GASSMAN CROTTY & DENICOLO P.A.
ATTORNEYS AT LAW

THE THURSDAY REPORT

Issue # 268 Thursday, June 20, 2019

Re: The Gassman Virtual Reality Experience Report

In This Issue:

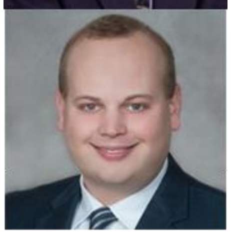
We welcome contributions for future Thursday Report topics. If you are interested in making a contribution as a guest writer, please email Alan at agassman@gassmanpa.com

Quote of the Week

No organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate nor any document of reasonable length contain express provisions for all possible questions.

-ABRAHAM LINCOLN, First Inaugural Address, Mar. 4, 1861

What You Never Knew About Large Charitable Donations and the Choices That Donors Can Be Given(part 3 of 3)



By Alan Gassman, John Beck and Cody Vallette

Many planners are now aware of the very profound income tax savings and flexibility that can be facilitated by the use of what is known as a Flip Net Income Make-Up Charitable Remainder Unitrust ("NIMCRUT"). Under this gift plan, the trust may receive appreciated assets and let them be sold and then generate income tax free for 15 years or more, while allowing a large payment to the donor or family members when desired, and income earned under the trust can be deferred for 15 years or more by using a "blocker" LLC. Additionally, this type of trust only requires a relatively small payment to charity at the end of a term of years that may end up being less than 5% of the total amounts placed in a trust, despite the fact that the trust deferred income tax for so many years. These assets placed in the trust may be borrowed from if properly structured to provide no income or gift tax deduction upon formation and funding.

Please feel free to request our white paper entitled "You Will Flip When You See How Much Taxes A NIMCRUT Will Save" to understand how these can work for clients who wish to defer taxes and allow the trust assets to grow on a tax deferred basis.

While most well qualified estate and gift tax planning advisors have a reasonable understanding of how a Charitable Lead Annuity Trust ("CLAT") can be used to avoid estate and gift taxes while satisfying the donor's annual charity aspirations, very few have given thought to the loss of the income tax deduction that applies when a Non-Grantor Charitable Lead Annuity Trust is used. This is the most common form of CLAT, and normally involves funding an LLC or limited partnership with investments, and then donating the non-voting ownership interests to a "zeroed out CLAT" which makes annual payments to charity. It allows any assets remaining under the trust after the last charitable payment to pass to the benefit of the donor's family members or others without being considered to be a gift or countable estate asset passing to them. An example would be a trust that will pay $825,600 per year to charity for 15 consecutive years. If the trust is funded with $10,000,000 in June of 2019, there is said to be no gift to the remainder beneficiaries because under the June 2019 IRC Section 7520 rate of 2.8% it is expected that there will be nothing left for charity after the 15th year, although it may be expected that the actual rate of return will be 7% or 8% and that discounts that may apply when part ownership of an LLC or limited partnership or other entity interest is placed in the CLAT may result in there being significant value to pass to the donor's family at the end of the CLAT term.

This type of CLAT makes very good sense to be formed and funded upon death in lieu of a direct charitable disposition if there is a strong motivation to avoid estate tax and benefit charity. In the example above, a client would be avoiding a 40% estate tax on $10,000,000 of assets, saving up to $4,000,000 in taxes. Assuming that the CLAT assets grow at approximately 7% per year, the family should receive a total of $6,843,795 at the end of the 15 years and the charity beneficiary will have received $12,384,000. In this case, the family would have only received $6,000,000 in the event that the 40% estate tax rate was applied to the full $10,000,000. Here, the family receives almost $7,000,000 tax free and the charitable entity receives well over $12,000,000.

There is some risk associated with the use of a CLAT if leaving some or all of the assets to family members is a priority. In the event the market rate of return is at or below the Section 7520 rate, there would be nothing left in the CLAT to be provided to the family. This may help to explain why Jacqueline Kennedy Onassis's children apparently chose to inherit directly in lieu of allowing much of her estate to pass to "zeroed" out CLATs that were provided as optional provisions under the Will that they were given the right to disclaim into.

The above CLAT is normally set up as a "Non-Grantor CLAT," which is taxed at its own brackets if and when the income from the CLAT investments ever exceeds the deduction that the CLAT receives from the payments that go to charity, because the rules do not permit any income tax deduction when a Non-Grantor CLAT is established.

The Non-Grantor CLAT will be advantageous when the donor giving to charity is using more than the applicable percentage of net income allowance, because the income generated by the Non-Grantor CLAT is offset by the payment to charity and thus not taxable.

