

Monthly Webinar Series Courtesy of Gassman, Crotty & Denicolo, P.A.

DESIGNING AND ENFORCING NON-COMPETITION COVENANTS

Tuesday, May 23, 2017
12:30 p.m. to 1:00 p.m.

Presented by:

Alan S. Gassman &
Darryl Richards



Darryl Richards
DarrylR@jpfirm.com



Alan S. Gassman
agassman@gassmanpa.com

Darryl Richards Bio



Darryl R. Richards is a shareholder at Johnson, Pope, Bokor, Ruppel & Burns, LLP, and practices in the areas of Commercial Litigation, Non-Competition Agreement Litigation, Land Use Litigation and Sophisticated Business Litigation. Darryl has been a trial lawyer with the firm since 1982. He has handled many types of cases, including non-competition and trade secret cases, land use litigation and sophisticated business litigation. He is also a Certified Circuit Court Mediator and is AV rated by Martindale-Hubbell. Darryl is admitted to The Florida Bar, the U.S. District Courts for the Middle, Southern and Northern Districts of Florida, the U.S. Court of Appeals – Eleventh Circuit, and the Hillsborough County Bar Association. He has served on The Florida Bar, Board of Governors, Young Lawyers Division, and is a Past Board Member of Big Brothers Big Sisters – Pinellas County. He has also been recognized in *The Best Lawyers in America*, Order of the Coif, Florida Legal Elite, Clearwater Bar President's Award, Member Service Award – Bayshore Little League. Darryl received his JD from the University of Florida, high honors, and his BA from Stetson University, cum laude, and was the Law Review articles editor.



Alan Gassman Bio



Alan S. Gassman, J.D., LL.M. is a board certified estate planning and trust lawyer who practices in Clearwater, Florida. He has an LL.M. in taxation from the University of Florida, and practices in the areas of trust and estate planning, business and medical practice representation, taxation, wealth preservation and has represented well over 1,000 physicians for the last 28 years.

Mr. Gassman speaks for many tax conferences and national programs, including over 15 Bloomberg BNA webinars in the past 4 years, 3 times at the Notre Dame Tax and Estate Planning Institute in the past 2 years, and at many other national and Florida Bar conferences.

He was the lead author on Bloomberg BNA's Estate Tax Planning for 2011 and 2012, and is the author of several other books, including Gassman & Markham on Florida and Federal Asset Protection Law, Creditor Protection for Florida Physicians, and A Practical Guide to Kickback and Self-Referral Laws for Florida Physicians. He has been published multiple times in Medical Economics and has been quoted on numerous occasions in Modern Healthcare, the Wall Street Journal, the New York Times and many other publications.

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Upcoming Webinar Series Calendar for Business Law and Strategies For Business Owners and Professionals

SERIES 4	6/20/17-Coordinating Business Conduct, Contractor Relationships and Insurances with Chuck Wasson
SERIES 5	7/25/17-Creditor Protection Planning for the Professional Practice or Operating Business
SERIES 6	8/15/17-The Art and Science of Negotiating Agreements with David Finkel and Steve Maxwell
SERIES 7	9/26/17-Negotiating the Purchase and Sale of a Business with John McDonald of Hyde Park Capital
SERIES 8	10/31/17-Choice of Entity and Multiple Entity Structures
SERIES 9	11/21/17-Uses and Abuses of Independent Contractor Arrangements
SERIES 10	12/19/17-Income Tax Strategies and Compliance Aspects of Business Planning

*Free 30-Minute Webinars Courtesy of Gassman, Crotty & Denicolo, P.A.
For more information email: agassman@gassmanpa.com*

WHAT NON-ELDER LAW SPECIALISTS NEED TO KNOW
ABOUT PROTECTING ASSETS AND MEDICAID
PLANNING

Presented by:

Letha McDowell

Wednesday, June 7, 2017



Letha McDowell

A 2017 Estate Planning Webinar Series Presentation

Moderated by
Alan S. Gassman



IRA PLANNING OPPORTUNITIES AND PITFALLS

Presented by:

**Edwin Morrow
& Christopher Denicolo**

Wednesday, July 12, 2017

Moderated by
Alan S. Gassman



Edwin Morrow



Christopher Denicolo

A 2017 Estate Planning Webinar Series Presentation

BLOOMBERG BNA's 2017 ESTATE PLANNING WEBINAR SERIES

TOPIC	SPEAKER	DATE
What Non-Elder Law Specialists Need to Know About Protecting Assets and Medicaid Planning	Letha McDowell	June 7, 2017
IRA Planning Opportunities And Pitfalls	Edwin Morrow Christopher J. Denicolo	July 12, 2017
Business Succession Planning Techniques: Passing the Business on Fairly to Family and/or Employees Using Income Tax and Investment Smart Methods.	Jerome Hesch Joy Spence	July 19, 2017
Sophisticated Asset Protection Trust, Offshore LLC And Related Planning	Jonathan Gopman	August 9, 2017
To Be Announced	To Be Announced	September 6, 2017

