



## Re: Its Almost Time to Go Last Minute Shopping Report

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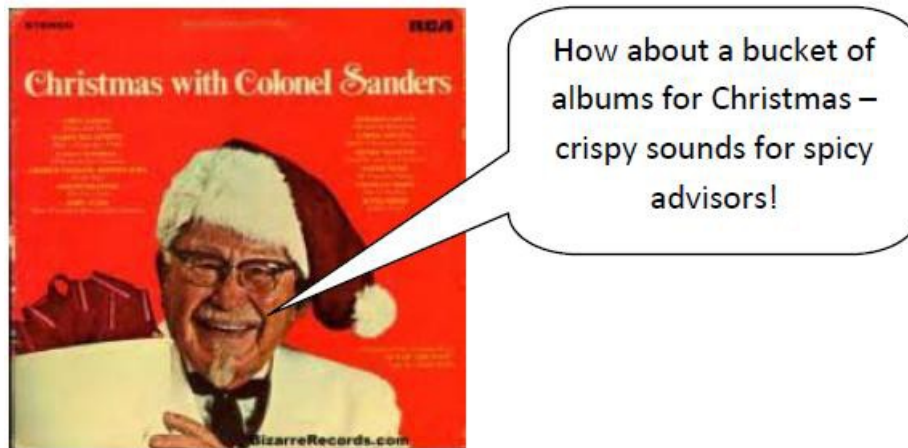
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We welcome contributions for future Thursday Report topics. If you are interested in making a contribution as a guest writer, please email Alan at [agassman@gassmanpa.com](mailto:agassman@gassmanpa.com)

This report and other Thursday Reports can be found on our website at [www.gassmanlaw.com](http://www.gassmanlaw.com)

## Quote of the Week

### Quote of the Week



It's that time of year again when last minute Christmas shoppers flood the floors of all the major department stores. But when you're looking for the best gift for your loved ones, consider blessing them with the sounds of *Christmas with Colonel Sanders*.

We all knew how Colonel Sanders loved to share his chicken with the world, but we didn't know about his love of spreading holiday cheer. From 1967 to 1969, KFC released three Christmas albums. These albums featured popular artists of the time singing Christmas music. The three albums are *Christmas Eve with Colonel Sanders* (1967), *Christmas Day with Colonel Sanders* (1968), and *Christmas with Colonel Sanders* (1969). Unfortunately, Colonel Sanders' taste of music was not as good as his fried chicken. Buzzfeed rated *Christmas with Colonel Sanders* as the 38<sup>th</sup> worst Christmas album of all time. Rounding out the top five worst Christmas albums are Roseanne Barr Singe the Christmas Classics at number five, The Freakscene Christmas Album at four, Conway Twitty comes in at number three with his album A Twistmas Story, Twisted Sister with A Twisted Christmas at number two, and the number one worst Christmas album was David Hasselhoff's, *The Night Before Christmas*. So on second thought, maybe leave out the Colonel Sanders Christmas album and just stick with giving a bucket of fried chicken.

Interestingly, the United States isn't the only place that Colonel Sanders brings cheer. When it comes to Christmas in Japan, Colonel Sanders is the guy dressed up in the red suit, not Santa. Turkey isn't common in Japan, and few people own ovens big enough to cook a large bird. In 1974, when people couldn't find turkey on Christmas day, they opted for fried chicken. It has become a Christmas tradition in Japan. Sounds like a very merry Christmas for Colonel Claus!

## **2018- 2019 Compliance Calendar of Events**

<b>Compliance Event</b>	<b>Date/Deadline</b>
Filing period for annual reports of Corporations, LLC, LLP, LP and non-profit	January 1 – May 1
Florida Corporate Income Tax Due	March 15 – April 1
Spring Break	March 9, 2019 – March 17, 2019
Hurricane Season	June 1 – November 30
Fantasy Fest in Key West	October 20 – 27, 2019
First day of Hanukkah (time to buy a gift for your Jewish tax lawyer)	December 22 – December 30, 2019
Deadline for early payment of Property Taxes with a discount (check your county tax appraiser's website for the exact deadlines)	4%.....November 30 3%.....December 32 2%.....January 31 following year 1%.....February 28 following year
Property Tax deadline	Typically March 31, but check your tax appraiser's website to be sure
TRIM Notice – Right to contest an appraisal	Varies – see your tax appraiser's website immediately after you receive notice
Vehicle Tag Renewal	Annual on the owner's birthday
Open Enrollment for HMOs	Varies – Check with your Employer's human resource department
Gasparilla Pirate Festival in Tampa	January 26, 2019
Deadline for purchasing a Florida 529 Prepaid College Plan at the previous year's prices	January 31, 2019
Homestead Application Deadline	March 1, 2019
Bike Week in Daytona	March 8 – March 17, 2019



## **No Santa Clawback - No Surprise**

**By Alan Gassman**

There was some speculation by a very limited number of tax lawyers and CPAs that using more than \$5,49,000 worth of an individual's estate tax exclusion would result in a possible "clawback tax" being imposed if and when the exclusion amount is reduced to 50% of its otherwise applicable level on January 1, 2026.

The Treasury Department was polite enough to issue a release on November 20 confirming that this would not be the case.

The coast is now very clear to enable individuals who wish to make the best use of their \$11,400,000 estate tax exemption (that is the level it will reach on January 1, 2019) before the exclusion goes down.

There are other very good reasons to use the excess exclusion now:

1. Future growth on the assets transferred will be excluded from the estate.
2. A discounted gift can be made now and reported as being well under the underlying value of assets subject to the transfer.

The IRS will then have three years to audit the gift tax return. If the gift is made in 2019, the gift tax return is filed in 2020, and the IRS's ability to audit the return lapses in 2023, then there will be time to make another gift or gifts using what remains of the exemption.

We call this the “double scoop treat” technique.

Please plan to get with your tax advisors in 2019 to discuss this opportunity.

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I'll be back –  
But there is NO  
SANTA  
CLAWSBACK!

## **Famous Births Today:**

1537: John III, King of Sweden

1868, Harvey Firestone – American industrialist and founder of Firestone Tire and Rubber Company

1945 , Peter Criss - Drummer of American band, KISS





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## Liability: The Other Never-Ending Story

By Amanda Schillinger

Unfortunately, independent contractors can also cause problems for principal businesses whether they are deemed to have formed an agency relationship or not.

### If It Quacks, Waddles, and Flaps Like a Duck, It's Probably an Agent

Outside agency law, principal businesses can be sued for the negligence of an independent contractor (held vicariously liable) when a court finds that an agency relationship was formed by the principal business and the independent contractor. Also, within agency law, principal businesses can be held vicariously liable if a court finds that implied/apparent authority exists, but only if related to the Plaintiff, as described below.

