        | 48%                 |
| 2005        | 47%                 |
| 2006        | 46%                 |
| 2007-2009   | 45%                 |
| 2010        | 35%                 |
| 2011        | 55%                 |

## Cost Basis Adjustments at Death

|             |  |
|-------------|--|
| 2001 - 2009 | Unlimited Step Up in Cost Basis  |
| 2010        | \$1.3 million for all Decedent's Estates<br>\$3 million additional for property passing to spouse or "Qualified Trust" |
| 2011        | Unlimited Step Up in Cost Basis  |

# Which Estate Plans are in Jeopardy?

## Formula Clauses:

- Marital/Credit Shelter Formula Plans
- GST Exemption Formula Plans
- Charitable Deduction Formula Plans

# Modified Carryover Basis Considerations

## Will Your Estate Get the Full Benefit of Basis Increase?

- Review estate planning documents AND ownership and current cost basis in holdings
- Basis is the lesser of the decedent's basis or fmv of the asset at death
- Property eligible for basis increase is any property acquired through bequest, inheritance, estate, certain qualified trusts, or by reason of death without consideration

# Opportunities and Challenges for 2010

- Opportunities:
  - Lower Gift Tax Rate on Taxable Gifts
  - No Generation Skipping Transfer Tax
- Risks:
  - Making gifts to Generation Skipping Trusts during period of repeal
  - If Reform is passed by Congress, could it be retroactive?

## Recommendations for 2010 Planning

- Prepare Net Worth Statement listing assets (including IRAs and Retirement Plans) reflecting current value, estimated cost basis and ownership for review with your estate planning counsel
- Discuss Gifts (including payment of insurance premiums) to Irrevocable Trusts with estate planning counsel prior to transfer to Trust

## State Death Taxes!!!

- Taxation of real estate owned by non-residents
- Decoupling
- Avoidance and Planning
  - Gift Trusts
  - Entity Ownership (e.g., LLCs)

# Florida Law Update

# HOMESTEAD PROPERTY TAX BENEFITS

- Florida homestead law affords significant tax benefits to Florida residents.
- Various Exemptions from Assessed Value
- “Save Our Homes” Cap & Portability

# HOMESTEAD EXEMPTIONS

- Up to \$50,000 reduction to Assessed Value
  - The first \$25,000 applies to all property taxes, including school district taxes.
  - The next \$25,000 applies to the assessed value between \$50,000 and \$75,000, but only to non-school district taxes.
- Additional \$50,000 exemption for persons 65 and older in Collier and Lee Counties (subject to income limitations).
- Other Minor Exemptions:
  - \$500 Widow's and Widower's Exemption
  - \$500 Disability Exemption
  - \$5,000 Disability Exemption for Ex-Service Member

# “SAVE OUR HOMES” EXEMPTION

- Constitutional revision that took effect January 1, 1995
- Annually caps the increase in the assessment of homestead at 3% or the Consumer Price Index (CPI) for all urban consumers, U.S. city average, whichever is less.

| <b>Year</b> | <b>CPI Change</b> | <b>Cap</b> |
|-------------|-------------------|------------|
| 2010        | 2.7%              | 2.7%       |
| 2009        | 0.1%              | 0.1%       |
| 2008        | 4.1%              | 3.0%       |
| 2007        | 2.5%              | 2.5%       |
| 2006        | 3.4%              | 3.0%       |
| 2005        | 3.3%              | 3.0%       |
| 2004        | 1.9%              | 1.9%       |
| 2003        | 2.4%              | 2.4%       |
| 2002        | 1.6%              | 1.6%       |
| 2001        | 3.4%              | 3.0%       |

# OBTAINING TAX BENEFITS

- Must be domiciled in Florida as of January 1<sup>st</sup> the year you apply for the exemption.
  - If Florida domicile established after January 1<sup>st</sup>, no benefit until following year.
- Deadline: March 1<sup>st</sup> of the year the exemption will apply
  - Monday, March 1, 2010 for this year.
- Submit homestead application, including proof of residence, with local Property Appraiser.

# EVENTS THAT REQUIRE REAPPLICATION

- Purchased New Homestead
  - Portability: Transfer up to \$500,000 SOH Exempt Value
- Transferred Homestead to Spouse
- Death of First Spouse
  - Surviving Spouse was not an original co-applicant
  - Confirm beneficial interest of trust f/b/o Surviving Spouse
- Transfer to a Trust

## Trust Accounting Requirements under the Florida Trust Code

### Example:

John Smith enters into an estate plan that will establish a marital trust for the benefit of his wife, Jane, upon his death. Jane will receive all of the income during her lifetime and principal as needed for her support. At Jane's passing, the assets of the marital trust will be divided in four equal shares amongst John's children, which include two children from a prior marriage and two children from his marriage to Jane. Jane will be the Trustee.

# CONSIDERATIONS WHEN PASSING HOMESTEAD TO A TRUST FOR BENEFICIARIES

- Restrictions on Descent and Devise
  - May need to execute a conditional homestead waiver to allow the residence to pass into a trust for the purpose of utilizing estate tax exemption
- Continuation of Homestead Exemption
  - Homestead resident must have an equitable life estate (full use, occupancy and possession of the residence)
  - Revocable Trust
  - Qualified Personal Residence Trust (QPRT)
    - Funding
    - Termination

# HOMESTEAD OWNERSHIP

## Tenancy by the Entireties

- Automatically passes to surviving spouse upon death of the first.

## Individual vs. Revocable Trust

- Transfer of title to a revocable trust may not avoid judicial administration your homestead property
- Regardless of title a homestead proceeding may be needed to allow for the passage of title to your beneficiaries

## Duty to Inform & Account

- Qualified beneficiaries: beneficiaries currently entitled to receive distributions from the trust, those who can receive distributions when the interest of the current beneficiaries expire and presumptive remainder beneficiaries
- Upon acceptance of a trust, trustees must give qualified beneficiaries notice their name and address within 60 days
- When a trust becomes irrevocable, within 60 days, trustees must give qualified beneficiaries notice of the trust, the identity of the grantors, the right to request a trust copy and the right to accountings.

## Duty to Inform & Account

- Qualified beneficiaries can request a complete copy of the trust instrument and particulars regarding the trust. This can provide access to a broad set of information.
- Trustees must provide accountings annually and upon termination of the trust, unless the requirement is waived by the qualified beneficiary.
- This applies to all trust accountings on or after July 1, 2003.

