GASSMAN CROTTY & DENICOLO P.A.
ATTORNEYS AT LAW

THE THURSDAY REPORT

Issue # 256 Thursday, December 6 2018

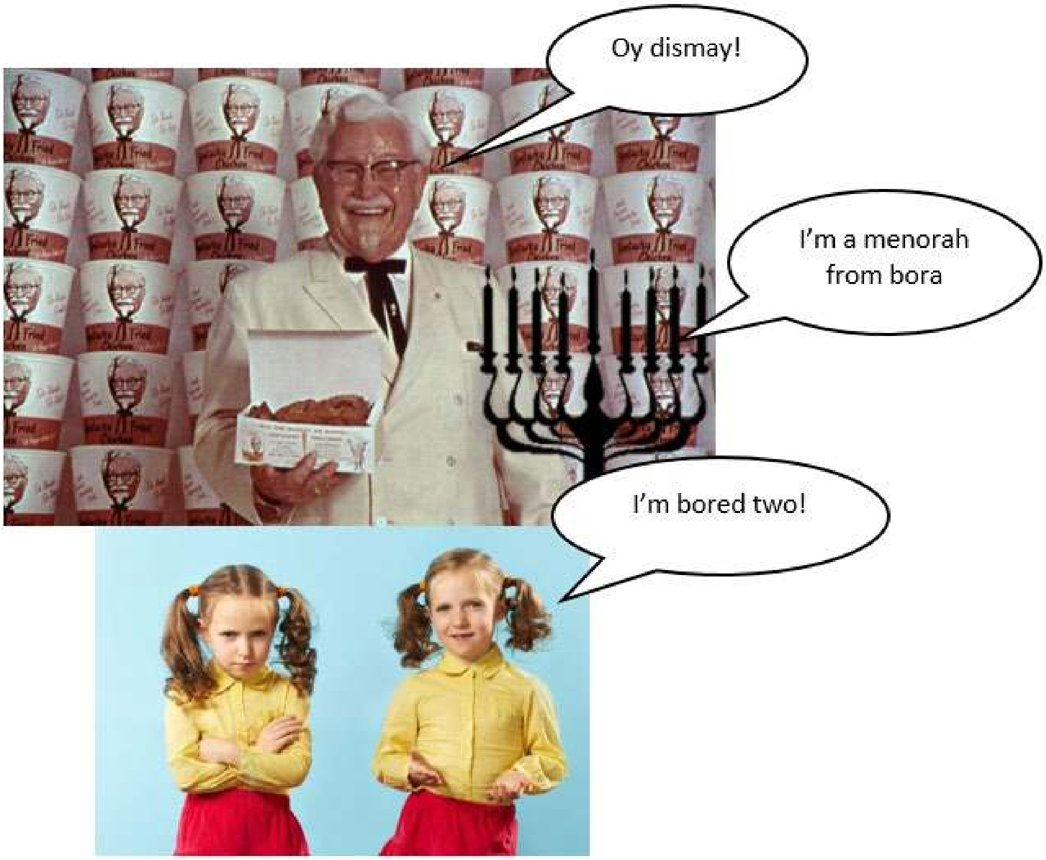
Re: Tell Your Friend Veronica, It's Time to Celebrate Hanukkah

In This Issue:

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

This report and other Thursday Reports can be found on our website at www.gassmanlaw.com

Quote of the Week



Thursday is the fifth night of Hanukkah, and this week we're bringing back our favorite Hanukkah song:

On the first night of Hanukkah, someone sent to me, a chicken wing topped with cream cheese.

On the second night of Hanukkah, someone sent to me, two cobs of corn, and a chicken wing topped with cream cheese.

On the third night of Hanukkah, someone sent to me, three buttery biscuits, two cobs of corn, and a chicken wing topped with cream cheese.

On the fourth night of Hanukkah, someone sent to me, four pounds of potato wedges, three buttery biscuits, two cobs of corn, and a chicken wing topped with cream cheese.

On the fifth night of Hanukkah, someone sent to me, five tubs of cole slaw, four pounds of potato wedges, three buttery biscuits, two cobs of corn, and a chicken wing topped with cream cheese.

On the sixth night of Hanukkah, someone sent to me, six buckets of chicken, five tubs of cole slaw, four pounds of potato wedges, three buttery biscuits, two cobs of corn, and a chicken wing topped with cream cheese.

On the seventh night of Hanukkah, someone sent to me, seven Colonel's laughing, six buckets of chicken, five tubs of cole slaw, four pounds of potato wedges, three buttery biscuits, two cobs of corn, and a chicken wing topped with cream cheese.

On the eighth night of Hanukkah, someone sent to me, eight extra crispy tenders, seven Colonel's laughing, six buckets of chicken, five tubs of cole slaw, four pounds of potato wedges, three buttery biscuits, two cobs of corn, and a chicken wing topped with cream cheese.

Traditional Public Charities Can Own For-Profit Businesses

By John Beck

Last issue we discussed the Newman's Own Exception that allows a private foundation to own 100% of a business. This week we will discuss an alternative option that allows more freedom for a charity to own a for-profit business.

"Traditional Public Charities" such as schools, churches, hospitals and governmental units do not have to pass the public support test to be treated as public charities. For purposes of this article we will mainly focus on schools, but the same general concepts should apply to all of these types of entities. Public charities are able to own business and corporate interests in the same way as is permitted under the Paul Newman Exception, however the Paul Newman Exception requires 100% ownership of the for-profit business, which is not required for Traditional Public Charities because these entities are not subject to the excess business holdings limitations. Thus, a Traditional Public Charity can own interest in a private company and would generally only need to be concerned with UBTI in terms of tax liability.