The case law is quite generous in providing that third parties who are not customers, employees, or otherwise involved with the parties will not be able to sue the principle for damages inflicted by the contractor or an employee of the independent contractor unless the principal was engaged in inappropriate or negligent conduct, which caused the damages.

For a court to find that an independent contractor and a principal business share an agency relationship that would expose the principal business to liability if a customer or other person or entity directly in privity<sup>2</sup> with the principal business, the common law requires that one of the following items must exist:

1. Negligence in selecting, instructing, or supervising the independent contractor (which goes towards the control factor under *Kane*)
2. A non-delegable duty that arose out of some responsibility the principal has toward

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<sup>1</sup> Beyoncé, *Single Ladies (Put a Ring on It)*, on *I Am... Sasha Fierce* (Columbia Records 2009). Although not an actual ring, when a principal business engages in conduct that is inappropriate or negligent when dealing with an independent contractor, a court will not think twice about attaching a “ring” the principal business’s finger displaying an agency relationship has been formed between the principal and the independent contractor.

<sup>2</sup> The relationship between the principal business and the customer, person, or entity (the “third party”) would typically be a contractual one in which the third party contracts with the principal business for goods or services to be rendered, and the principal business then contracts out to an independent contractor to either perform the service or make the good (typically we see this scenario in cases where goods need to be delivered and the principal



business contracts with a separate entity to have those services met by that separate entity's employees as seen in the first case below)

the public or the particular plaintiff; or

3. The employment for work is especially, peculiarly, or "inherently" dangerous, such as working with explosives or firearms.

As to the first exception for negligent selection, instruction or supervision, in *Del Pilar v. DHL*, the First District Court of Appeals of Florida, in 2008, found that the principal business DHL, which was to receive and deliver packages on behalf of third parties, possibly had formed such an agency relationship with a separate company that employed drivers in trucks (outfitted with the DHL appearance and labels) because of the requirements, obligations, limitations, and conditions it imposed in its contract with its independent contractor, Silver Ink.<sup>3</sup> Even though the contract expressly specified that Silver Ink was only an independent contractor of DHL, and that the performance of Silver Ink's services was in the sole discretion and control of the Contractor's responsibility, the other provisions set forth in the contract implied otherwise. DHL required that employees of Silver Ink wear a specific uniform that included DHL's logo, as well as drive a delivery van that incorporated DHL's logo. DHL was further required to be indemnified by Silver Ink should any packages be lost or stolen, required Silver Ink to submit unannounced operational inspections and audits, required exclusivity from Silver Ink, and had Silver Ink operate their hub out of one of DHL's facilities.<sup>4</sup> Because of their inherent control over the independent contractor, an agency relationship was found to exist.<sup>5</sup>

The last two exceptions are typically seen together, but not always. In regards to the second exception in which the principal holds a non-delegable duty to the public or particular plaintiff, the Court in *Newbold-Ferguson v. AMISUB* found that a non-delegable duty, "competent emergency services," may be established under the circumstances of a hospital supervising a physician independent contractor, and the hospital failing to supervise that physician would make the hospital vicariously liable by not providing "competent emergency services."<sup>6</sup> The Court also pointed out,

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<sup>3</sup> See *Del Pilar v. DHL*, 993 So. 2d 142, 142-43 (Fla. 1st DCA 2008).

<sup>4</sup> *Id.* at 144-45.

<sup>5</sup> See *id.* at 147. Also, take note that DHL delegated all of its responsibilities within the Florida Metropolitan area to Silver Ink, but this clause in the agreement was outweighed, in the Court's opinion, by the "exhaustive" and "deathly" procedural list enforced upon Silver Ink's employees and the right to indemnity DHL held over Silver Ink should any package be lost or damaged while in their care.

<sup>6</sup> 85 So. 3d 502, 505 (Fla. 4th DCA 2012) (citing *Irving v. Doctors Hosp. of Lake Worth, Inc.*, 415 So. 2d 55 (Fla. 4th DCA 1982)) (holding that a hospital that provides

emergency room care for a patient has a non-delegable duty to provide “competent emergency services” based upon implied contract theory).

however, that a non-delegable duty can also arise from a statute, contract, or regulation.<sup>7</sup>

The “inherently dangerous” exception morphs into a non-delegable duty in the course of performance of an activity in which liability will be attached to the principal during the performance of the activity by the independent contractor.<sup>8</sup> In *Nat’l R.R. Passenger v. Rountree Transport*, the Court explained that an activity becomes “inherently dangerous” if the “danger inheres in the performance of the work” and “it is sufficient if there is a recognizable and substantial danger inherent in the work, even though a major hazard is not involved.”<sup>9</sup> The Court stated that the activity’s performance in the “ordinary course of events” would probably, instead of merely possibly, cause injury unless proper precautions are taken to prevent such injury.<sup>10</sup> If the activity is found “inherently dangerous” then the person performing the work is under a non-delegable duty to perform, or have others perform, the work reasonably safe and carefully.

### I’ve Fallen, Now Pay Up!

Even if an individual classified as an independent contractor is not deemed to be an agent, there can always be issues, and the possibility of lawsuits, when that independent contractor is injured on the job.

The Court found in *Sagarino v. Marriott Corp.* that the parking attendant, Sagarino, who was an employee of FLT, an independent contractor, could collect damages for his injuries that were suffered as a result of Marriott’s negligence.<sup>11</sup>

Unlike the principal business in the *Kane* case, Marriott wanted the Court to find that Sagarino was an employee, a statutory employee, or a borrowed employee, so that Marriott would not have to further compensate Sagarino for his injuries since Marriott had already given him worker’s compensation.

Unfortunately (for Marriott), the Court found that Sagarino was neither of these types of employees but was in fact an independent contractor by applying the Restatement Second of Agency

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<sup>7</sup> *Id.* (citing *Wax v. Tenet Health Sys. Hosps., Inc.*, 955 So. 2d 1, 11 (Fla. 4th DCA 2006)) (holding that a hospital has a non-delegable duty to provide competent anesthesia services where there are both contractual and statutory basis for such a duty).

<sup>8</sup> *See* 286 F.3d 1233, 1249 (11th Cir. 2002).

<sup>9</sup> *Id.* at 1248-49 (emphasis omitted).

<sup>10</sup> *Id.* at 1249.