# Trust Accounting Requirements

The Trust Accounting must be reasonably understandable and adequately disclose:

- the identity of the Trust, the Trustee and period covered
- all cash and property transactions
- all ***significant*** transactions affecting administration, including compensation paid to the Trustee and its agents
- gains and losses realized
- all receipts and disbursements
- noncontingent liabilities
- allocations of items when it affects any beneficiary

# Trust Accounting Requirements

The Trust Accounting must disclose, to the extent feasible:

- identity and value of trust assets, including:
  - asset acquisition value or carrying value
  - estimated current value
- **significant** transactions that do not affect the trust amount, including:
  - investment name changes
  - adjustments to carrying value
  - custodial institution changes
  - stock splits

☐ §736.08135(3). This applies to all trust accountings on or after January 1, 2003.

# Designated Representative

- A trust grantor can specifically nominate a “designated representative” who can represent and bind one or more beneficiaries and receive notices, information, accountings and reports on behalf of those beneficiaries.
- A grantor can also authorize others (except a trustee) to appoint a designated representative (i.e, a grantor can authorize a surviving spouse or child to appoint a designated representative).

# Designated Representative

- A trustee cannot serve as a designated representative.
- A beneficiary cannot serve as a designated representative unless named by the grantor or otherwise related in certain degrees to the beneficiaries to be represented.
- Designated representatives are statutorily exonerated for acts or omissions made in good faith, but this law has not been tested.

# Leveraging Your Legacy

# Estate Tax Overview

- Federal Estate Tax

2010

- No estate tax
- Modified carryover basis

2011

- \$1,000,000 estate tax exemption scheduled
- Unlimited marital deduction
- Maximum 55% Rate

- No Florida Estate Tax

- State estate tax varies by state and some states, such as Connecticut, New York, New Jersey & Ohio have a separate state estate tax

# Gift Tax Overview

- Federal Gift Tax

## 2010

- \$13,000 annual exclusion gifts
- \$1,000,000 gift tax lifetime exemption
- Unlimited med/ed exclusion
- Unlimited marital deduction
- 35% Rate

## 2011

- Same as 2010 but maximum 55% Rate

- No Florida Gift Tax

# Generation-Skipping Tax Overview

- The “Grandchildren’s Tax”
- Generation-skipping tax in addition to gift/estate taxes 2010
- No Generation-Skipping Tax under current law 2011
- \$13,000 annual exclusion
- Unlimited med/ed exclusion
- \$1,000,000 exemption scheduled
- Maximum 55% Rate

# The Power of Lifetime Gifts - Annual Exclusion Gifts

- Annual Tax-Free Gifts: \$234,000 (assuming 3 children, 6 grandchildren & 50% gift & estate tax rate)
  - $9 \times \$13,000 \times 2$
- Estimated Estate Taxes Saved: \$117,000
  - $\$234,000 \times 50\%$
- Impact of 20 Years - No Growth
  - Total Transferred - \$4,680,000
  - Estate Taxes Saved - \$2,340,000
- Impact of 20 Years - 6% Annual Return
  - Total Transferred - \$4,680,000
  - Value in 20 Years - \$8,600,000
  - Estate Taxes Saved - \$4,300,000

# The Power of Lifetime Gifts - Annual Exclusion Gifts

- Do It Yourself
- Stop Anytime
- Start Sooner

# The Power of Lifetime Gifts - Use Lifetime Exemptions

- **Gift \$2,000,000 Lifetime Exemptions**
  - Each Spouse gifts \$1,000,000
- **Impact of 20 Years - No Growth**
  - Total Transferred - \$2,000,000
  - Estate Taxes Saved - \$0
- **Impact of 20 Years - 6% Annual Return**
  - Total Transferred - \$2,000,000
  - Value in 20 Years - \$8,600,000
  - Estate Taxes Saved (assuming 50% estate tax rate) - \$3,300,000

# Dynasty Trusts

- A long-term trust benefiting multiple generations
- Avoids gift/estate/GST tax “forever”
- Established in a jurisdiction that permits multi-generational trusts
  - At least 19 states have repealed their rule against perpetuities, including Delaware, Rhode Island, New Jersey, Alaska, South Dakota and Florida (360 years)

# Dynasty Trusts

- May be funded with any type of asset, including life insurance (ILIT)
- May include your spouse as a beneficiary (SERT)
- Many protective benefits

# Protective Benefits of Dynasty Trusts

- Minimize taxes
- Trust owns property, not the beneficiaries
- Protection from:
  - Divorcing spouses
  - Business creditors
  - Personal injury plaintiffs
- Protection from beneficiary excess
- Professional asset management

# Spousal Estate Reduction Trust (SERT)

- What is it?
  - Trust with spouse and descendants as beneficiaries
  - Funded with:
    - Annual gifts using \$13,000 exclusion
    - Larger gifts using \$1 million gift tax exemption
- Who creates it?
  - People who want to reduce their taxable estate through gifting
  - People who want continuing access/control

# SERT

- Trust for spouse only must provide for mandatory income distributions in order to qualify for marital deduction
- Other trusts for spouse and descendants can make income and principal distributions in the Trustee's discretion or at certain times for certain purposes

## Income & Principal Distributions from Trusts

- Trusts for spouse and/or descendants can make income and principal distributions in the Trustee's discretion or at certain times for certain purposes, if not trying to qualify for the marital deduction

## Income & Principal Distributions - “HEMS”

- Ascertainable Standards Trust -- require the Trustee to make distributions for certain reasons -- typically for health, education, maintenance and support (“HEMS”)
- Independent Trustee can make distributions beyond “HEMS” needs
- Beneficiary can be sole Trustee and make HEMS distribution to him/her self and others
- Provides comfort that basic needs will be met
- HEMS trusts are not creditor/predator protected

# Income & Principal Distribution- Discretionary Trusts

- Completely Discretionary Trusts -- provide for distributions in an Independent Trustee's sole and uncontrolled discretion
- Beneficiary does not have any rights to distributions
- Provides creditor/predator protections because Beneficiary is not entitled to any distributions and trust lasts for Beneficiary's lifetime
- Does not give beneficiary ability to force distributions even if Trustee is being "unreasonable"
- Provides protection from a "spendthrift" or otherwise irresponsible Beneficiary
- Beneficiary can be a Trustee to assist in investment management decisions but can't make distribution decisions
- Can allow Beneficiary to remove Independent Trustee and replace with another Independent Trustee
- Grantor can control where trust assets go at Beneficiary's death