UBTI is Unrelated Business Taxable Income which can lead to a tax rate of up to 21% for income a non-profit corporation generates through performing a business activity not related to its charitable purpose. Generally, unrelated income that is passive is not subject to UBTI. There is little guidance on how much business activity a public charity can facilitate before it loses its public charity status. It would likely be a good idea to disclose changes on Form 1023, allowing the IRS to object to the public charity entertaining any added business activities.

To maintain public charity status, it is essential that the qualifying aspects of the organization's activities remain its principal activities and do not become merely secondary; any non-qualifying activities must be merely incidental and growing out of the qualifying activities.

There are a number of Revenue Rulings dealing with the issue of what is and what is not a school under 170(b)(1)(A)(ii). Revenue Ruling 78-309 discusses a martial arts school which met all the requirements. The Service indicated that the school qualified because classes were regularly scheduled and taught by a faculty of qualified instructors, there was a regularly enrolled student body, and the classes were interrelated to the primary purpose of the school which was to teach martial arts.

In Revenue Ruling 73-456 a training center established to instruct the blind to properly function with the aid of guide dogs met the requirements relating to faculty, curriculum and enrolled student body, and qualified under 170(b)(1)(A)(ii). This indicates that the nature of the education does not need to be traditional.

The requirement of maintaining a regular curriculum does not necessarily require a course program or a formal classroom instruction, but does mean that the courses must be offered on a recurrent basis. For example, in Revenue Ruling 69-492 an organization whose only function was to conduct classes for eight weeks each summer, during which it maintained a regular faculty and curriculum with regularly enrolled students, qualified under 170(b)(1)(A)(ii).

If the entity's primary purpose was viewed to be the running of its for-profit businesses, it would not qualify under 170(b)(1)(A)(ii) and lose its public charity status. That said, it is possible for the school to maintain its focus of education and simply hold a large portfolio of businesses and/or assets that generate income. If the school did not qualify as a public charity, it may try to use the Paul Newman exception discussed in last week's Thursday Report.

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529 MISCONCEPTIONS ABOUT 529 PLANS

By Alan Gassman

Internal Revenue Code Section 529 was enacted in 1996 to allow interest, dividends, and capital gains that occur under mutual fund-like wrappers to be tax-free if the entire fund is spent on qualified educational expenses.

The 2017 Tax Act expanded qualified educational expenses to include up to $10,000 per year for kindergarten through 12th grade tuition, beginning in 2018.

There are many misconceptions and thousands of mistakes made with respect to 529 plans. The following list and explanation should be helpful to many.

1. Contributions to a 529 Plan are not deductible for federal income tax purposes.

Additionally, no deduction is earned when monies are withdrawn to pay for expenses. The growth in value within the plan is not subject to income tax, except to the extent spent on items that are not qualified educational expenses.

2. A 529 college savings plan is different than a prepaid tuition program.

Even though both of them are established under Internal Revenue Code Section 529, there are some differences. Many families will invest in both prepaid tuition and 529 college savings plans so that a child will have tuition, room and board paid partly or wholly under the prepayment plan and permitted living and other educational expenses paid from the college savings plan.

3. Any person can choose any college plan form any state.

While each state has one or more College Savings Plans that it sponsors and permits, any person or trust entity can choose to invest in any state's 529 College Savings Plan. There are often good reasons to use a state other than where the person resides, this includes costs, whether a chosen financial advisor works with that Plan, and whether the state has a statute that prevents creditors from reaching the Plan.

The creditor law that applies in the owner's state of residence will most likely apply; however, this is not always clear or firmly established. So, it is best to reside in a state that provides for protection from creditors as well as purchase a Plan sponsored by a state that also has legislation which protects 529 Plans from creditors.

4. Don't always save on the lower side.

While many advisors believe that the 10% excise tax and ordinary income rates will apply for 529 Plan withdrawals, this may not always be the case. Even 529 Plans that are used completely for non-educational purposes offer some tax advantages will often be preferable to the tax treatment of variable annuities and certain other investment vehicles.

Let's take an example that illustrates how the tax treatment works. Mary invests in a 529 College Savings Plan for her daughter, and puts $100,000 into the Plan. It grows to $150,000 before it has been used. Mary spends $50,000 on her daughter's education, but no more is needed because her daughter marries a lottery winner and decides not to pursue a post-graduate degree because her MRS degree is sufficient.

Mary then withdraws $10,000 from the Plan to pay for her expenses in attending the wedding.

The $50,000 of growth that the Plan had is considered to remain in the Plan and to not come out when qualified educational expenses are paid. This means that Mary's plan now has $50,000 of "cost basis" and $50,000 of "untaxed income." The original $100,000 of cost basis was reduced by the $50,000 of expenses that were paid.

Mary does not have to pay income tax or the 10% excise tax on the entire $10,000 that she withdrew to spend on the wedding. The income comes out pro rata to value, so the $10,000 distribution carries out $5,000 of income and $5,000 is a return of principal. In addition, the 10% excise tax applies to the $5,000, so Mary pays income tax based upon her normal bracket, plus an additional $500 excise tax.

Assume that three weeks later there is $90,000 in the Plan and Mary withdraws another $10,000. The ratio remains the same.

If Mary had instead invested in a variable annuity contract, the 10% excise tax would have applied to the first monies out unless Mary is over 59-1/2, because then there is no excise tax for pulling income out of a variable annuity.

5. Assuming that the Plan has to be Spent on the Child Initially Designated.

The 529 plan rules do not require that distributions be made only to the child that was initially designated to receive them. The rules also permit changing the intended beneficiary to an alternate beneficiary annually. The 529 Plan may also be separated into different 529 plans, which can be designated for separate individuals.