<sup>11</sup> 644 So. 2d 162, 166 (Fla. 4th DCA 1994).



test, the Workmen's Compensation Act, and Florida Statutes, Section 440.11(2).<sup>12</sup>

To explain further, the Court found that Marriott had little to no control over Sagarino's performance of his job. Sagarino had entered into a contract with another company; and that company had contracted with Marriott to provide parking attendants, such as Sagarino.

In its reasoning, the Court relied on *Jones v. Florida Power Corp.*, which held that the principal business was not immune from paying damages to an injured independent contractor because the immunity could only be applied in a situation where the principal business had assumed the role as a contractor and an employer and had a duty to provide worker's compensation benefits.<sup>13</sup>

From here, the Court found that Marriott had no duty to secure worker's compensation benefits for Sagarino because the other company that Marriott contracted with already did this. Without the duty to provide worker's compensation, Marriott had no immunity under the Act.<sup>14</sup>

In its last attempt to avoid liability, Marriott argued that Sagarino was a borrowed employee under Florida Statutes, Section 440.11(2), which provides that immunity from liability will extend to an employer and each employee of that employer who uses a "help supply services company's"<sup>15</sup> employee(s) for services that is in furtherance of the employer's business.<sup>16</sup>

The Court stated that the presumption is always that the employee is not borrowed, and to overcome this presumption the corporation must show that: (1) the existence of a contract for hire (express or implied) between Marriott and Sagarino; (2) the work being performed at the time of the injury was essentially that of Marriott; and (3) the power to control the details of the work was handled by Marriott.<sup>17</sup>

The first element was not met. Marriott did not satisfy its burden of showing that there was deliberate and informed consent by the employee that he was contracted with Marriott for

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<sup>12</sup> *Id.* at 164-66.

<sup>13</sup> *Id.* at 164-65.

<sup>14</sup> *Id.* at 165.

<sup>15</sup> Standard Industry Code 7363 defines a "help supply services company" as the establishments that primarily engage in supplying temporary or continuing help, which is always on the payroll of the supplying establishments, but is under the direct/general supervision of the business to whom the help is furnished, on a contract or fee basis.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

employment before the new employment began.<sup>18</sup>

Ultimately, Marriott was still on the hook for the damages owed to Sagarino for the injuries incurred due to Marriott's negligence.

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## **FLORIDA AND FEDERAL ASSET PROTECTION LAWS - FLORIDA ASSET PROTECTION: Annuities – Beneficial If Used Wisely**

**By Alan Gassman and Mike Markham**



This is Part of the series on Florida and Federal Asset Protection Law from our book, *Gassman & Markham on Florida and Federal Asset Protection Law*.

This part will focus on annuities and the protection of annuities under the law in Florida from creditors; and here, I'm not referring to all creditors because super creditors, which include the Securities & Exchange Commission (SEC), the Internal Revenue Service (IRS), some loans relating to Small Business Administration (SBA) guarantees, some Federal Deposit Insurance Corporation (FDIC) obligations and some Medicare refund penalty obligations, are not protected under Florida law or the creditor protection exemption laws of any state. This is important to keep that in mind when you do creditor protection planning anywhere.

In any event, the Florida statutes make it clear that an annuity is an exempt asset, meaning the creditors cannot reach an annuity even if they have a judgment against the beneficiary of the annuity. Now while the Florida statute refers to the beneficiary of the annuity as being the protected party, when a client buys an annuity contract from an insurance carrier and is the owner of the

contract with an entitlement to make withdrawals and possibly receiving withdrawals, that owner is the beneficiary of the annuity for purposes of the statute.

And when that original owner dies, then any individual appointed as the owner will have the same immunity, and the annuity contract will not be subject to creditor claims of the owner's estate. For example, if I owe money to a creditor that I can't pay, and before the creditor became a problem, I sent \$500,000 to a life insurance company to buy a variable annuity that is like a mutual fund wrapper, which enabled me to defer recognition of income tax on the gains within the annuity until I made voluntary withdrawals; the creditor cannot reach that annuity, even though I have the ability to withdraw from it freely.

And if I make my wife the beneficiary of a properly drafted revocable trust upon my death, my creditor cannot reach that annuity contract, and neither can my wife's creditors. That's assuming that my revocable trust is properly established, and that my wife receives payments on the annuity that she takes and puts into another creditor exempt asset, or she rolls the annuity, which can be done tax-free or at least tax-deferred, into a separate annuity of her own. And fortunately, our Florida Supreme Court has ruled that a variable annuity is just as protected as any other annuity contract.<sup>1</sup>

Now when you buy the annuity contract, make sure that it is titled in the name of the individual as owner, and not a revocable trust, because our statute is not clear on whether someone, other than an individual, would have this protection. It should be fine to have the beneficiary of the annuity on death be the revocable trust, as long as the revocable trust does not provide that creditors will be paid from the revocable trust.

It is also important to note that annuities have distinct disadvantages as compared to mutual funds or other investments. These include the fact that any gain that you take from an annuity comes out as ordinary income, not capital gains, when you finally take it out, and monies that come out of an annuity for an owner under age 59-1/2 are going to be subject not only to income tax, but also to a 10% excise tax on the amount of income withdrawn. You can separate annuities into multiple annuities, and as long as you do so 180 days in advance of withdrawal, what you bring out of a new annuity is based upon a pro ration of the income among the annuities established. This is further described in our book.

Finally, many different types of annuities that you could buy end up with large sales charges, large surrender charges, or a combination of both of them and annual charges, which are called M&E charges for mortality and expenses; and some annuities, have special, as I like to put it, "income guarantees," which are quite misleading.

If you Google or YouTube Gassman Notre Dame Annuities, you will see part of my presentation at the Notre Dame Tax Institute a few years ago on how misleading and expensive some of these annuities can be. On the other hand, you will find no load annuities with very low expense ratios offered by companies like Vanguard, TIAA and others.

The big takeaway from all of this is that it's one thing to tell a client that a variable annuity is a good idea, and it's another one to make sure that they decide on the right one, and they use it in the right way. Please send any questions to [agassman@gassmanpa.com](mailto:agassman@gassmanpa.com).

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<sup>1</sup> See *LeCroy v. McCollum*, 612 So. 2d 572 (Fla. 1993).



## A Memo to Physicians and Their Clients

By Alan Gassman

We just posted [Your Biggest Financial Nightmare Is Parked In Your Driveway](#) on Forbes. This article can be viewed [here](#).

We are also in the process of updating our book - *Creditor Protection for Florida Physicians* and will be giving a copy to all who attend PCMA's cruise in March.

"Florida Creditor Protection Trusts" will be discussed on the cruise, and the following should be a good introduction.

While Florida does not have a creditor protection statute, there are certain kinds of Florida trusts which can benefit a physician without being exposed to his or her creditors.