If, in this first example, a donor with $500,000 a year of AGI has a $30,000,000 net worth and wants to donate $350,000 a year to public charity, then she may want to donate $250,000 in appreciated stocks and fund the other $100,000 a year by forming a $10,000,000 CLAT that pays charity $100,000 a year for 10 years and then reverts back to her. Assuming that the CLAT has $100,000 a year of income, which is given to the charity, and that this income would have been taxed to her at the 23.8% combined qualified income and Medicare tax bracket, she will save $23,800 a year of income taxes, or almost $240,000, over 10 years. If she lives in a state like California that imposes its own additional 13% tax then she will be saving $33,800 year, or almost $340,000 over 10 years. Whatever remains in the CLAT after the 10th year will be paid back to her and can be "re-CLATed" or otherwise owned and invested under her own name or as she may prefer.

The other available arrangement is the Grantor CLAT, under which there is an income tax deduction provided for a living donor when the CLAT is established and funded, as if the CLAT assets were donated directly to the charity that the CLAT will make payments to. This is based upon the percentage of AGI that would apply if the charity or charities to receive the payment are Public Charities or Private Operating Foundations, or if changeable, are required to be Private Operating Foundations or Public Charities to qualify for the 50% AGI deduction for the donation or appreciated assets.

The good news about the Grantor CLAT is that there is a charitable deduction that can be taken by the grantor upon the contribution of assets to the CLAT, as if the assets were donated directly to the applicable charity, and that no separate annual tax return will be needed for the CLAT. The not so good news is that the grantor must include the income from the CLAT on his or her personal income tax return, and that if the grantor dies during the CLAT term there will be "recapture" of the deduction that was taken on inception to the extent that the payments to charity have been less than the initial tax deduction taken when the CLAT is funded, after adjustment for income that the grantor received during the CLAT term.

Fortunately, most grantors can survive the CLAT term, and even if the grantor does not survive the CLAT term, then the charitable deduction taken in the year of contribution should still outweigh the loss of the recapture of that deduction upon the grantor's death.

Also, the CLAT assets can be invested in low or zero dividend growth stocks, and also municipal bonds, assuming that there is not a fiduciary problem with buying tax free bonds, which normally have a materially lower interest rate than taxable bonds, and indirectly benefit the grantor by being acquired.

The final benefit of the Non-Grantor CLAT has been overlooked by most writers on this topic, and is that all of the assets placed into a zeroed out Non-Grantor CLAT will qualify for the income tax charitable deduction, even though it is very likely that much of the value will come back to the donor or applicable family members at the end of the CLAT term.

As an interesting side note to end on, many advisors are not aware that CLATs can in fact own life insurance!

New Homestead Statute in Florida Creates "Safe Harbor" For Waiver by Deed

by Wesley Dickson

Florida is famous, or maybe infamous, for having incredibly generous and complicated homestead exemptions. If one were to Google "Florida Homestead" today, they would likely find information about protests taking place in and around the city of Homestead. This city, despite hosting the yearly finale of the Monster Energy NASCAR Cup Series, is not what this article is about.

Homestead property is real property that an individual occupies as his or her residence. When someone first makes a property their permanent and primary residence, he or she may be eligible to receive a homestead exemption of up to $50,000. There are actually three separate types of homestead exemptions under Florida Law: exemption from forced sale, exemption from taxation, and the one in question, exemption from devise and alienation.

While all three of these exemptions and their applications are constantly evolving, the protection against devise and alienation has recently undergone some changes. A new Florida law, which went into effect in July of 2018, provides that a spouse can waive inheritance rights through a deed. This statute builds off of the homestead protection law that dates back to the late 70s and allows for the waiver of rights that would otherwise prevent the spouse from devising the property to someone else.

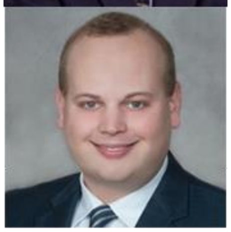
The statute's language provides a simplified method for the waiver of homestead through a deed. This method that the "safe harbor" statute provides, however, would not waive all rights associated with a homestead. The rights to "waiver of restrictions against the alienation by mortgage, sale, gift or deed without the joinder of the owner's spouse[,]" shall still be in effect. Additionally, this language alone is not sufficient, but rather the waiver must be made "knowingly and intentionally."

These new laws were passed in order to benefit Florida citizens. Residents of the state still receive all the benefits of the homestead protections, but can now circumvent them if desired. Before this legislation took effect, there was much debate as to whether a deed could constitute a waiver of rights. The homestead protections are guaranteed by the Florida Constitution, which states that "[t]he 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."

This right, as has been debated in court, is more than a personal constitutional right. The Florida Supreme Court, in *Chames v. DeMayo*, found that homestead rights were designed to protect both the individual and the public. The waiver of these types of constitutional rights, that affect a multitude of parties, have always been contentious. The 2014 case, *Stone v. Stone*, is a recent example of hotly debated and discussed court ruling which allowed a deed to constitute a waiver of homestead rights.

The relative ease of including this statute in a deed may turn out to be a detriment to some clients. Given the nature of the constitutional right being waived, one might see the danger in potentially neglecting to fully read the document. This waiver needs to be brought to the attention of both spouses, and all possible outcomes should be fully explained.