6. A 529 plan does not belong to the individual for whom it is designated.

529 Plans can actually be considered to belong to the individual who funded and controls it. This applies notwithstanding that the 529 Plan will not be subject to estate tax if it has been considered to be a gift for the designee, making it the only mechanism that allows someone to own an asset that will not be considered as owned by them for federal estate tax purposes.

What makes a 529 Plan even better for many taxpayers is that the $15,000 per year gift tax allowance permits an election to be made to consider a 529 Plan acquisition to be a gift allocated equally between the year of the transfer and the four subsequent years by the filing of a gift tax return.

In other words, grandma and grandpa could put $150,000 into a 529 plan for their grandchild and consider this to be a gift of $15,000 from each of them in the year of purchase and the four subsequent years. They can therefore fund the 529 plan for their grandchild and not have any reduction of their $11,180,000 estate tax exemption (which is scheduled to go to one-half of the inflation-adjusted amount in 2026) while having $150,000, and the growth thereon, out of their estate beginning in the year of transfer.

7. 529 Plans can be owned by family LLCs, irrevocable trusts, and other entities.

For many affluent taxpayers, it is preferable to use the $15,000 a year annual gifting exclusion for discounted gifting of family limited partnership, LLC, and other interests because much more value is transferred when discounts are used.

For example, an estate taxable taxpayer who has $10,000,000 worth of assets in a family LLC might gift a small percentage of the LLC interest each year to a trust for a grandchild, reporting this as a $15,000 gift. This will move more value out of his estate over five years than a single front-loaded 529 Plan, assuming equivalent rates of return. The family LLC can purchase a 529 Plan for whatever amount may be needed for tuition, college, and graduate school so that all of the income tax savings from the 529 Plan is maximized, while estate and gift tax avoidance is also best handled.

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EXCERPT FROM THE 2018 EDITION OF GASSMAN & MARKHAM ON FLORIDA AND FEDERAL ASSET PROTECTION LAWS - CHAPTER 6: WAGES AND WAGE ACCOUNTS (BASIC RULES)

By Alan Gassman and Mike Markham

In many states wages earned by the head of household are not subject to creditor claims and may be invested in other exempt assets without constituting a fraudulent transfer. Florida Statute Section 222.11 protects earnings, including compensation paid or payable, in money of a sum certain, for personal services or labor whether denominated as wages, salary, commission, or bonus of a head of family.[1] According to the statute, a head of family is any natural person providing more than one-half of the support for a child or other dependent.[2] **However, the courts have been somewhat limited in their protection of wages that could have been re-characterized as profits when related to professionals and closely held businesses, and there is some confusion in the case law caused by the tendency of judges to refer to independent business holders as "independent contractors", while independent contractors who do not have their own separate business and simply earn monies for services rendered can have their wages protected under the statute.**

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[1] Fla. Stat. § 222.11.

[2] Fla. Stat. § 222.11(c).

Florida Statute Section 222.11 "head of family" exemption was amended in October of 2010, which changed the amount of disposable earnings that are automatically exempt (garnishment exemption) from $500 to $750 per week,[3] and created supplemental requirements for creditors who wish to obtain an enforceable waiver of the garnishment exemption.[4] Pursuant to Florida Statute Section 222.11(b), the waiver of the judgment debtor is now required to be stated on a separate document, and therefore can no longer be discreetly placed within an agreement or contract.[5] The effectiveness of wage garnishment from an otherwise financially solvent judgment debtor may be substantially limited under the garnishment wage exemption, as it enables debtors to exempt significant amounts of disposable earnings for up to six months.[6]

Section 222.11(3) provides for the protection of monies deposited into a "wage account" for up to six months after the deposit has been made. The account must be held in a "financial institution." Many advisors encourage physicians to establish wage accounts, deposit their wages into the accounts, and then to move the monies from the wage account into other protected investments within six months of each wage check deposit.

The wage and wage accounts exemption under Florida Statute Section 222.11 provides that the first $750 per week of such disposable earnings are exempt from attachment or garnishment, and disposable earnings above that amount will not be subject to attachment or garnishment <u>unless such person has agreed otherwise in writing</u>. Advisors negotiating bank loan documents should be sure to ask the bank to strike any reference to waiver if Florida wage exemption rights apply. Waiver of wage exemption documents have been upheld by multiple courts. For example, in a 2011 case, *USAmeriBank v. Klepal,*[7] the Second District Court of Appeal upheld a waiver of disposable earnings in a promissory note.

But even if loan documents purport to waive the exemption of wages, such clauses may not be enforceable if the debtor did not have reason to know that they were part of the loan document package. Recently revised Florida Statute Section 222.11(2)(b) provides the following requirements for a waiver to be valid:

> (b) Disposable earnings of a head of a family, which are greater than $750 a week may not be attached or garnished unless such person has agreed otherwise in writing. The agreement to waive the protection provided by this paragraph must:
>
> 1. Be written in the same language as the contract or agreement to which the waiver relates;

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[3] Fla. Stat. § 222.11(2)(a).
[4] Fla. Stat. § 222.11(2)(b).
[5] The waiver must also be in at least 14-point font and "substantially" in the following form: If you provide more than one-half of the support for the child or other dependent, all or part of your income is exempt from garnishment under Florida law. You can waive this protection only by signing this document. By signing below, you agree to waive the protection from garnishment.
[6] *Id.*
[7] 100 So.3d 56, 61 (Fla. 2d. Dist. App. 2011).

2. Be contained in a separate document attached to the contract or agreement; and

3. Be in substantially the following form in at least 14-point type:

IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME IS EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM GARNISHMENT.

Under Florida Statute Section 222.11(3), wages that would qualify as exempt that are deposited into an account at any financial institution are exempt from attachment or garnishment for six months after the earnings are received by the financial institution if the funds can be traced and identified as earnings.[8] The statute also states that commingling earnings with other funds does not by itself defeat the ability of a head of family to trace earnings.