### A Trust Funded or Left by One Spouse for the Other Spouse and Descendants.

While Florida law generally provides that a trust funded by a person, that is held for that same person's benefit, can be invaded by creditors. This is not the case where one spouse or other person funds a trust for the other spouse. Almost all married physician clients should have will and trust arrangements to help assure that life insurance and other assets can pass on death into a trust that can benefit a surviving spouse and descendants, while also protecting them from creditors, "the next spouse," federal estate tax, and also undue influence and other threats to wealth. This can also be accomplished by gift during the joint lifetime of the married couple, and such a trust could divide into two separate trusts in the event of a divorce.

### The Inheritance Trust.

The first kind of Florida Creditor Protection Trust is an "Inheritance Trust" that is funded by gift or after death by a parent or other person separate and apart from the physician who is a beneficiary. The physician may also serve as Trustee and direct how the trust assets pass on the physician's death.

The Florida Trust Code provides that creditors cannot reach into a trust where the beneficiary did not fund the trust and is limited to being able to take distributions to what is reasonably needed for health, education, maintenance and support.

This means that the physician can control the investments of the trust, direct distributions for children, and also take out what is needed to live on, while banking his or her own paycheck into creditor exempt assets.

An Inheritance Trust can be established under the estate planning documents of a parent, or can be established by the physician beneficiary so that the parents only have to amend their

documents to provide that the inheritance for the child will pass to the child as Trustee of the Inheritance Trust.

#### The Lifetime Q-TIP Trust.

Another variety of a Florida Creditor Protection Trust is called the “Lifetime Q-TIP.” One spouse can establish a trust for the lifetime benefit of the other spouse, which becomes a trust for the donor spouse after the death of the lifetime beneficiary spouse.

The surviving beneficiary spouse can be the Trustee of the trust and receive amounts as needed for health, education maintenance, and support, while having the ability to direct how the trust assets will be used or pass to the descendants of the marriage.

Married couples who have significant assets held as tenants by the entirety will be well advised to have life insurance payable to this type of trust, because the surviving spouse will lose the asset protection feature offered by joint ownership as tenants by the entirety when the other spouse dies, and may remarry and leave the formerly joint assets to a new spouse and the new spouse’s children.

For example, Jane Smith, M.D. may have a short life expectancy, so her husband, John, establishes a trust that will pay her all income plus amounts as she needs for health, education maintenance, and support during her lifetime.

On Jane’s death, the trust will be held for the health, education maintenance, and support of John, and John will be able to serve as Trustee and direct how the trust assets will pass for their common descendants when he dies.

John’s creditors cannot reach into the trust, assuming that certain other requirements are met.

#### Irrevocable Defective Trust.

The final type of Florida Creditor Protection Trust that can benefit a Grantor without being accessible to creditors is called the “Irrevocable Defective Trust.” This is a trust that is established for family members other than the Grantor, and includes provisions which cause the income earned by the trust to be reported by the Grantor on his or her personal or joint married Form 1040 income tax return.

“Defective” is a technical term in the tax law which means that the trust income is taxed to the Grantor, even though the Grantor is not a beneficiary of the trust.

The Florida Trust Code allows the Trustee of an Irrevocable Defective Trust to reimburse the Grantor for income taxes that the Grantor has paid without causing the reimbursement right to be accessible to a creditor.

For example, Dr. Jones can form a trust for his spouse and children and have it own 20% of his medical practice. The trust may receive income of \$100,000 a year, and Dr. Smith will pay approximately \$37,000 a year in income tax attributable to the trust income.

After ten years, the trust has \$1,000,000 plus the growth thereon, and the Trustee, who can be selected and replaced by Dr. Smith, has the discretion to pay Dr. Smith up to \$370,000 at

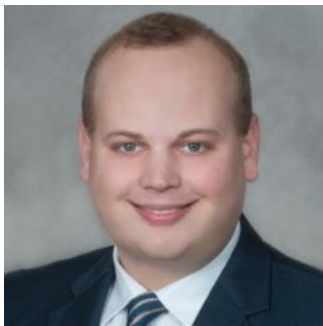
any time and for any reason, although creditors cannot reach any part of the trust, despite the fact that the Trustee has the discretion to pay Dr. Smith up to \$370,000.

Please Don't Try This at Home.

I promise not to read my own ultrasounds or prescribe my own Schedule 2 medications, and recommend that you use competent, board-certified, or otherwise appropriately-qualified lawyers, to make sure that trust work is done properly. Quite often, it is done improperly.

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## **Gift Yourself a Private Operating Foundation for the Holidays!**

**By John Beck and Alan Gassman**

Let Uncle Sam pay 37% or more of a gift that will never stop giving and avoid capital gains or recognition of taxes on appreciated property!



Traditionally, those who are charitably inclined and have the means will contribute financially to society through Private Foundations. However, in 1968 the federal rules related to Foundations were tightened. Since then, many donors have decided to work through “non-operating” Foundations that operate by making grants to other charities rather than doing the charitable work directly. This route may not be suited for those who want to be more involved in the charitable work and decision-making. So what options are there?

In deciding what type of charitable entity is right for you, the first step is understanding what being a 501(c)(3) organization means. Charitable entities can qualify as tax exempt entities under Internal Revenue Code Section 501(c)(3) if they are set up and run with the purpose of accomplishing certain charitable goals. There are two main benefits that come with qualifying as a 501(c)(3) entity:

1. The organization becomes exempt from most federal income tax; and
2. Those who contribute to the organization receive the benefit of deducting some or all of their contribution from their federal income taxes.

While there are two main categories of 501(c)(3) organizations, Public Charities and Private Foundations, there are multiple options available within both of those categories depending on the goals of the organization.

## Public Charities

The majority of 501(c)(3) organizations are classified as public charities, but that does not mean that establishing a public charity is the best option. The IRS generally defines Public Charities as “not a Private Foundation.” To be a public charity, the entity must (1) meet the Public Support Test, (2) be a traditional public charity, such as a school, church, hospital or governmental unit, or (3) be a supporting organization established to assist other public charities and be controlled or operated in connection with another public charity. According to the IRS, any other charitable entity that does not meet that definition is a private foundation.

Public charities are preferred because they enjoy more tax advantages than most private foundations and contributors to public charities can also receive more charitable benefits than contributors to private foundations. Additionally, public charities are not subject to the 2% annual excise tax on net investment income like private foundations. They are also not subject to the “anti-abuse” rules that apply to private foundations that can result in fines for certain conduct.