# Income & Principal Distributions - Guidance to Trustees

- If Independent Trustee has sole discretion Trustee does not have any requirements to distribute
- A Statement of Intentions can provide Independent Trustee with guidance as to your wishes in general terms
- If you include mandatory distributions you can include an “override” or “holdback” provision if Trustee determines distributions are ill-advised

## Summary Regarding Structuring Trusts

- Less discretion for the Trustee helps guarantee your wishes are followed but could cost the beneficiaries some or all of their inheritance
- The less a Trustee is required to distribute to a particular beneficiary, the greater the protection from a beneficiary's creditors and predators and from a beneficiary's own poor decisions
- Creditor Protection requires an Independent Trustee whose judgment you trust
- You can provide Independent Trustee with guidance as to your wishes
- You can provide beneficiaries with flexibility to remove and replace Trustees without jeopardizing creditor protection
- Lifetime trusts allow you to control where assets go at Beneficiary's death

# Estate Freezes

# ESTATE FREEZES

- Common techniques:
  - Low Interest Loan to Family Members.
  - Grantor Retained Annuity Trust (GRAT).
  - Installment Sale to an “Intentionally Defective Grantor Trust” (IDGT).
  - Qualified Personal Residence Trust (QPRT) for depressed real estate.
- Fix gift tax value today and transfer appreciation tax-free.
- A freeze is an exchange of a property interest that is expected to grow for an interest with a fixed rate of return.

# ESTATE FREEZE OBJECTIVES

- Survive term interest.
- Outperform IRS assumed interest rate: IRC Section 7520 Rate (“7520 Rate”) for GRATs, and QPRTs & IRC Section 1274 Applicable Federal Rate (“AFR”) for Installment Sales to an IDGT and Low Interest Rate Loans.

# LOW INTEREST LOANS

Current interest rates make loans a cost efficient way to make funds available to family members or to trusts established for their benefit.

If the family member or trust can invest the loaned funds and obtain a return in excess of the required AFR, the excess passes free of federal gift tax.

The Lender must report the interest which is paid (or should be payable) as income, *whether or not the interest is actually paid.*

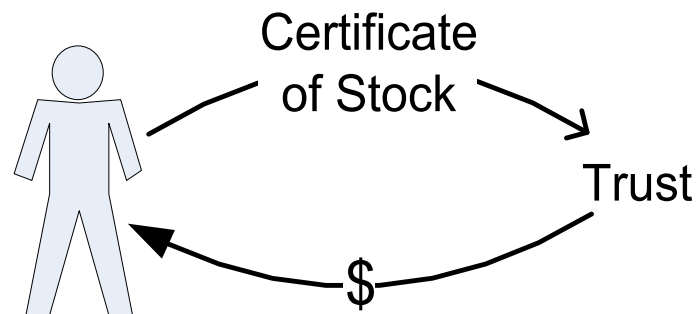
# APPLICABLE FEDERAL RATES (February 2010)

| Term of Loan | Minimum Annual Interest Rate |
|--------------|------------------------------|
| 0-3 years    | 0.72%                        |
| 3-9 years    | 2.82%                        |
| 9+           | 4.44%                        |

Versus GRAT 7520 Rate in February 2010 of 3.4%

# GRANTOR RETAINED ANNUITY TRUST (GRAT)

- Grantor contributes property to trust
- Grantor receives from the trust a fixed annuity for a fixed term.
- At end of term, trust property passes to children (or to trust for spouse and/or children).



# GIFT TAX CONSEQUENCES

**Taxable Gift** = Value of Property Transferred to trust  
reduced by the present value of  
annuity stream to Grantor.

Taxable gift can be reduced by increasing the value of the Grantor's Annuity. If the actuarial value of the annuity payments to be made equals the value of the transfer to trust, then the Grantor's gift is zero. Any income or growth in excess of the 7520 Rate passes tax-free to the beneficiaries.

## A ZEROED-OUT GRAT

- Grantor transfers \$1 million to a GRAT when 7520 Rate = 3.4%.
- Grantor receives an annual annuity of \$356,252 for 3 years.
- After 3 years, remaining GRAT funds pass to children.
- Value of taxable gift is \$0.

# SCHEDULE OF ANNUITY PAYMENTS

(when 7520 rate = 3.4%)

| Year | Beginning Amount | 5%<br>Income &<br>Growth | Annuity   | Amount<br>Remaining<br>in Trust |
|------|------------------|--------------------------|-----------|---------------------------------|
| 1    | \$1,000,000      | \$50,000                 | \$356,252 | \$693,748                       |
| 2    | \$693,748        | \$34,687                 | \$356,252 | \$372,183                       |
| 3    | \$372,183        | \$18,609                 | \$356,252 | <b>*\$34,540</b>                |

**\*Amount passing to beneficiaries gift tax free**

# SAVINGS DEPENDENT ON INVESTMENT PERFORMANCE VERSUS 7520 RATE (3.4%)

**Average Return for 3 years**

---

**Amount Passing Tax-Free to Children After 3 Years**

---

**3.4%**

**\$0**

**4.0%**

**\$12,787**

**5.0%**

**\$34,540**

**10.0%**

**\$151,805**

**12.0%**

**\$202,790**

**15.0%**

**\$283,789**



# MAXIMIZING A GRAT

- Identify valuation opportunities.
- Segregate assets into separate GRATs.
- Increase annuity by 20% each year.
- Purchase property from the GRAT.
  - Lock in performance gains
  - Lock out performance losses and re-GRAT
  - Preserve basis step-up
- Rolling GRATs.
- Grantor Trust as the remainder beneficiary.
- GRAT & GST Planning.
  - ETIP Period
  - Allocating GST exemption
- Administer the GRAT properly.

# GRAT RISKS

- What if grantor dies before termination of GRAT?
  - At worst, property is taxable in grantor's estate.
  - Nothing gained, but nothing lost.
- What if trust investment performance is less than 7520 Rate?
  - Again, nothing gained, but nothing lost.

## INSTALLMENT SALE TO IDGT

- Objective: Outperform AFR Required for Notes between related parties.
- Grantor sells Property to Irrevocable Grantor Trust.
- Grantor receives Promissory Note from Trust.
- Note Terms.
  - Interest Only at AFR
  - Balloon Payment of Principal at End of Note Term
- No gain recognized on sale.
- Interest payments should be tax free to Grantor.
- Property value is “frozen” at amount of Note plus annual interest payments.