It is noteworthy that Bankruptcy Code Section 522(f) may prevent the waiver of exemption rights from applying in bankruptcy. The specific language of the statute is as follows:

> (f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is…

The paragraph (3) referred to above states:

> (3) In a case in which State law that is applicable to the debtor—
>
> (A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and
>
> (B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;
>
> the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor

[8] Fla. Stat. § 222.11(3).

to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $ 6,425.

In *In re Holmes*, a 2009 case from the Bankruptcy Court for the Southern District of Florida, a debtor successfully argued that the "gratuities" that were added to and thus included in his paycheck were exempt from garnishment under Section 222.11.[9] In this case, the debtor was a bartender who moonlighted as an event photographer. His employer automatically added a "service charge" to all orders. This service charge was then passed along to the debtor in his paychecks under a line item labeled "gratuities." The decision does not indicate whether the service charge was added to photography, bartending, or both. The Bankruptcy Court stated that commissions are only eligible for the exemption under Section 222.11 when the debtor is an employee, and not when the debtor is an independent contractor. The court stated that "[i]n order for compensation to be exempt under the statute, a debtor must receive regular compensation dictated by the terms of an arm's-length employment agreement to perform services that are much like a job."[10] In this case, the Bankruptcy Court held that the debtor's gratuities were exempt because they were earned under an arm's-length employment agreement and could be properly traced and identified as earnings.

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Waiver Of Spousal Inheritance Rights And New Statute Affecting Homestead

By Brandon Bellew

Brandon D. Bellew, a partner at Johnson Pope Bokor Ruppel & Burns, LLP, practices exclusively in the areas of trust, estate and guardianship litigation. He currently serves as President of the Clearwater Bar Association. He is also active in the Florida Bar's Real Property, Probate, and Trust Law Section where he serves on its Executive Council, is active on the Trust Law, Probate Law and Procedure and Probate & Trust litigation committees and serves as a Vice Chair of the Guardianship, Power of Attorney and Advanced Directives Committee.

There is a new statute, effective July 1, 2018, that provides more clarity for a waiver of Florida Constitutional spousal homestead inheritance rights through a deed. The Florida Constitution, under Article X, Section 4(c), states:

"the homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child."

[9] 414 B.R. 868, 870 (Bankr. S.D. Fla. 2009).

[10] *Id.* at 870.

The new statute, Florida Statutes Section 732.7025, provides specific language to include in a deed to effectuate a waiver of homestead inheritance rights to allow the owner spouse to freely devise the property after death without the Florida Constitution's devise restrictions. This statute relates solely to homestead inheritance rights and does not affect other spousal probate rights. A deed which complies with this statute waives homestead inheritance rights, but it does NOT: 1. waive the owner's creditor protection against creditor claims during the owner's life or after death; OR 2. waive the restriction against alienation by mortgage, sale, gift, or deed without the joinder of the non-owner spouse.

The following language (or substantially similar language) will constitute a presumption that the non-owner spouse has waived his/her homestead inheritance rights if included in a deed: "By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me."

This does not mean that homestead inheritance rights cannot be waived through a deed if this language is not/was not included but it is much less clear without it. There are Florida cases[1] which hold that a spouse waived his/her homestead inheritance rights through a deed, but those cases are factually specific and cannot be relied upon without a detailed analysis of the facts and a judicial determination. Without the language in Florida Statutes Section 732.7025, it is possible that a court could find that the deed does not constitute a valid waiver because it was not a knowing and intelligent waiver.

Homestead inheritance rights, as well as other spousal inheritance and probate rights (elective share, intestate share, pretermitted share, exempt property, family allowance, and preference in appointment as personal representative) can also be waived by a written agreement under Florida Statutes Section 732.702.

Judicial approval is still likely required for both waivers of homestead inheritance rights through written agreements and through deeds that do not include the language described in Florida Statutes Section 732.7025 for title insurance purposes. Including the specific waiver language from Florida Statutes Section 732.7025 in a deed between spouses can avoid the need for judicial approval. Therefore, a more effective practice would be to execute a deed with the statutory language regardless of whether there is a written agreement that also includes a waiver of homestead inheritance rights.

A waiver of spousal probate and inheritance rights under Florida Statutes Section 732.702 must be in the form of a written contract, agreement or waiver that is signed by the waiving party in the presence of two subscribing witnesses, no consideration is required. However, the witness requirement only applies to waivers signed by Florida residents after January 1, 2002. A waiver signed by a non-resident of Florida is valid here if it was valid when executed under the laws of the state or country where it was executed, whether or not he/she is a Florida resident at the time of death. The language used in the written waiver does not have to be complicated or detailed—in fact, it is very simple. The statute only requires the written waiver to state that it is a waiver of:

"all rights" (or comparable language) "in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce."

All rights waived do not need to be listed and are included unless the waiver specifically provides to the contrary. A waiver under Florida Statutes Section 732.702 affects all rights that pass by intestacy or by the provisions of a will executed before the waiver. A subsequently executed will supersedes a previously executed waiver to the extent that provisions are in conflict. The waiver does not even have to be an actual "waiver", or a document titled as a "prenuptial" or "postnuptial" agreement to effectively waive spousal rights.

A waiver under Florida Statutes Section 732.702 results in a rebuttable presumption that spousal probate rights have been waived.[2] Financial disclosure is not required if the waiver is executed before marriage, but financial disclosure is required if the waiver is executed after marriage.[3] Additionally, there is no presumption of undue influence available to parties contesting a prenuptial agreement in a probate proceeding like there is in a dissolution proceeding. A prenuptial agreement benefiting one party in a grossly disproportionate manner—even with evidence of coercive circumstances surrounding its execution—does not give rise to a presumption of undue influence or overreaching when such agreement is contested in probate proceedings.[4] However, a prenuptial agreement may be set aside by a probate court on other grounds—for instance, one's signature had been coerced or otherwise improperly obtained or the party was incompetent at the time he/she signed.[5]

This new statute is another detail in the already very detailed area of Florida homestead law. There is now a statutory mechanism available to make it clear that a deed between spouses is a waiver of homestead inheritance rights.