While there are many benefits to having a public charity, most people will not be able to establish one because it can be very difficult to satisfy the requirements of the public support test and this process usually involves a great deal of time and effort. Classification as a supporting organization used to be popular but is less so after Congress tightened restrictions in 2006, requiring the related public charity to have more control over the actions of the supporting organization.

Although it is difficult to qualify as a public charity, there are two other options available. First, rather than creating a charitable organization, gifts can instead be made to a “donor-advised fund” that is established by a public charity. Second, while private foundations may be less desirable than a public charity, the charitable entity can be established as a private operating foundation instead.

## Donor-Advised Fund

A donor advised fund is one in which the donor makes a contribution to a separate fund that is held by a public charity known as the sponsor. The sponsor allows the donor to decide which other public charities will receive gifts from the fund. The sponsor is generally a community foundation and, because the sponsor is a public charity, the preferential public charity tax rules apply.

Under a donor-advised fund, the donor does not have to worry about the administrative or financial responsibilities that go along with running a private foundation. While that is a significant incentive, many people avoid donor-advised funds for several reasons:

1. The final determination of where donations will be distributed is made by the sponsor of the fund. Thus, the donor’s decision is actually more of a recommendation and not a binding requirement.



2. The check to the public charity chosen will come from the donor-advised fund, giving less recognition to the donor.
3. While public foundations can run forever with the right amount of resources, this is not guaranteed with donor-advised funds.
4. Donor-advised funds usually only accept donations made in cash or by the listed subsidiaries, thereby limiting the donors who wish to donate real estate or business interests.
5. While private foundations allow family members to be employed by the foundation, donor-advised funds do not.
6. A donor-advised fund may not be able to achieve all of the goals the donor set forth for his contribution to the fund.

### Private Operating Foundation

Private operating foundations (POFs) are the least common form of 501(c)(3) organizations but they benefit from being a hybrid between public charities and private foundations. If a donor wants the ability to run the organization themselves or not deal with other charities, a POF can be a solid solution. Additionally, POFs qualify for tax rules that normally would only apply to public charities.

POFs provide donors with many benefits that would not be afforded to them by a donor-advised fund. The donor would have the control, recognition, and permanence of a private foundation all while providing contributors to the foundation the same tax benefits of donating to a public charity. Additionally, the private foundation excise tax does not apply to POFs in much the same way as public charities.

There is one major overarching requirement for POFs: a POF must directly carry out its own charitable purposes. In contrast, private foundations can simply make donations and grants to other charities to satisfy their distribution requirements.

The tricky part with POFs is actually qualifying as a POF for federal tax purposes. Internal Revenue Code section 4942(j)(3) provides two technical requirements for foundations to qualify as POFs. The organization must meet the “income test,” and one of three tests: (1) an asset test; (2) an endowment test; or (3) a support test. Each of these tests are explained in more detail below.

The income test must first be met in order to qualify as a POF. The purpose of this test is to ensure that the organization is acting as a charitable organization by using a certain portion of its annual funding for charitable purposes. The IRS will look at two factors to determine if an organization meets the income test. First, the minimum amount of funding spent on charitable endeavors must equal the lower of 85% of the organization’s gross income (reduced by expenses and other deductions) or 4.25% of the value of the organization’s investments and non-operational assets (calculated by taking 85% of 5% as required by the IRS). Second, the minimum amount that is calculated must be applied directly to charitable purposes.

The second prong of qualifying as a POF is meeting any one of the asset test, the endowment test, or the support test.

The endowment test is the easiest to pass. Under this test, at least 3.33% of the complete value of all foundation assets must be spent on charitable activities or expenses related to those activities. The purpose of this test is to ensure that the foundation is not just collecting money in a bank account but is actually spending it on the charitable purpose it was designed for.

Under the asset test “substantially more than half,” or 65%, of the organization’s assets must be held for the purpose of conducting the charitable activities the foundation was created for. This test helps to ensure that the POF is not just an investment fund and discourages stagnant assets.

Finally, the support test requires that the organization is supported by a broad base of contributors. The rationale behind this test comes from the idea that if there is a broad base of contributors, those contributors will only be happy and keep donating if the POF is actually functioning and doing charitable work. First, at least 85% of the foundation’s support must come from both the general public (as defined by the IRS) and five or more other 501(c)(3) organizations. Second, no more than 25% of the support can come from any single other tax exempt organizations. Finally, a maximum of 50% of total support for the organization can come from gross investment income.

If an organization meets the income test plus at least one of the other three tests, it can qualify as a POF. The IRS determines POF status yearly, but there are two different ways a POF can qualify: (1) if the organization meets the tests three out of four years or (2) if the organization meets the tests over the first four years put together (also known as four year aggregation). A new POF can be automatically considered a POF for its first year as long as the organization makes a good faith determination to the IRS that it will pass the tests. Then, if it meets the tests for years two and three, it will continue to qualify to as a POF. For the benefit of contributors, the organization will still be considered a POF for its first year even if it fails to meet the tests.

For the average person, a public foundation that simply makes grants to other charities may be the way to go because POFs require a lot more time and attention. However, if you want more control over how contributions are spent, a POF may be for you!

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## **What’s Your Science IQ?**

1. Let’s say your home is 80 degrees. You can either put the thermostat on 75 degrees or on 70 degrees. Which would make the room colder faster? 70 degrees or 75 degrees?

2. True or False: Turning the light switch on without having anything plugged into the socket will burn electricity.
3. True or False: It takes more energy to turn on a florescent light bulb than it does for the light to burn three days.
4. True or False: Driving with the AC on will take use more gasoline than driving without the AC.
5. True or False: There is a correlation between the usage of small space heaters and woodchuck deaths.

*Answers*

1. If you said 70 degrees, you're wrong. It's a common misconception that if you turn the thermostat to a lower temperature, the house will get colder faster. However, this is not true because of the way air conditioners are programmed to work. Usually air conditioners operate at two speeds, high and low, which means that the air conditioner cannot work any harder to get to the cooling point. Rather the air conditioner will just continue to run until the house reaches the temperature set on the thermostat.
2. False. If you do not have anything plugged into the socket and you turn on the switch, you will not burn any electricity. You need to have a complete circuit in order to draw electricity. This means you need to have something plugged in and the switch must be turned on. Without these two conditions, the circuit is broken and will not draw electricity.
3. False. This is another common misconception. The reality is that when you turn on a florescent lamp there is a brief jump in current that does not draw much power. According to the U.S. Department of Energy, this is only equivalent to a few seconds of normal operation. So as long as you're not switch happy and not turning the lights on and off every two minutes, it will not take more energy to turn on the light than let it burn for three days straight. For practical purposes and from an environmental standpoint, it makes sense to just turn the lights off when you are not using them.
4. True. When the air conditioner runs in your car, it uses energy that is supplied by the alternator. This energy comes from the engine, which requires fuel from the gas tank to run.
5. True. Space heaters used in offices use up significant amounts of energy both on the space heater and on the air conditioning system. A recent woodchuck electrical study indicated that the number of trees that come out of the wetlands resulting from this cause the loss or death of one woodchuck per space heater. So if you turn the space heater on, remember that woodchuck. This is why we recommend that legal and accounting offices immediately

outfit their staff with electrically heated socks for chronically cold feet, which are \$60 per foot.