BLOOMBERG BNA's 2017 ESTATE PLANNING WEBINAR SERIES

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A Comprehensive Checklist For Succession Planning	Turney Berry Clary Redd	September 13, 2017
The Most Common Challenges We See From The IRS, And How To Avoid Them	John Porter	October 4, 2017
Essential Non-Tax Planning Considerations For Sophisticated Estate Plan	Martin Shenkman	November 1, 2017
Tax Planning for Marriage and Divorce	Carlyn McCaffrey Nicole Pearl Jerome Hesch	November 8, 2017
Planning To Reduce Medicare And Self-Employment Taxes In Business, Investment, And Trust Structuring – 6 Structures That Can Be Used.	David Kirk	December 13, 2017



Join us

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Monday, August 21, 2017

4:00 p.m. to 6:00 p.m.

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Martin M. Shenkman and Alan S. Gassman

Hot Topics In Asset Protection	4:00 PM—4:50 PM
Networking Opportunity	4:50 PM—5:00 PM
Financial & Estate Planning for Chronic Illness	5:00 PM—5:50 PM
Wine and Hors D'oeuvres	5:50 PM—6:30(ish)



Martin Shenkman, CPA, MBA, PFS, AEP, J.D.

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Alan S. Gassman, J.D., LLM.'s Professional Acceleration Workshop

"Alan Gassman is a leader in the asset protection field and is nationally-known for his abilities and experience. Anything he writes is a must-read by anyone, including both practitioners and prospective clients."

— Steve Oshins, nationally known and respected Estate Attorney

FRIDAY, AUGUST 25, 2017

9:00 A.M. TO 2:00 P.M.

AVE MARIA SCHOOL OF LAW

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Alan S. Gassman is a practicing lawyer and author based in Clearwater, Florida. Mr. Gassman is the founder of the firm Gassman Law Associates, P.A., which focuses on the representation of physicians, high net worth individuals, and business owners in estate planning, taxation, and business and personal asset structuring.

FEE:

Continental breakfast, lunch and 400 page manual included.

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Non-Competition Covenant Discussion



542.335 Valid restraints of trade or commerce

(1) Notwithstanding s. [542.18](#) and subsection (2), enforcement of contracts that restrict or prohibit competition during or after the term of restrictive covenants, so long as such contracts are reasonable in time, area, and line of business, is not prohibited. In any action concerning enforcement of a restrictive covenant:

(a) A court shall not enforce a restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought.

(b) The person seeking enforcement of a restrictive covenant shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant. The term "legitimate business interest" includes, but is not limited to:

1. Trade secrets, as defined in s. [688.002](#)(4).
2. Valuable confidential business or professional information that otherwise does not qualify as trade secrets.
3. Substantial relationships with specific prospective or existing customers, patients, or clients.
4. Customer, patient, or client goodwill associated with:
 - a. An ongoing business or professional practice, by way of trade name, trademark, service mark, or "trade dress";
 - b. A specific geographic location; or
 - c. A specific marketing or trade area.
5. Extraordinary or specialized training.



542.335 Valid restraints of trade or commerce

Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.

(c) A person seeking enforcement of a restrictive covenant also shall plead and prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction. If a person seeking enforcement of the restrictive covenant establishes prima facie that the restraint is reasonably necessary, the person opposing enforcement has the burden of establishing that the contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the established legitimate business interest or interests. If a contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the legitimate business interest or interests, a court shall modify the restraint and grant only the relief reasonably necessary to protect such interest or interests.

(d) In determining the reasonableness in time of a post-term restrictive covenant not predicated upon the protection of trade secrets, a court shall apply the following rebuttable presumptions:

1. In the case of a restrictive covenant sought to be enforced against a former employee, agent, or independent contractor, and not associated with the sale of all or a part of:
 - a. The assets of a business or professional practice, or
 - b. The shares of a corporation, or
 - c. A partnership interest, or
 - d. A limited liability company membership, or
 - e. An equity interest, of any other type, in a business or professional practice,

a court shall presume reasonable in time any restraint 6 months or less in duration and shall presume unreasonable in time any restraint more than 2 years in duration.