1. Stone v. Stone, 157 So. 3d 295 (Fla. 4th DCA 2014); Lyons v. Lyons, 155 So. 3d 1179 (Fla. 4th DCA 2014)
2. In re Estate of Roberts, 388 So. 2d 216, 217 (Fla. 1980).
3. Fla. Stat. §732.702(2).
4. Evered v. Edsell, 464 So. 2d 1197 (Fla. 1985).
5. Id. (citing In Re Estate of Roberts, 388 So. 2d 216, 217 (Fla.1980).

To read part one, please click **HERE**.

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Your Biggest Financial Nightmare is Parked in Your Driveway

By Alan Gassman

Every year, thousands of Americans get killed or seriously harmed in motor vehicle accidents. For almost every accident, there is a family in peril and usually the owner and the driver of the vehicle will be blamed for the damages done.

This is not to soft pedal or ignore that someone has been seriously injured and that their life may never be the same, but I represent the people who did not intend to cause any problem, or who even were not in the accident itself but owned the motor vehicle that the driver was using.

If you drive a vehicle, own a vehicle for personal or business purposes or if you are the parent of a minor who drives, then you have significant liability exposure and Murphy's Law is bound to happen.

Here are some things that you can do to reduce your exposure to this unlimited liability.

1. Do not own the vehicle that other people are driving.

Young adults can own their own cars and parents can take back notes or even put liens on the car to keep financial control of the situation.

Instead of keeping the car in your name, transfer the vehicle to someone else’s name. Cars can be put in your mother-in-law's name, the name of a limited liability company, the name of a spouse who has fewer assets or may intentionally be kept "judgment proof". But watch out and make sure that transferring the vehicle does not cause loss of otherwise applicable liability insurance. You must know who owns each vehicle and what the insurances are for anyone and everyone who may drive the vehicle to protect yourself from liability.

2. Watch out for liability from a minor driver.

In many states a parent who is required to sign off to allow a minor to drive has unlimited liability for any damages done on the roadway.

In these cases, jury verdicts exceeding $10 million are very common, so please don't kid yourself by thinking that having a $1 million or even a $5 million umbrella liability insurance will solve all of your problems. I can tell you from experience that having a $1 million or even a $5 million umbrella liability insurance will not resolve you from any liability exposure for what happens on the roadway if you are responsible.

Plaintiff lawyers have a legal responsibility to leave no stone un-turned in determining how their clients can be paid. Life care for a young adult who can no longer live alone and will need assistance with feeding, clothing, and supporting themselves can merit a $20 million or more jury verdict. If your child was texting or drinking when the accident took place, punitive damages can exceed that and will not be covered by insurance.

While the vast majority of accidents are covered by insurance, this is not always the case. The following headlines have all occurred in the last 6 months:

- $150,000 Jury Verdict in Norfolk Virginia Car Accident Personal Injury Case

- $4,280,000 Texas Jury Verdict in Car Accident Case Involving Pedestrian Death
- $103,331 Initial Award In Case Where California Bicyclist Ran Into Open Car Door
- 18-Wheeler v. Motorcycle: Texas Jury Verdict Resulting in $6,000,000

3. Do not put a teenager in a sports car.

Unless there is a responsible adult in the car making sure that nothing bad is happening, it is never a good idea to put a teenager in a sports car. You may think your child is an angel, but we can all think back to our teenage years and the things we did that our parents never knew about.

Please prepare for the worst and hope for the best.

4. Have an asset protection plan.

Every American family with significant assets should have an "asset protection plan." Actually it is better to say that every American family has an asset protection plan, because whatever the situation you are in is your plan. If your assets are easy to get to and disaster strikes, then your plan is to give all of your assets to an unexpected creditor.

So get a better plan! Ask your estate planning lawyer or other advisors what their credentials are to give you advice on how to best protect your assets, and take reasonable action with a qualified and reputable lawyer who has knowledge in this area. This does not mean that you need a lawyer who mass markets intricate or "sexy" creditor protection techniques like offshore trusts and fancy, expensive insurance structures. Sometimes the solution is as easy as having the cars in the name of one spouse and the assets in the other spouse's name.

5. Have plenty of umbrella liability insurance.

Especially address any business driving and anyone who may drive your vehicle. There is a popular misconception in the insurance industry that a liability insurance policy only has to be as much as the value of assets that would be lost in a tragic lawsuit. Why would someone with $1,000,000 of assets that they need to preserve for retirement not buy a $5,000,000 umbrella liability policy if the additional cost is only a few hundred dollars per year?

Purchasing a large enough umbrella liability insurance policy may especially be important for individuals who are elderly or physically or mentally impaired. More often than not, they are blamed by juries notwithstanding whose fault the accident really was.

Most carriers only issue insurance policies with $250,000 or $500,000 limits, so a separate umbrella policy is issued for excess liability and the policies must be properly coordinated. You can see our YouTube video entitled “What Mary Poppins Didn’t Know About Umbrellas” for more information.

Oftentimes, insurance will not cover situations where illegal acts have been committed. This includes situations where there is a driver who was not disclosed to the carrier or a car that the carrier did not realize was being kept or is used in a different geographical area than the coverage was written for.

6. Keep corporate vehicles in a separate subsidiary or in the employee's name.

While business companies offer limited liability to their shareholders, the business's assets, their goodwill, and their ability to continue operating can be lost when a car owned by the business gets in an accident. The company will be at risk when someone is driving for its benefit and is in an accident while on "corporate business."