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## [Alan's Forbes Blog](#)

### **The Most Valuable Gift You Can Give: A Good Estate Plan**



**Make Sure Your Parents Have A Good Estate Plan Maximizing Your Inheritance While Safeguarding Your Parents' Assets**

One of the challenges of being an estate planner is watching clients skimp on estate planning because this reduces the protection of what their descendants will receive by significant multiples, ultimately cheating themselves and their loved ones.

The best thing you can buy your parents is a good estate plan, especially from a 'return on investment' standpoint.

For example, spending an extra \$500 to \$700 to have a revocable trust instead of just a Will can save tens of thousands of dollars on probate, not to mention wasting needless time going through the courts, but this money is often not spent.

**To view the full article, click [HERE](#)**

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## **Richard Connolly's World**

Insurance advisor Richard Connolly of Ward & Connolly in Columbus, Ohio often shares pertinent articles found in well-known publications such as *The Wall Street Journal*, *Barron's*, and *The New York Times*. Each issue we feature some of Richard's recommendations with links to the articles.

**[click here to see article](#)**

The attached article from *Forbes* reports:

***Arguing before the U.S. Supreme Court on Wednesday, Indiana's solicitor general was already trying to defend confiscating a \$42,000 Land Rover taken from Tyson Timbs, who sold less than \$400 worth of drugs.***

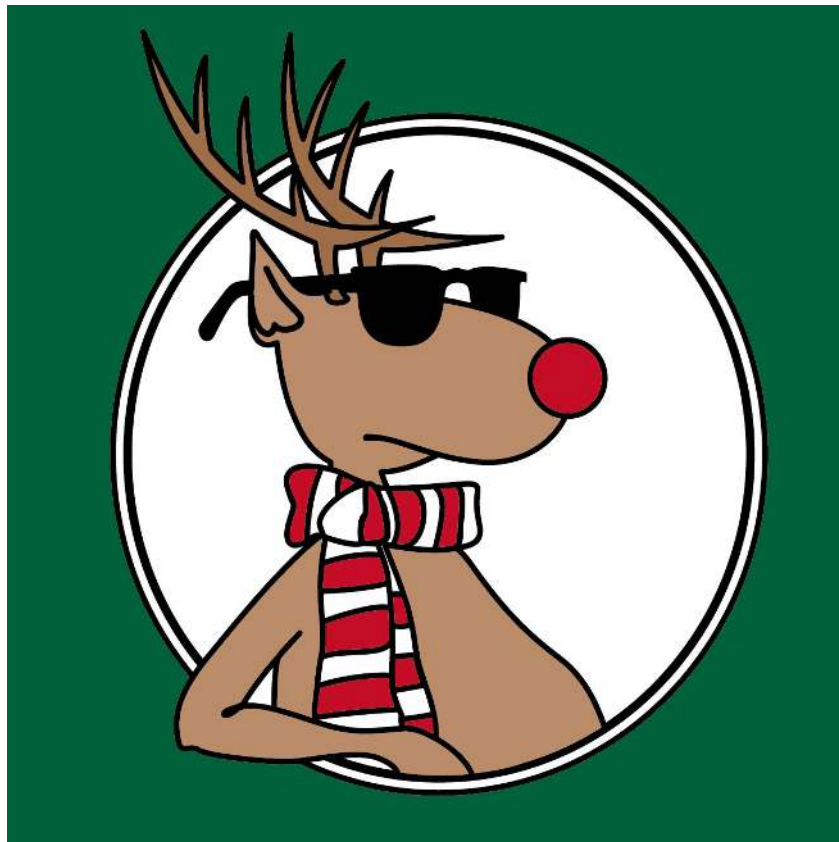
***Before the day was through though, Solicitor General Thomas Fisher found himself arguing that the Constitution would let him forfeit luxury cars caught going five miles over the speed limit.***

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## **Humor-or something similar...**

- What do you call a kid who doesn't believe in Santa?
  - A rebel without a Claus
- What nationality is Santa Claus?
  - North Polish
- What do you call an elf that can sing and dance?
  - Elfis
- What did the elf want to be when he grew up?
  - A wrapper!
- What did one candle say to the other candle?
  - Let's get lit
- Why is Santa scared to go down chimneys?
  - Because he has Claus-trophobia!

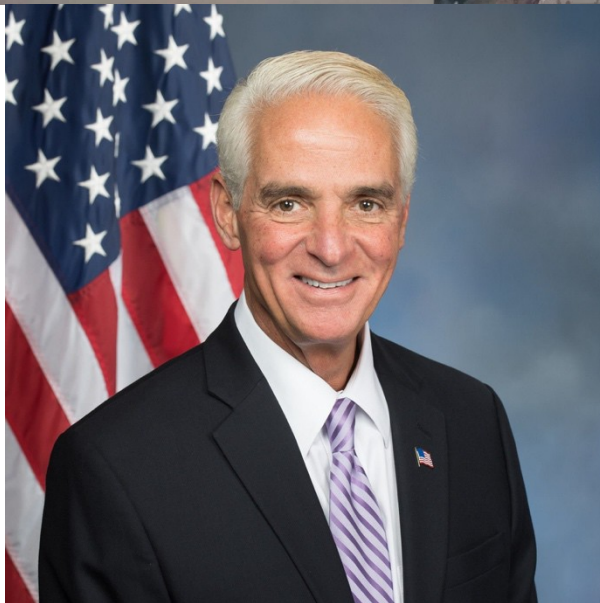




Why do mummies like Christmas so much?

Because they're into all the wrapping!