## IDGT EXAMPLE

- Grantor Gifts \$100,000 to Grantor Trust.
- Grantor later sells Asset worth \$1,000,000 to Trust.
- Trust gives the Grantor a \$1,000,000 Promissory Note.
  - Interest Only at 2.82% AFR (February 2010) for Nine Years
  - Balloon Payment of Principal at End of Ninth Year
- Value of Taxable Gift is \$100,000.

# SAVINGS FOR CHILDREN DEPENDENT ON INVESTMENT PERFORMANCE

**Annual Return  
for 9 years**

---

**Amount Passing Tax-Free  
to Children After 9 Years**

---

**2.82%**

**\$128,434**

**3.4%**

**\$195,001**

**5%**

**\$395,512**

**10%**

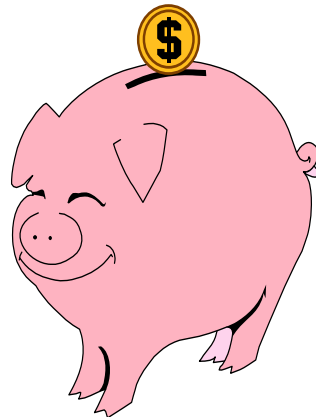
**\$1,210,801**

**12%**

**\$1,663,713**

**15%**

**\$2,396,303**



## GRAT vs. SALE TO IDGT

### Amount Passing Tax-Free to Children after 9 Years

| <u>Annual Return<br/>for 9 years</u> | <u>IDGT funded w.<br/>\$1,100,000 @<br/>2.82% (AFR)</u> | <u>GRAT funded w.<br/>\$1,100,000 @<br/>3.4% (7520 rate)</u> |
|--------------------------------------|---|--|
| 2.82%                                | \$128,434   | \$0  |
| 3.4%                                 | \$195,001   | \$0  |
| 5.0%                                 | \$395,512   | \$119,470  |
| 10.0%                                | \$1,210,801   | \$639,325  |
| 12.0%                                | \$1,663,713   | \$923,810  |
| 15.0%                                | \$2,396,303   | \$1,453,772  |

## GRAT vs. Sale To IDGT

### GRAT

---

- Statutory roadmap
- Limited gift tax risk
- No gift on creation
- No downside for underperformance
- No GST Exemption
- Higher interest rate hurdle
- Annual valuation of assets
- Payments include principal
- Survival requirement

### Sale to IDGT

---

- Legal uncertainties
- Valuation gift tax risk
- Seed capital required
- Underperformance can result in loss of seed capital
- GST Exemption
- Lower interest rate hurdle
- Up-front valuation
- Interest only balloon note
- No survival requirement, but:
- Possible gain recognition at Grantor's death

## CONCLUSIONS: GRAT vs. SALE TO IDGT

- Both techniques benefit from low federal interest rates; 7520 Rates are lower than long-term AFRs.
- GRAT More Appropriate for Risk Averse.
- Greater Returns May Be Achievable With IDGT.
- “Re-GRAT” May Achieve Nearly Comparable Returns With Less Risk.

# QUALIFIED PERSONAL RESIDENCE TRUST (QPRT)

- Grantor transfers personal residence to trust.
- Retains right to live there for a fixed term of years.
- At end of term, residence passes to children (or trust for spouse and/or children).



## How a QPRT Works

- QPRTs are trusts drafted specifically to meet Internal Revenue Code requirements.
- QPRTs can only be used for Personal Residences (primary residence or vacation home).
- Tax advantage comes from how the value of the gift to the QPRT is calculated for gift tax purposes.
- Value is a function of the value of the house, the age of the Grantor at the time of the gift, the number of years the Grantor can live in the house rent-free after the gift, and the 7520 Rate.

# GIFT TAX CONSEQUENCES

Taxable Gift = Value of children's right to receive residence after QPRT term ends

= Value of residence less value of:

- a) Grantor's right to live there for term
- b) Reversion (residence returns to Grantor's estate if grantor dies within term)

# ESTATE TAX SAVINGS

Suppose: Grantor, age 65, puts \$1 million residence in 10-year QPRT, triggering a \$562,040 gift (assumes a 7520 Rate of 3.4%) and Grantor survives QPRT term.

Then: Estate Tax savings of approximately \$218,980  
[50% of \$437,960 (\$1,000,000 - \$562,040)]

- Value of house is transferred to next generation for a \$562,040 taxable gift.
- Estate Tax savings increase if value of residence increases after creation of QPRT.

## Effect of Term on Taxable Gift

Assume a 65 year old Grantor has a \$1,000,000 residence  
(3.4% 7520 Rate):

| <u>Term of QPRT</u> | <u>Taxable Gift</u> | <u>Age at QPRT end</u> |
|---------------------|---------------------|------------------------|
| 7 years             | \$684,190           | 72                     |
| 10 years            | \$562,040           | 75                     |
| 15 years            | \$373,300           | 80                     |
| 20 years            | \$214,810           | 85                     |

## Interest Rates and QPRTs

- QPRTs work best in high interest rate environments.
- If Grantor retains a 10-year interest in house, it is worth the same to the Grantor, regardless of how the IRS values it for gift tax purposes.
- Because the 7520 Rate is used for valuing the term being retained for IRS purposes, higher interest rates result in smaller “gifts” but either way, Grantor is giving away same property and retaining same rights for the term.
- Even with low interest rates, today’s depressed market provides opportunities.

# Impact of Current Real Estate Market

## Fluctuation in Value

- 2008 Fair Market Value of Grantor's house = \$1,400,000
- 2009 Fair Market Value of Grantor's house = \$1,000,000
- Fair Market Value of house in 201??? = \$1,400,000 again.

# Impact of Current Real Estate Market

## Fluctuation in Gift Tax Results

- Grantor age 65 creates a 10-year QPRT in February 2010 at current value of \$1,000,000; results in a taxable gift of \$562,040.
- Grantor age 65 creates a 10-year QPRT with same house after recovery of real estate market when value is again \$1,400,000 (and the 7520 Rate is the same); results in a taxable gift of \$786,856.