Most businesses should have unowned automobile insurance, and ensure that vehicles being driven after hours are not in the name of the company, or are in a subsidiary or related company that owns vehicles, and not much else.

7. Seek thorough and immediate medical treatment.

A leading cause of health problems resulting from accidents is the failure to seek medical attention, either immediately after the accident or a few days after the accident.

You are best served having a careful medical examination, an MRI or other such scans or tests that may be recommended any time that you have hit your head or have a potential broken bone or cartilage.

While chiropractors heavily advertise for accident victims, and often do a very good job of treating soft tissue injuries, they do not have the same extensive medical training or testing regimens that medical doctors (M.D.'s) and osteopaths (D.O.'s) normally have. Many medical doctors and osteopaths complain that patients would have been better cared for if they had started in an emergency room or urgent care center as opposed to a chiropractic practice.

8. Find out who the witnesses are and their contact information.

Whoever contacts the witnesses first will typically get a more supportive story because it is human nature to try to satisfy or please anyone who asks you questions.

It is also human nature to not volunteer significant information or even that a person saw an accident, in order to avoid time and trouble with respect to testifying, or being put on the spot as to whether they had any participation in the accident.

A driver who is not hurt is well advised to get the names and phone numbers of any witnesses, or at least license plate pictures, before they disappear, and to give those names and numbers to the insurance carrier or the law firm that will be representing the driver.

Please remember that from a legal standpoint cars cause much more liability than guns or other dangerous things every single day in every single city. Make sure that you are ready when your number comes up, by having proper insurances, property titling and proper rules or protocols for the use of any car that you may be responsible for.

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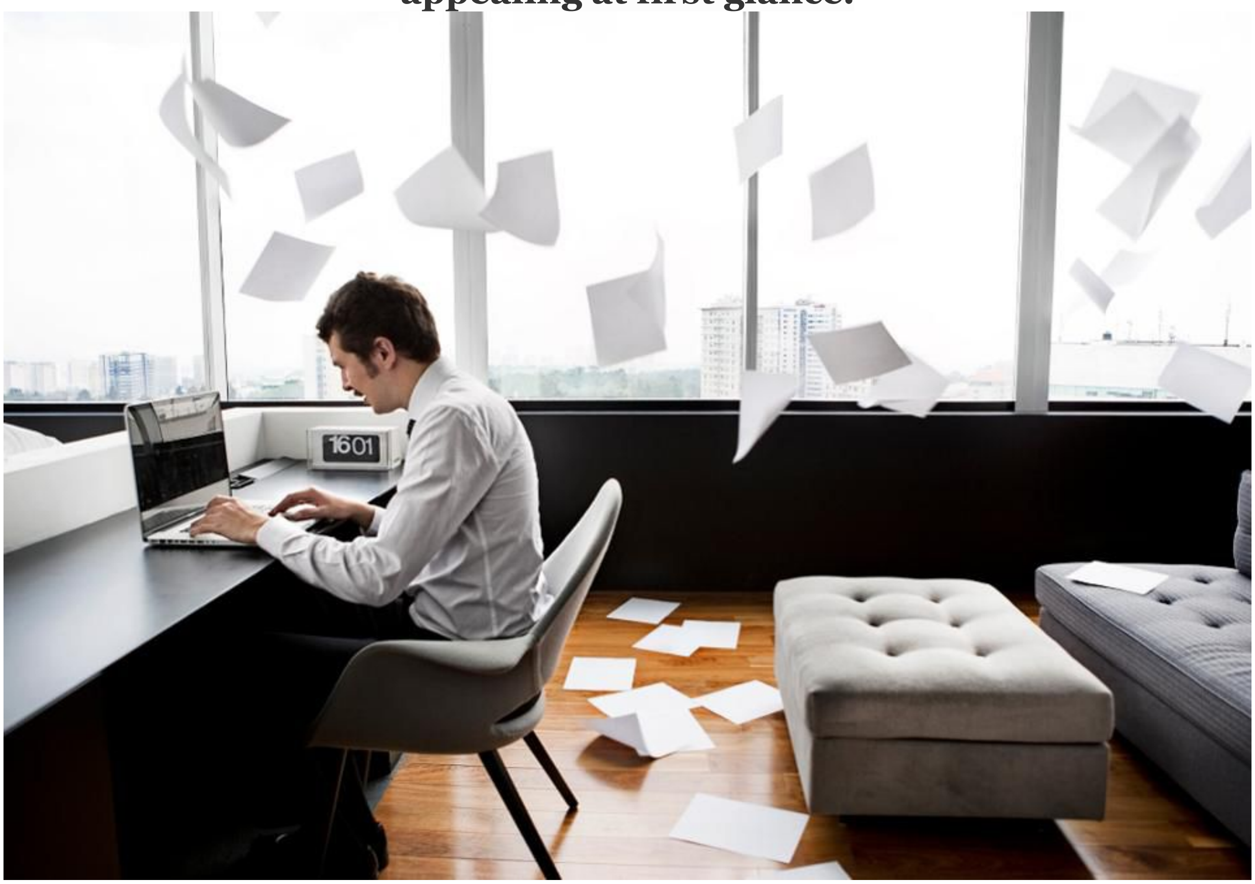
Alan's Forbes Blog

REAL ESTATE INVESTING WITH SECTION 199A: DON'T LET YOUR DEDUCTIONS FLY OUT THE WINDOW

The tax benefits of owning real estate in an IRA plan certainly seem appealing at first glance.



My August 28, 2018 post discussed how the new Section 199A 20% deduction rules apply for real estate investors and professionals, and referred to certain other rules to be covered in a future posting. You can review that post by clicking here.