**Merry Cristmas! From  
Congressman Charlie Crist**



**and from Congressman Bill Murray**

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**Special Announcements:**

<b>53<sup>rd</sup> Annual Heckerling Institute on Estate Planning</b>  <b>January 14-18, 2019</b> <b>Orlando World Center Marriott Resort &amp; Convention Center</b>	<p><b>Monday, January 14-</b>Alan will be giving out free copies of <i>Gassman and Markham on Florida Creditor Protection</i>, which is newly added to the Bloomberg Tax family of books at the Bloomberg tax booth periodically during the conference. Mention the Thursday Report to get a free copy!</p> <p><b>On Wednesday, January 16,</b> Alan will be conducting a booth Q&amp;A Appearance at Craig Hersch's Freedom Practice booth entitled, "What Estate Planners Need to Know About Bankruptcy" where attendees will receive a copy of the new book of the same name.</p> <p><b>Additionally,</b> Alan and Chris Denicolo will have a booth Q&amp;A Appearance for the Veeralytic booth, "Trust Planning with IRAs" where attendees will receive a copy of <i>Planning for Ownership and Inheritance of Pension and IRA Accounts and Benefits in Trust or Otherwise</i></p> <p><b>Alan will have a booth Q&amp;A Appearance on 199A planning at the Interactive Legal booth where attendees will receive a copy of <i>The Section 199A (and 1202) Handbook</i>.</b></p>	<p><b>Please Click <a href="#">HERE</a> to register</b></p>
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<b>Johns Hopkins All Children's Foundation 2019 Estate, Tax, Legal and Financial Planning Seminar</b>  <b>February 7, 2019</b>	<p>Topics and speakers include:</p> <ul style="list-style-type: none"> <li>• 199A and the New Trust Regulations-<b>Jonathan Blattmachr, J.D.</b></li> <li>• Trust and Estate Litigation; Planning Ahead for the Inevitable – a Primer for the Planner - <b>Sandra D. Glazier, Esq.</b></li> <li>• The Mathematics of Estate Planning – <b>Jerry Hesch</b></li> <li>• Retirement Asset Planning, Including for First and Second Marriages: Let the Fun Begin <b>Christopher R. Hoyt</b></li> <li>• The Most Innovative Planning Ideas Today (That Don't Involve Subchapter Kryptonite) -<b>Paul S. Lee, J.D., LL.M.</b></li> <li>• 2019 IRA and Retirement Planning Update - <b>Ed Slott, CPA</b></li> <li>• Resurgence of a Forgotten Problem for Family Limited Partnerships: Section 2036 (A)(2) and the <i>Powell</i> Case Panel Discussion with <b>Jerry Hesch and Jonathan Blattmachr</b> and Moderated by <b>Alan Gassman, Esq.</b></li> </ul>
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<b>New Jersey Bar Association Presentation</b>	<b>March 11, 2019, 9:00am until 1:00PM</b>  <b>New Jersey Law Center, New Brunswick, NJ</b>	<b>Alan will be giving a four hour lecture on <i>What New Jersey Lawyers Need to Know About Florida Law</i> speaking for two separate topics:</b>	<b>To Register click <a href="#">HERE</a></b>
<b>New Jersey Bar Association Presentation</b>	<b>March 11, 2019, 2:00PM until 5:00PM</b>  <b>New Jersey Law Center, New Brunswick, NJ</b>	<b><i>What to Do for Clients Who No Longer Have to Worry About Federal Estate Tax with Deirdre Wheatley</i></b>	<b>To Register click <a href="#">HERE</a></b>



## Pinellas County Medical Association

9th Annual Continuing Medical Education Cruise

4 Night Western Caribbean Cruise Conference

March 14 - 18, 2019

Family-Friendly ★ Stress-Free CME ★ 10 AMA PRA Category 1 Credit(s)<sup>TM</sup>



Caribbean's Brilliance of the Seas

10 AMA PRA Category 1 Credits<sup>TM</sup>

### CRUISE RATES:

Interior Stateroom (6V)	\$215
Ocean View (8N)	\$264
Ocean View with Balcony (6D)	\$485
Ocean View with Balcony (2D)	\$524
Junior Suite with Balcony (J3)	\$1,178

Rates are per person, based on double occupancy and subject to change. Port charges, taxes and fees \$178 per person. \$200 per stateroom deposit with reservation.

### COURSE FEE:

\$350 Members
\$450 Non-Members

### TARGET AUDIENCE:

Physicians, Physician Assistants,  
Office Administrators & Ancillary Medical Staff

### SPEAKERS

Alan Gassman, JD, LLM, Dr. Lora Brown, Dr. Tim Carlson,  
Renee Kelly-Medical/Practice Consultant, Troy Kimbrough,  
CPA, Dr. Paula O. Pell, Dr. Meena Jain, Dr. Tracie Leonhardt

### PROGRAM TOPICS:

- The Biggest Mistakes Physicians Make As Owners and Non-Owners in Medical Practices and additional small group legal workshops - **Alan Gassman, JD, LLM**
- Update on Marijuana Recommendations - **Dr. Lora Brown**
- Current Management of Sepsis - **Dr. Tim Carlson**
- Top 10 reasons why your practice loses Money/and Payor Denials - **Renee Kelly, Medical / Practice Consultant**
- Planning in the Age of Tax Reform - **Troy Kimbrough, CPA, Gregory Sharer & Stuart**
- Medical Errors - **Dr. Paula O. Pell** (2hr)
- 'Not tonight dear' Undiagnosed Chronic Pelvic Pain - **Dr. Meena Jain**
- Latest update on the use of Stem Cell - **Dr. Tracie Leonhardt**
- Cyber Security, are you and your practice and mobile devices protected?

DATE	PORT OF CALL	ARRIVE	DEPART
Thu Mar 14	Tampa, Florida	-	4:00 pm
Fri Mar 15	At Sea - Cruising	-	-
Sat Mar 16	Cozumel, Mexico	8:00 am	6:00 pm
Sun Mar 17	At Sea - Cruising	-	-
Mon Mar 18	Tampa, Florida	7:00 am	-

Continuing Education, Inc. is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

Continuing Education, Inc. designates this live activity for a maximum of 1 AMA PRA Category 1 Credit<sup>TM</sup>. Each physician should claim only the credit commensurate with the extent of their participation in the activity.