# QPRT RISKS

- What happens if Grantor dies before QPRT term ends?
  - Residence is distributed back to Grantor's estate and is taxed.
  - Nothing is gained (but nothing is lost).
- What happens if grantor survives the QPRT?
  - Grantor must now rent residence from "new" owners in order to use it. Rent must be fair market rent.
  - At Grantor's death the property will not receive a "step-up" in basis for capital gains tax purposes.

# Estate Planning with Retirement Plans

## Roth Retirement Plans: The Basics

- Roth IRA, Roth 401(k) and Roth 403(b)
- Contributions are Non-Deductible
- Earnings Grow Tax-Free
- “Qualified” Distributions are Tax-Free
- Maximum Annual Contribution for Roth IRAs
- May Contribute After 70 ½
- RMD Rules at 70 ½ Don't Apply
- High Income Taxpayers barred from making contributions to Roth IRAs. Income Limits for 2009
  - Single: AGI \$120,000 (phase-out after \$105,000)
  - Married: AGI \$176,000 (phase-out after \$166,000)

## What's new?

- The Tax Increase Prevention and Reconciliation Act of 2005 eliminates AGI and filing status limits in 2010!
  - Prior to 2010, (a) AGI had to be less than \$100,000 in year of conversion (didn't include amount being converted) and (b) married taxpayers filing separately could not convert
- Must include the converted amount (the "Conversion Income") in income, subject to ordinary income tax rates (the "Conversion Tax")
  - Special Rule for 2010: Conversion Income is included in gross income, not in 2010, but half in 2011 and half in 2012, but be careful with future rates

## When is Roth conversion beneficial?

- Federal income tax rates increase
- You can pay conversion tax with non-IRA assets
- You will not need assets from Roth IRA during life
- Your estate will be subject to federal estate tax
- You plan to leave Roth IRA to your family
- You expect your Roth IRA assets will appreciate
- The longer you live, the better
- The younger the beneficiaries, the better

## When is Roth conversion not beneficial?

- Federal income tax rates decrease
- You cannot pay conversion tax with non-IRA assets
- You will need to withdraw assets from Roth Plan during life
- Your estate will not be subject to federal estate tax
- You plan to leave Roth Plan to charity
- You expect that your IRA assets will depreciate in value or remain the same over time
- Shorter life detracts from benefits
- Older beneficiaries do not benefit as much as younger beneficiaries

## What are advantages of conversion to Roth?

- Distributions are tax-free if made after 5 years from conversion and after age 59 ½ or death.
- Greater wealth can be accumulated in a tax-sheltered environment.
- There are no required distributions from a Roth IRA after age 70 ½.
- Contributions to a Roth IRA are possible after age 70 ½
- Use of charitable deduction or net operating loss carryforwards
- Reduce estate tax due to payment of the Conversion Tax

## What are the possible disadvantages of a Roth conversion?

- Income may be taxed at a higher rate with a Roth conversion.
- If a Roth IRA fails to qualify for stretch treatment, then the Roth IRA must be liquidated within just five years after the Roth owner's death.

# Considerations for Roth IRA Conversions

- Experts have identified a host of factors to consider in deciding whether or not to convert to a Roth Retirement Plan.
  - Your current and anticipated future income tax rates
  - Whether you have current tax benefits that can offset the Conversion Tax in whole or in part
  - Anticipated federal estate tax liability and proposed estate plan
  - Cash flow needs
  - Your health and life expectancy
  - Estimated rates of return on all assets, IRA and non-IRA
  - Anticipated life expectancies of IRA beneficiaries
  - Anticipated legislative changes (positive and negative)

## Income Taxation of Roth IRA Conversion

- Special rule for payment of 2010 Conversion Tax
- 2010 Conversion Income is automatically deferred to 2011 and 2012, meaning that the Conversion Tax is payable in two equal installments in 2012 and 2013.
- This is not necessarily a good thing. You must pay the Conversion Tax at the ordinary income tax rates in effect for 2011 and 2012. Consider whether income tax rates will increase.
- If you believe the income tax rates will be higher in 2011 and 2012, you may elect to pay the entire Conversion Tax in 2010, using 2010 income tax rates.

## Roth IRA Re-Characterizations

- What if you convert and later decide you do not want to pay the income tax? You can “re-characterize” the converted IRA, i.e., undo the conversion, at any time before you file your personal Form 1040 for the year of the conversion.
- Re-characterization makes sense if the value of the Roth IRA assets decrease after conversion.

## Roth IRA Re-Characterizations (cont.)

- Be careful with a re-characterization if you have filed an extension. Income tax is due on April 15<sup>th</sup>, whether or not you file an extension. If you do not pay the Conversion Tax on April 15<sup>th</sup> and do not re-characterize the conversion you will owe penalties and interest.
- You must re-characterize on the basis of an entire IRA, not the assets within an IRA; it is an all or nothing proposition.
- Re-characterization can be complicated by an IRA with multiple asset classes. A poor performance in one asset class can be offset by good performance in another.

## Roth IRA Conversions

- Prior to January 1, 2008, an employee had to follow a two-step process in rolling a Designated Roth Account (a 401(k) plan or 403(b) plan) over into a Roth IRA: first, create a Traditional IRA and second, convert the Traditional IRA to a Roth IRA
- Employees may now rollover a Designated Roth Account directly to a Roth IRA and pay the resulting Conversion Tax
- A beneficiary of an inherited Traditional 401(k) or 403(b) CAN convert to a Roth IRA (regardless of income levels)
- A beneficiary of an inherited Traditional IRA CANNOT convert to a Roth IRA: Don't delay!

# Roth IRA Conversions

- Final Roth Conversion Observations:
  - You MUST have a qualified tax professional RUN THE NUMBERS for you
  - You do not have to convert each and every asset in a Traditional IRA to a Roth IRA, but if you have made non-deductible contributions to your Traditional IRA you cannot rollover just the “nontaxable” part
  - RMDs normally cannot be converted to a Roth IRA; the temporary suspension of RMDs for 2009 allows to convert what would have been your RMD to a Roth IRA

# Retirement Plans & Required Minimum Distributions

# Why do we Stretch?

- Goal is to keep assets in the Retirement Plans for as long as possible to maximize deferral income taxes
  - Assets become taxable once they are in the hands of a beneficiary for Traditional Retirement Plans
- Rules allow us to extend the RMDs over the life expectancy of a Designated Beneficiary
- The younger the Designated Beneficiary, the longer the Stretch and the greater the deferral of income taxes
- Deferral can be significant