By way of brief review, the Section 199A deduction allows up to a 20% deduction from net income received from a qualified trade or business. The active rental of real estate, being a dealer or developer in real estate, and other associated activities and vocations can qualify, but several special rules apply.

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.

The *Leimberg 60 -Second Planner* below reports:

In PLR 201843007, the IRS ruled on the tax consequences of a judicial modification of an irrevocable trust. Bob Keebler reports. The text of the IRS ruling can be found at

https://www.irs.gov/pub/irs-wd/201843007.pdf .
Click here to hear the podcast

This PLR addressed a judicial modification of a trust to fix the Crummey withdrawal power.

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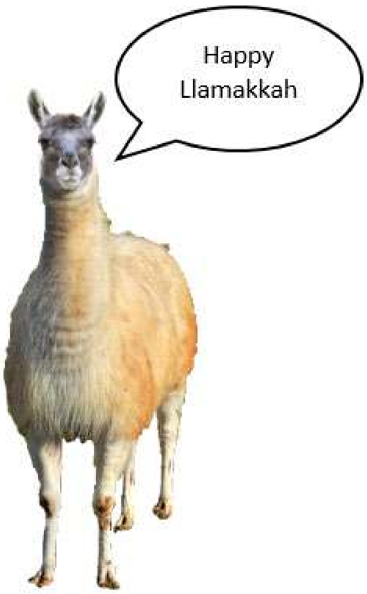
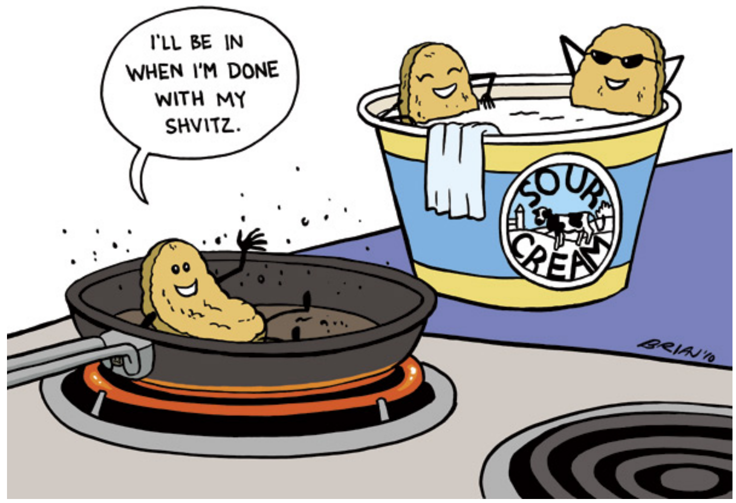
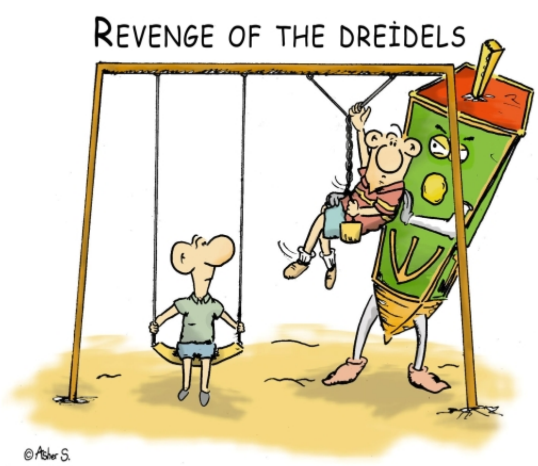
Humor


Happy
Llamakkah


I'LL BE IN
WHEN I'M DONE
WITH MY
SHVITZ.
SOUR
CREAM


REVENGE OF THE DREIDELS
©Asher S.


You see doc, I
keep getting
these dizzy spells!


1245
GASSMAN, CROTTY & DENICOLO, P.A.
ATTORNEYS AT LAW
ALAN S. GASSMAN
KENNETH J. CROTTY
CHRISTOPHER J. DENICOLO
EMIL G. PRATESI
BRANDON L. KETRON
HAPPY
CHIPINANDBUY
SOMETHING
WRONGAKAH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HAPPY HANU-
LITIGATION-
AKAH

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For the 5th day of Hannukah,
To Mordecai and Veronica,
Remember September 26th and 27th,
Attend the Notre Dame Tax and Estate Planning Institute,
Call now to reserve your plane!

Calendar of Events

Alan Gassman and The Pinellas County Medical Association Present Two Outstanding Continuing Education and Legal, Tax and Financial Knowledge Enhancement Programs

What You Need to Know About... Webinar Series:

We will explore a variety of estate planning and tax related issues including asset protection, estate planning, life insurance issues and more!

December:

- Definitions and Fundamentals of Tax and Accounting for Physicians with Troy Kimbrough - December 4, 2018
- What are the Most Important Things a Physician Needs to Know in Regards to Personal and Practice Financial Planning?: Fully Fund Your Retirement Plans with Mike Jensen - December 11, 2018
- A Personal Insurance Coverage Checklist with Chuck Wasson - December 18, 2018

January:

- Business and Personal Law 101 for Physicians and Their Advisors with Alan Gassman - January 8, 2019
- Increasing Your Practice's Income by Applying 3 Billing and Coding Principals with Renee Kelly - January 15, 2019
- What are the Most Important Things a Physician Needs to Know in Regards to Personal and Practice Financial Planning?: Protecting Your Assets From Malpractice Predators and Financial Creditors with Mike Jensen and Troy Kimbrough - January 22, 2019
- The Medical Practice Insurance and Risk Exposure Checklist with Chuck Wasson - January 29, 2019

February:

- What a Good Billing and Coding Consultant Can Do For Your Practice with Renee Kelly - February 5, 2019
- Limiting Liability by Using Medical Practice Companies and Other Entities with Alan Gassman - February 12, 2019
- Employee Practices, Exposures, and Insurances with Chuck Wasson and Alan Gassman - February 19, 2019
- What are the Most Important Things a Physician Needs to Know in Regards to Personal and Practice Financial Planning?: Have a Full Financial Analysis Done by a Team of Professionals with Mike Jensen - February 26, 2019

March:

- Year End Tax Planning, If It Isn't Too Late with Troy Kimbrough - March 5, 2019
- Anti Kickback and Related Laws, Don't Be Stark Naked with Alan Gassman and Renee Kelly - March 12, 2019
- What are the Most Important Things a Physician Needs to Know in Regards to Personal and Practice Financial Planning?: How to Invest in Stocks, Bonds, Mutual Funds and Institutional Money Managers with Mike Jensen March 19, 2019
- What are the Most Important Things a Physician Needs to Know in Regards to Personal and Practice Financial Planning?: Action Plan to Achieve Financial and Retirement Goals with Mike Jensen - March 26, 2019

April:

- How Practice Financial Statements Work, and What they can tell you with Troy Kimbrough - April 2, 2019
- Cornflakes and Estate Planning Mistakes with Alan Gassman and Mike Jensen - April 9, 2019
- Coding Mistakes Often Seen in Primary Care Offices with Renee Kelly - April 16, 2019
- How malpractice insurance works and options you may not know about with Chuck Wasson - April 23, 2019

Webinar series free for PCMA members. Non-members can make a donation of $295 to the PCMA Fund for unlimited access to these webinars, PowerPoint presentations and other useful materials.

Pinellas County Medical Association's 9th Annual Continuing Medical Education Cruise

4 Night Western Caribbean Cruise Conference

10 *AMA PRA Category 1 Credits ™*

PROGRAM TOPICS:

- The Biggest Mistakes Physicians Make As Owners and Non-Owners in Medical Practices -*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?

COURSE FEE:
$350 Members
$450 Non-Members

TARGET AUDIENCE:
Physicians, Physician Assistants, Office Administrators & Ancillary Medical Staff

Spouses are welcome to attend tax and legal sessions on cruise.

PCMA webinars can be shared with spouses, office managers and professional advisors.

Newly announced events in RED

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EVENT	DATE/TIME	LOCATION	DESC.	REGISTRATION
Pinellas County Medical Association "What You Need to Know About" Webinar Series	January 8, 2019, 12:00 PM	Gotowebinar	Business and Personal Law 101 for Physicians and Their Advisors.	Please Click HERE
53rd Annual Heckerling Institute on Estate Planning	January 14-18, 2019 Orlando World Center Marriott Resort & Convention Center	Monday, January 14-Alan's Meet and Greet at Bloomberg Tax Booth--See Alan and get a free copy of *Gassman and Markham on Florida Creditor Protection*, which is newly added to the Bloomberg Tax family of books.		Please Click HERE
Maui Mastermind Scale and Grow Rich	January 25-27, 2019	Hilton Irvine-Orange County Airport	Preparing Your Company for Sale and Why	Please Click HERE.
Johns Hopkins All Children's Foundation 2019 Estate, Tax, Legal and Financial Planning Seminar	February 7, 2019	TBD	Alan will be serving as moderator and speaking	Contact: Agassman@gassmanpa.com
Pinellas County Medical Association "What You Need to Know About" Webinar Series	February 12, 2019, 12:00 PM	Gotowebinar	Limiting Liability by Using Medical Practice Companies and Other Entities	Please Click HERE
Pinellas County Medical Association	February 19, 2019, 12:00 PM	Gotowebinar	Employee Practices, Exposures and	Please Click HERE

"What You Need to Know About" Webinar Series			Insurances with Chuk Wasson.	
New Jersey Bar Association Presentations	March 11, 2019, 9:00am and 1:00PM	Alan will be speaking for two separate topics: What New Jersey (and other) Lawyers Need to Know About Florida Law and Trust and Estate Planning for Their Florida Based Clients *and Business Law You Need to Know for Your Florida Client* and *What to do for Estate Planning Clients that No Longer Have to Worry About Estate Tax* with Martin Shenkman		Contact: Agassman@gassmanpa.com
Pinellas County Medical Association "What You Need to Know About" Webinar Series	March 12, 2019, 12:00 PM	Gotowebinar	Anti-Kickback and Related Laws with Renee Kelly	Please Click HERE
9th Annual Pinellas County Medical Association Continuing Medical Education Cruise	March 14-18, 2019 	Port of Tampa	Biggest Mistakes Physicians Make in Medical Practice	FOR INFORMATION AND RESERVATIONS CONTACT JEN BOLL 727-526-1571 / 1-800-422-0711
Pinellas County Medical Association "What You Need to Know About" Webinar Series	April 9, 2019, 12:00 PM	Gotowebinar	Cornflakes and Estate Planning Mistakes with Mike Jensen	Please Click HERE
Florida Bar Association	April 18, 2019, 10:00 am – 2:00 PM	Stetson Tampa Law Center *Primary Florida and Federal Creditor Protection Laws, A Closer Look at Florida and Federal Creditor Exemption Laws and Planning* And		Contact: Agassman@gassmanpa.com

		Putting it All Together with Leslie Share		
Maui Mastermind Financial Pillar Super Course	June 22-23, 2019	Hilton-Atlanta Airport	Crucial Legal and Tax Principals for Accumulating Wealth	Please Click HERE
45th Annual Notre Dame Tax Institute	October 26-27, 2019	South Bend, Indiana	TBD	Contact: Agassman@gassmanpa.com
Maui Mastermind Wealth Summit	November 3-8, 2019	Wailea Beach Resort, Maui	Essential Aspects and Decisions for Your Remarkable Financial Future	Please Click HERE