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2. In the case of a restrictive covenant sought to be enforced against a former distributor, dealer, franchisee, or licensee of a trademark or service mark and not associated with the sale of all or a part of:

- a. The assets of a business or professional practice, or
- b. The shares of a corporation, or
- c. A partnership interest, or
- d. A limited liability company membership, or
- e. An equity interest, of any other type, in a business or professional practice,

a court shall presume reasonable in time any restraint 1 year or less in duration and shall presume unreasonable in time any restraint more than 3 years in duration.

3. In the case of a restrictive covenant sought to be enforced against the seller of all or a part of:

- a. The assets of a business or professional practice, or
- b. The shares of a corporation, or
- c. A partnership interest, or
- d. A limited liability company membership, or
- e. An equity interest, of any other type, in a business or professional practice,

a court shall presume reasonable in time any restraint 3 years or less in duration and shall presume unreasonable in time any restraint more than 7 years in duration.

(e) In determining the reasonableness in time of a postterm restrictive covenant predicated upon the protection of trade secrets, a court shall presume reasonable in time any restraint of 5 years or less and shall presume unreasonable in time any restraint of more than 10 years. All such presumptions shall be rebuttable presumptions.

(f) The court shall not refuse enforcement of a restrictive covenant on the ground that the person seeking enforcement is a third-party beneficiary of such contract or is an assignee or successor to a party to such contract, provided:



542.335 Valid restraints of trade or commerce

1. In the case of a third-party beneficiary, the restrictive covenant expressly identified the person as a third-party beneficiary of the contract and expressly stated that the restrictive covenant was intended for the benefit of such person.
2. In the case of an assignee or successor, the restrictive covenant expressly authorized enforcement by a party's assignee or successor.

(g) In determining the enforceability of a restrictive covenant, a court:

1. Shall not consider any individualized economic or other hardship that might be caused to the person against whom enforcement is sought.
2. May consider as a defense the fact that the person seeking enforcement no longer continues in business in the area or line of business that is the subject of the action to enforce the restrictive covenant only if such discontinuance of business is not the result of a violation of the restriction.
3. Shall consider all other pertinent legal and equitable defenses.
4. Shall consider the effect of enforcement upon the public health, safety, and welfare.

(h) A court shall construe a restrictive covenant in favor of providing reasonable protection to all legitimate business interests established by the person seeking enforcement. A court shall not employ any rule of contract construction that requires the court to construe a restrictive covenant narrowly, against the restraint, or against the drafter of the contract.



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(i) No court may refuse enforcement of an otherwise enforceable restrictive covenant on the ground that the contract violates public policy unless such public policy is articulated specifically by the court and the court finds that the specified public policy requirements substantially outweigh the need to protect the legitimate business interest or interests established by the person seeking enforcement of the restraint.

(j) A court shall enforce a restrictive covenant by any appropriate and effective remedy, including, but not limited to, temporary and permanent injunctions. The violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of a restrictive covenant. No temporary injunction shall be entered unless the person seeking enforcement of a restrictive covenant gives a proper bond, and the court shall not enforce any contractual provision waiving the requirement of an injunction bond or limiting the amount of such bond.

(k) In the absence of a contractual provision authorizing an award of attorney's fees and costs to the prevailing party, a court may award attorney's fees and costs to the prevailing party in any action seeking enforcement of, or challenging the enforceability of, a restrictive covenant. A court shall not enforce any contractual provision limiting the court's authority under this section.

(2) Nothing in this section shall be construed or interpreted to legalize or make enforceable any restraint of trade or commerce otherwise illegal or unenforceable under the laws of the United States or of this state.

(3) This act shall apply prospectively, and it shall not apply in actions determining the enforceability of restrictive covenants entered into before July 1, 1996.

History.-ss. 1, 3, ch. 96-257.



Temporary Injunction Hearing



Legitimate Business Interests



Referral Sources



Clean Hands



Regarding Exceptions to Enforceability



Liquidated Damages Provisions



Careful Drafting of Arbitration Revisions



WHAT NON-ELDER LAW SPECIALISTS NEED TO KNOW
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Christopher Denicolo

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Income Tax Planning With Business And Investment Entities – Little Known Opportunities For Estate Planning And Corporate Advisors	Prof. David Herzig	May 10, 2017
What Non-Elder Law Specialists Need to Know About Protecting Assets and Medicaid Planning	Letha McDowell	June 7, 2017
IRA Planning Opportunities And Pitfalls	Edwin Morrow Christopher J. Denicolo	July 12, 2017
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