## How do we Stretch?

- Name a Designated Beneficiary
- The Internal Revenue Code provides that a Designated Beneficiary means any *individual* named as a beneficiary by the Participant
  - Key is that only individuals have life expectancies
- Estates and Charities do not have life expectancies and do not qualify as Designated Beneficiaries
- Certain Trusts qualify as See-Through Trusts where a trust beneficiary may qualify as a Designated Beneficiary

# Required Minimum Distribution Rules For IRAs During Life

- Traditional IRA: Must begin distributions by “Required Beginning Date”
  - April 1 of the year following the year in which the Owner reaches age 70 ½
  - At retirement after age 70 ½ if Account Owner is not a 5% Owner of the company
  - In subsequent years, distribution must be taken by December 31 of each year
- Roth IRAs have no RMDs for the Owner
- Remember: Designated Roth Accounts are subject to RMDs for the Participant

# Retirement Plans - Distributions After Participant's Death (Traditional & Roth)

- Participant Dies **Before** Age 70-1/2 (Required Beginning Date)
  - Is there a surviving spouse? If yes, spousal rollover option
  - Is there a Designated Beneficiary? If yes, then -
    - Use Designated Beneficiary's life expectancy - See Single Life Table (SLT) included at end of presentation.
  - Is there a Designated Beneficiary? If no, then -
    - 5-Year Rule Applies

# Retirement Plans - Distributions After Participant's Death

- Participant Dies **After** Age 70-1/2 (Required Beginning Date)
  - Is there a surviving spouse? If yes, spousal rollover option
  - Is there a Designated Beneficiary? If yes, then -
    - Use the greater of (i) the Participant's life expectancy and (ii) Designated Beneficiary's life expectancy - See Single Life Table (SLT) included at end of presentation.
  - Is there a Designated Beneficiary? If no, then -
    - Use Participant's life expectancy - See Single Life Table (SLT) included at end of presentation.

# Required Minimum Distributions After Owner's Death

## Spousal Rollover

- If Spouse is the sole beneficiary and elects to treat Roth IRA as his/her own, no lifetime withdrawals necessary
- If Spouse is the sole beneficiary and does not treat Roth IRA as his/her own, can delay distributions until Owner would have reached 70 ½
- Remember: If Spouse is not the beneficiary
  - Use 5-Year Rule if no Designated Beneficiary
  - Use Designated Beneficiary's life expectancy

## Why Name a Trust as Beneficiary?

- Control over ultimate disposition of assets
- Second Marriage
- Creditor/Divorce protection
- Beneficiary is a Minor/Spendthrift
- Lack of Capacity/Special Needs issues
- Preserve Estate Tax Exemption
- Generation-skipping Transfer Tax Planning

## Why Not Name a Trust as Beneficiary?

- Loss of Spousal Rollover
- Difficulty obtaining Designated Beneficiary Status and maximizing income tax deferral
- Remember: Traditional IRAs and Qualified Retirement Plans not best for utilizing exemptions because income tax liability will waste exemption

## UNIFORM LIFETIME TABLE

| <u>Age</u> | <u>Distribution Period</u> | <u>Age</u> | <u>Distribution Period</u> |
|------------|----------------------------|------------|----------------------------|
| 70 .....   | 27.4                       | 93 .....   | 9.6                        |
| 71 .....   | 26.5                       | 94 .....   | 9.1                        |
| 72 .....   | 25.6                       | 95 .....   | 8.6                        |
| 73 .....   | 24.7                       | 96 .....   | 8.1                        |
| 74 .....   | 23.8                       | 97 .....   | 7.6                        |
| 75 .....   | 22.9                       | 98 .....   | 7.1                        |
| 76 .....   | 22.0                       | 99 .....   | 6.7                        |
| 77 .....   | 21.2                       | 100 .....  | 6.3                        |
| 78 .....   | 20.3                       | 101 .....  | 5.9                        |
| 79 .....   | 19.5                       | 102 .....  | 5.5                        |
| 80 .....   | 18.7                       | 103 .....  | 5.2                        |
| 81 .....   | 17.9                       | 104 .....  | 4.9                        |
| 82 .....   | 17.1                       | 105 .....  | 4.5                        |
| 83 .....   | 16.3                       | 106 .....  | 4.2                        |
| 84 .....   | 15.5                       | 107 .....  | 3.9                        |
| 85 .....   | 14.8                       | 108 .....  | 3.7                        |
| 86 .....   | 14.1                       | 109 .....  | 3.4                        |
| 87 .....   | 13.4                       | 110 .....  | 3.1                        |
| 88 .....   | 12.7                       | 111 .....  | 2.9                        |
| 89 .....   | 12.0                       | 112 .....  | 2.6                        |
| 90 .....   | 11.4                       | 113 .....  | 2.4                        |
| 91 .....   | 10.8                       | 114 .....  | 2.1                        |
| 92 .....   | 10.2                       | 115+ ..... | 1.9                        |