**Don't miss this excellent networking opportunity!**  
**FOR INFORMATION AND RESERVATIONS CONTACT JEN BOLL**  
**727-526-1571 / 1-800-422-0711**

**See breakout workshops after calendar of events**




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## Calendar of Events

### Newly announced events in **RED**

EVENT	DATE/TIME	LOCATION	DESC.	REGISTRATION
<b>Pinellas County Medical Association “What You Need to Know About” Webinar Series</b>	January 8, 2019, 12:00 PM	Gotowebinar	Business and Personal Law 101 for Physicians and Their Advisors.	Please Click <a href="#">HERE</a>
<b>53<sup>rd</sup> Annual Heckerling Institute on Estate Planning</b>  <b>January 14-18, 2019 Orlando World Center Marriott Resort &amp; Convention Center</b>	<p>Monday, January 14-Alan will be giving out free copies of <i>Gassman and Markham on Florida Creditor Protection</i>, which is newly added to the Bloomberg Tax family of books at the Bloomberg Tax booth periodically during the conference. Mention the Thursday Report to get a free copy!</p> <p>On Wednesday, January 16, Alan will be conducting a booth Q&amp;A Appearance at Craig Hersch’s Freedom Practice booth entitled, “What Estate Planners Need to Know About Bankruptcy” where attendees will receive a copy of the new book of the same name.</p> <p>Additionally, Alan and Chris Denicolo will have a booth Q&amp;A Appearance for the Veeraltic booth, “Trust Planning with IRAs” where attendees will receive a copy of <i>Planning for Ownership and Inheritance of Pension and IRA Accounts and Benefits in Trust or Otherwise</i></p> <p>Alan will have a booth Q&amp;A Appearance on 199A planning at the Interactive Legal booth where attendees will receive a copy of <i>The Section 199A (and 1202) Handbook</i>.</p>			Please Click <a href="#">HERE</a>
<b>Maui Mastermind Scale and Grow Rich</b>	January 25-27, 2019	Hilton Irvine-Orange County Airport	Preparing Your Company for Sale and Why	Please Click <a href="#">HERE</a> .
<b>American Bar Association Presentation</b>	Tuesday, January 29, 2:00 PM – Join Alan for his presentation, <i>Lesser Known Traps and Strategies for the Well Versed Creditor Protection Planner, Including What You Really Must Know About Bankruptcy</i> .			
<b>Dentists are Different Webinar</b>	February 4, 2019	Gotowebinar	With Martin Shenkman	
<b>Johns Hopkins All Children’s Foundation 2019 Estate, Tax, Legal</b>	<b>Resurgence of a Forgotten Problem for Family Limited Partnerships: Section 2036 (A)(2) and the Powell Case Panel Discussion with Paul Lee, Jerry Hesch, Jonathan Blattmachr and Moderater, Alan Gassman, Esq.</b>			Contact:  <a href="mailto:Agassman@gassmanpa.com">Agassman@gassmanpa.com</a>

<b>and Financial Planning Seminar</b>				
<b>February 7, 2019</b>				
<b>Pinellas County Medical Association “What You Need to Know About” Webinar Series</b>	February 12, 2019, 12:00 PM	Gotowebinar	Limiting Liability by Using Medical Practice Companies and Other Entities	Please Click <a href="#">HERE</a>
<b>Pinellas County Medical Association “What You Need to Know About” Webinar Series</b>	February 19, 2019, 12:00 PM	Gotowebinar	Employee Practices, Exposures and Insurances with Chuk Wasson.	Please Click <a href="#">HERE</a>
<b>New Jersey Bar Association Presentations</b>	March 11, 2019, 9:00am and 1:00PM  New Jersey Law Center, New Brunswick, NJ	Alan will be speaking for two separate topics: What to Do for Clients Who No Longer Have to Worry About Federal Estate Tax with Deirdre Wheatley and <i>What New Jersey Lawyers Need to Know About Florida Law</i>		To Register click <a href="#">HERE</a>
<b>Pinellas County Medical Association “What You Need to Know About” Webinar Series</b>	March 12, 2019, 12:00 PM	Gotowebinar	Anti-Kickback and Related Laws with Renee Kelly	Please Click <a href="#">HERE</a>
<b>9<sup>th</sup> Annual Pinellas County Medical Association Continuing Medical Education Cruise</b>	March 14-18, 2019 	Port of Tampa	Biggest Mistakes Physicians Make in Medical Practice	<b>FOR INFORMATION AND RESERVATIONS CONTACT JEN BOLL</b> 727-526-1571 / 1-800-422-0711
<b>Pinellas County Medical Association “What You</b>	April 9, 2019, 12:00 PM	Gotowebinar	Cornflakes and Estate Planning Mistakes with Mike Jensen	Please Click <a href="#">HERE</a>

Need to Know About” Webinar Series				
Florida Bar Association	April 18, 2019, 10:00 am – 2:00 PM	Stetson Tampa Law Center <i>Primary Florida and Federal Creditor Protection Laws, A Closer Look at Florida and Federal Creditor Exemption Laws and Planning</i> And <i>Putting it All Together with Leslie Share</i>		Contact: <a href="mailto:Agassman@gassmanpa.com">Agassman@gassmanpa.com</a>
Maui Mastermind Financial Pillar Super Course	June 22-23, 2019	Hilton-Atlanta Airport	Crucial Legal and Tax Principals for Accumulating Wealth	Please Click <a href="#">HERE</a>
45 <sup>th</sup> Annual Notre Dame Tax Institute	October 26-27, 2019	South Bend, Indiana	TBD	Contact: <a href="mailto:Agassman@gassmanpa.com">Agassman@gassmanpa.com</a>
Maui Mastermind Wealth Summit	November 3-8, 2019	Wailea Beach Resort, Maui	Essential Aspects and Decisions for Your Remarkable Financial Future	Please Click <a href="#">HERE</a>

## Get your financial, tax, estate planning and legal house in order!

This year's PCMA cruise features

### **FIVE HOURS OF POWER**

and free 20 minute curb consultations with financial, legal, tax, accounting and insurance professionals.

Feel free to bring your tax returns, financial statements, wills & trusts and anything else you would like to discuss.

PCMA's professional advisors have over 100 years of combined professional experience.



DATE	PORT OF CALL	ARRIVE	DEPART
Thu Mar 14	Tampa, Florida	-	4:00 pm
Fri Mar 15	At Sea - Cruising	-	-
Sat Mar 16	Cozumel, Mexico	8:00 am	6:00 pm
Sun Mar 17	At Sea - Cruising	-	-
Mon Mar 18	Tampa, Florida	7:00 am	-



Alan Gassman, Esq.



Chuck Wasson, CIC



Troy Kimbrough, CPA



Michael Jensen, CFP



Renee Kelly



Workshops include:

1. Estate Planning and Creditor Protection
2. Tax Planning From A to Z
3. Investments and Tax Planning with Investments
4. Protecting Your Medical Practice
5. All About Insurance

\*includes valuable materials

These workshops and curb consultations will all be scheduled on the first evening of the cruise.

Bring your most challenging and procrastinated issues and get them resolved while enjoying beautiful weather, scenery, comradery, entertainment and fine dining.

*These free bonus hours do not qualify for CME credit, and are in addition to the 10 AMA hour credits being offered.*

**For information, email Anissa Raiford at [Araiford@pinellascma.org](mailto:Araiford@pinellascma.org)**

**For reservations, contact Jen Boll at 1-800-422-0711**