## SINGLE LIFE TABLE

| <u>Age</u> | <u>Life Expectancy</u> | <u>Age</u> | <u>Life Expectancy</u> | <u>Age</u> | <u>Life Expectancy</u> | <u>Age</u> | <u>Life Expectancy</u> |
|------------|------------------------|------------|------------------------|------------|------------------------|------------|------------------------|
| 0 .....    | 82.4                   | 28 .....   | 55.3                   | 56 .....   | 28.7                   | 84 .....   | 8.1                    |
| 1 .....    | 81.6                   | 29 .....   | 54.3                   | 57 .....   | 27.9                   | 85 .....   | 7.6                    |
| 2 .....    | 80.6                   | 30 .....   | 53.3                   | 58 .....   | 27.0                   | 86 .....   | 7.1                    |
| 3 .....    | 79.7                   | 31 .....   | 52.4                   | 59 .....   | 26.1                   | 87 .....   | 6.7                    |
| 4 .....    | 78.7                   | 32 .....   | 51.4                   | 60 .....   | 25.2                   | 88 .....   | 6.3                    |
| 5 .....    | 77.7                   | 33 .....   | 50.4                   | 61 .....   | 24.4                   | 89 .....   | 5.9                    |
| 6 .....    | 76.7                   | 34 .....   | 49.4                   | 62 .....   | 23.5                   | 90 .....   | 5.5                    |
| 7 .....    | 75.8                   | 35 .....   | 48.5                   | 63 .....   | 22.7                   | 91 .....   | 5.2                    |
| 8 .....    | 74.8                   | 36 .....   | 47.5                   | 64 .....   | 21.8                   | 92 .....   | 4.9                    |
| 9 .....    | 73.8                   | 37 .....   | 46.5                   | 65 .....   | 21.0                   | 93 .....   | 4.6                    |
| 10 .....   | 72.8                   | 38 .....   | 45.6                   | 66 .....   | 20.2                   | 94 .....   | 4.3                    |
| 11 .....   | 71.8                   | 39 .....   | 44.6                   | 67 .....   | 19.4                   | 95 .....   | 4.1                    |
| 12 .....   | 70.8                   | 40 .....   | 43.6                   | 68 .....   | 18.6                   | 96 .....   | 3.8                    |
| 13 .....   | 69.9                   | 41 .....   | 42.7                   | 69 .....   | 17.8                   | 97 .....   | 3.6                    |
| 14 .....   | 68.9                   | 42 .....   | 41.7                   | 70 .....   | 17.0                   | 98 .....   | 3.4                    |
| 15 .....   | 67.9                   | 43 .....   | 40.7                   | 71 .....   | 16.3                   | 99 .....   | 3.1                    |
| 16 .....   | 66.9                   | 44 .....   | 39.8                   | 72 .....   | 15.5                   | 100 .....  | 2.9                    |
| 17 .....   | 66.0                   | 45 .....   | 38.8                   | 73 .....   | 14.8                   | 101 .....  | 2.7                    |
| 18 .....   | 65.0                   | 46 .....   | 37.9                   | 74 .....   | 14.1                   | 102 .....  | 2.5                    |
| 19 .....   | 64.0                   | 47 .....   | 37.0                   | 75 .....   | 13.4                   | 103 .....  | 2.3                    |
| 20 .....   | 63.0                   | 48 .....   | 36.0                   | 76 .....   | 12.7                   | 104 .....  | 2.1                    |
| 21 .....   | 62.1                   | 49 .....   | 35.1                   | 77 .....   | 12.1                   | 105 .....  | 1.9                    |
| 22 .....   | 61.1                   | 50 .....   | 34.2                   | 78 .....   | 11.4                   | 106 .....  | 1.7                    |
| 23 .....   | 60.1                   | 51 .....   | 33.3                   | 79 .....   | 10.8                   | 107 .....  | 1.5                    |
| 24 .....   | 59.1                   | 52 .....   | 32.3                   | 80 .....   | 10.2                   | 108 .....  | 1.4                    |
| 25 .....   | 58.2                   | 53 .....   | 31.4                   | 81 .....   | 9.7                    | 109 .....  | 1.2                    |
| 26 .....   | 57.2                   | 54 .....   | 30.5                   | 82 .....   | 9.1                    | 110 .....  | 1.1                    |
| 27 .....   | 56.2                   | 55 .....   | 29.6                   | 83 .....   | 8.6                    | 111+ ..... | 1.0                    |

# Wealth Protection

# Wealth Protection Presentation Overview

- Homestead Creditor Exemption (Constitutional)
- Retirement Plans
- Life Insurance
- Annuities
- Tax Advantaged Savings Accounts
- Tenancy by the Entirety
- Effective Trust Planning for Asset Protection
- Self-Settled Trusts

## Homestead Creditor Exemption - Rules

- Unlimited Protection for Homestead Property - Section 4, Article X, Florida Constitution
- Homestead Must be Owned by Natural Person
- ½ Acre in a Municipality or 160 Acres of Contiguous Land in an Unincorporated Area
- Proceeds from Sale of Homestead
  - protected if reinvested in another homestead within a “reasonable time”
- *Havoco of America, Ltd. v. Hill* - Florida Constitutional Homestead Protection Trumps Florida Fraudulent Transfer Statute under Florida law

## Homestead Exemption - Exceptions

- Taxes and Assessments Related to a Homestead
- Obligations Contracted for the Purchase, Improvement or Repair of a Homestead
- Obligations Contracted for House, Field or Other Labor Performed on a Homestead (*i.e.*, Mechanics Liens)
- Federal law provided the federal government has federal statutory authority to override state exemptions (*e.g.*, Bankruptcy and IRS)

## Homestead & 2005 Bankruptcy Act

- 2 Year Rule - If debtor changes domicile within 2 years of filing for bankruptcy, the debtor must use the exemptions available in state the debtor was domiciled in for 6-month period preceding 2-year period.
- 3 Year, 4 Month Rule - The value of a homestead in excess of \$136,875 is not exempt until 1,215 days (*i.e.*, 3 years and 4 months) after the debtor *acquired an interest* in the home.
- 10 Year Rule - If within the 10 years prior to filing a bankruptcy petition a debtor converts non-exempt property to homestead with the actual intent to hinder, delay, or defraud a creditor, the value is reduced by the value of such converted property.

## Retirement Plans

- General Rule - Under Florida law, cash and other property payable to an owner, a participant, or a beneficiary from, and any interest of any such individual in a retirement or profit-sharing plan qualified under §§ 401(a), 403(a), 403(b), 408 (*i.e.*, an individual retirement account (“**IRA**”)), 408A (*i.e.*, a Roth IRA), or 409 of the Code is exempt from the claims of creditors of the beneficiary or participant.
- Consider establishing separate bank account to receive only distributions from your IRA or retirement plan to ease administrative burden of tracing distributions.

# Retirement Plans

- Revisit Your Retirement Plan Beneficiary Designations
  - In *Robertson v. Deeb*, 16 So. 3d 936 (Fla. 2d Dist. Ct. App. 2009), the Florida exemption for retirement plans was held **inapplicable** to an **inherited** IRA and was available to the beneficiary's creditors.
  - Although *Robertson v. Deeb* rests on dubious grounds, it is the current law in the Second District of Florida.
  - If one has sizeable IRA assets, it is important to change the beneficiary designations so that upon the participant's death the IRA proceeds pass to spendthrift trusts (in conjunction with the participant's estate plan) to ensure that creditor protection benefits extend to the IRA beneficiaries.

## Retirement Plans & the Bankruptcy Act

- The value of IRAs and Roth IRAs in excess of \$1 million may be available to creditors despite the specific exemption under Florida law.
- Simplified Employee Pension plans (SEPs) and Simple Retirement Accounts (SIMPLE IRA Plans) are expressly excluded from the \$1 million cap.
- Unlimited exemption for rollover IRAs
  - Consider maintaining separate accounts for IRAs funded with rollover contributions and IRAs funded with annual contributions.

# Life Insurance

- Cash Surrender Value
  - Cash surrender value is protected from the **insured's** creditors.
  - May preclude a debtor from accessing the cash surrender value of the policy without risking forfeiting the exemption.
  - Planning Opportunity: Can transfer policy to a wealth protection trust or an irrevocable life insurance trust (ILIT).
- Insurance Proceeds
  - Proceeds of a life insurance policy will inure to the benefit of the person who is designated as the beneficiary of such policy exempt from the claims of the **insured's** creditors.
  - Not protected from a beneficiary's creditors.
- Beneficiary Designations
  - Should not be payable to the insured or the insured's estate.
  - Consider having the proceeds pass to spendthrift trusts to ensure that creditor protection benefits extend to the beneficiaries.

# Annuities

- General Rule - Annuity contracts issued to Florida citizens or residents, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person *who is the beneficiary of such annuity contract*, unless the annuity contract was effected for the benefit of such creditor.
- Private Annuities may not be exempt.

# Tax Advantaged Savings Accounts

- Florida law exempts Florida Prepaid College Program, Florida College Savings Program, 529 Plans and Coverdell Education Savings Accounts.
  - protected from creditors of individual who purchased the account
  - protected from creditors of the beneficiary of the account
- Florida law exempts Health Savings Accounts (HSAs) and Archer Medical Savings Accounts (MSAs), which provide tax benefits to account owners with high deductible health plans.
  - Money paid into or out of, the assets of, and the income of such accounts will not be subject to attachment, garnishment, or legal process in Florida in favor of any creditor of such individual or beneficiary of such account

## Tenancy by the Entirety

- Form of Ownership Available Under Florida Law Only between a Husband and Wife
- Available for Both Real and Personal Property
- Presumption of Tenancy by the Entirety (however, it is important to ensure proper ownership titles)
- Cannot be Terminated by One Spouse Acting Alone
- Tenancy by the Entirety Property is Only Available to a Joint Creditor of Both Spouses

# Tenancy by the Entirety

- Can Overcome Bankruptcy Homestead Limitations
- Traps and Pitfalls
  - Joint liability
  - Death of Spouse
  - The “**D**” Word (Divorce)
  - Federal Tax Liens – *Craft*
- Springboard to Advanced Planning

# Effective Trust Planning for Asset Protection

- Revisit the Use of Trusts f/b/o Your Descendants
  - If a child or grandchild has, or potentially has, creditor issues (e.g., divorcing spouse, loan guarantees, foreclosure, etc.), it would be prudent to enhance the creditor protection benefits of trusts.
  - Considering using “wholly-discretionary” spendthrift trusts to obtain the maximum protection for a descendant/beneficiary.
  - Wholly-discretionary trusts do not grant a beneficiary mandatory distribution or withdrawal rights since such rights would be available to the beneficiary’s creditors.

# Effective Trust Planning For Asset Protection

- Revisit Your Trustee Appointments
  - *Miller v. Kresser* - Judge in trial court in Palm Beach County invalidated a spendthrift provision in a trust in which beneficiary's brother served as trustee.
  - Although decision will likely be reversed on appeal, it shows risk of a judge trying to satisfy creditors of a beneficiary and creating new law to do so.
  - Consider use of independent trustees to avoid a *Miller v. Kresser* issue.

# Self-Settled Trusts

- What is a Self-Settled Trust?
  - A trust is “self-settled” when the person who creates and funds an irrevocable trust (*i.e.*, the settlor or grantor) remains eligible to receive distributions of income and/or principal from the trust.
- Current Florida Law
  - A creditor of a settlor of a self-settled trust *established in Florida* may reach the maximum amount of trust assets that may be distributed to or for the benefit of the settlor.
  - Exception: Settlor permitted to retain a discretionary tax reimbursement power in an irrevocable trust.
  - Florida is in the process of considering self-settled trust legislation.
- What is a Wealth Protection Trust?
  - A wealth protection trust is a self-settled trust created in an appropriate jurisdiction (*i.e.*, foreign or domestic) that has appropriate domestic wealth protection trust legislation.

# Foreign Wealth Protection Trusts

- Ideal for cash and marketable securities
- Best way to address potential ongoing liability concerns
- Most flexible planning device
- Properly Structured
  - Nevis International Exempt Trust Ordinance 1994
  - Cook Islands International Trusts Act 1984
  - Discretionary & Spendthrift Trusts
  - Protector Provisions
  - Duress Provision
  - Flight Provision
- Know Your Client - Due Diligence

## Domestic Wealth Protection Trusts

- Alaska
- Delaware
- Nevada
- Rhode Island
- Missouri
- Utah
- South Dakota
- Oklahoma
- Tennessee
- Wyoming
- New Hampshire
- Colorado

Ideal for real property located in the designated states or to own stock in S corporations.



# Thank you for attending.

[www.cl-law.com](http://www.cl-law.com)

## Presented by: Cummings & Lockwood LLC

Cummings & Lockwood LLC • Collier Place II • 3001 Tamiami Trail North • Naples, FL 34103  
239.262.8311 Phone • 239.263.0703 Fax

Cummings & Lockwood LLC • The Brooks Grand Plaza • 8000 Health Center Boulevard •  
Suite 300 • Bonita Springs, FL 34135 • 239.947.8811 Phone • 239.947.8025 Fax

# Presented by: Cummings & Lockwood LLC

Cummings & Lockwood LLC • Collier Place II • 3001 Tamiami Trail North • Naples, FL 34103  
239.262.8311 Phone • 239.263.0703 Fax

Cummings & Lockwood LLC • The Brooks Grand Plaza • 8000 Health Center Boulevard •  
Suite 300 • Bonita Springs, FL 34135 • 239.947.8811 Phone • 239.947.8025 Fax

Marve Ann Alaimo  
Todd L. Bradley  
Catherine Carney-Richman  
Mary Beth Crawford  
Alison K. Douglas  
Jonathan E. Gopman  
M. Travis Hayes  
Elizabeth A. Hazelbaker  
William N. Horowitz  
Howard M. Hujsa

Kenneth D. Krier  
Robert L. Lancaster  
Rani Newman Mathura  
Brandon A. S. Ross  
Deborah L. Russell  
Joel Schechter  
Jayne M. Skindzier  
Matthew N. Turko  
Christopher L. Ulrich  
Theodore R. Walters