Despite the potential risks, most see this new legislation as a net-positive. This new statute will inevitably preserve court resources, and cut down on legal costs for many Floridians. By making the language readily accessible to everyone, there will be less issues to be decided in probate. It is important, however, to remember the wise words of Uncle Ben from Spiderman, "with great power comes great responsibility." Practitioners should be sure to use it wisely.

Will Stretch IRAs Become a Thing of the Past?

By Alan Gassman and John Beck

Big changes may be coming to the stretch IRA provisions that many tax attorneys and CPAs have spent a significant amount of time mastering. The goal has always been to extend an IRA or pension plan for the longest amount of time possible after the original owner's death in order to defer the tax on IRA and pension assets.

As long as assets are held in an IRA or pension plan, they can grow tax free, resulting in greater financial benefit to the ultimate recipient. In most cases, a trust that includes the proper retirement account provisions will enable the Trustee to extend distributions over the life expectancy of the oldest trust beneficiary, which can be a significant amount of time.

Stretching a retirement through the use of a properly drafted trust generally results in the same or similar distributions that would apply to an inherited IRA. The advantage of using a trust is that the assets can be protected from creditors, federal estate tax on the death of the beneficiary, divorce actions and can restrict the spending of the beneficiary. Most of our clients desire for these protections to apply to the funds they leave for their loved ones.

On May 23, 2019, the House passed H.R. 1994, the Setting Every Community Up for Retirement Enhancement Act ("Secure Act"), and the Senate Ways and Means Committee passed S. 972, the Retirement Enhancement and Savings Act of 2019 ("RESA"). The Secure Act and RESA are very similar and would require that all of the assets held by an IRA or pension plan must be distributed by the 10th anniversary of the original account holder's death.

Obviously, this will limit the benefits of tax free growth on retirement assets after the death of the original account holder and will have an impact on planning for these accounts.

This firm does not believe the intent of Congress is to prevent a surviving spouse from stretching retirement account payments over his or her lifetime, but that remains unclear.

Although deferral of taxation is a great benefit of stretching retirement account distributions over a beneficiary's lifetime, the tax savings are not as significant as one may assume. All of the funds must eventually be distributed and will be subject to income tax at that time. The loss of flexibility is more concerning. Retirement account beneficiaries may lose the ability to take out more of the retirement funds in a year in which they have a low income or a lot of deductions, subjecting the retirement account proceeds to higher marginal tax rates.

Upon request we can provide an article that we wrote in 2015, called Planning for Clients Under the $10 Million Net Worth, Including Portability Considerations, which contains a long section with spreadsheets that prove the mathematical outcome is not as different as many people assume. You can email me at agassman@gassmanpa.com for a copy of the article.

There are currently thousands of trusts in force that would allow a retirement account to be stretched. In order for the stretch to be permitted, the follow provisions are included in those trusts:

1. The IRA and pension plan account rights are directed to a separate trust;

2. By September 1st of the year following the death of the original retirement account holder, the separate trust must not permit anyone older than the intended beneficiary to receive distributions. Charities and other entities are also not allowed to benefit under the terms of the separate trust after the same September 1st deadline;

3. No expenses or liabilities of the IRA or pension plan account holder can be paid by the trust after September 1st of the year following the death of the original IRA or pension plan account holder;

4. The beneficiary of the separate trust can only direct the assets of the trust to living people who are younger than the beneficiary; and

5. If the intended beneficiary does not survive the original IRA or pension plan account holder and does not have a living descendant, or otherwise direct where the retirement assets would go, then the assets would have to pass to the original retirement account holder's "heirs-at-law."

These limitations also apply when a surviving spouse is the intended beneficiary of a trust that an IRA or pension is made payable to. There are certain exceptions to the ten-year rule included in the Secure Act which will allow the stretch provisions to apply in certain situations. These exceptions include distributions for the surviving spouse, disabled or chronically-ill beneficiaries, minor children, or beneficiaries that are no more than 10 years younger than the deceased original retirement account owner. Thus, stretch provisions will still have their place in many trusts.

Individuals who wish to have their spouses receive or derive the benefits from an IRA or pension plan account should consider whether the spouse will be better served by rolling the IRA or pension account over into his or her own "rollover IRA," or through the use of a trust that can protect the surviving spouse from a subsequent marriage, undue influence, excessive spending, bad investment decision, and/or federal estate tax.

The new proposed bill also allows for certain "lifetime annuity products" that I have written about previously. These products can be expensive and limited in terms of benefits. An expert should be consulted to ensure that the product being proposed will be in line with the beneficiary's expectations.

For example, I recently reviewed a contract that was proposed to one of my client's as a "safety income arrangement" by one of the largest insurance carriers.

He would put $1,000,000 in now, and if the investments do not go well, he would be able to receive at least $113,055 a year beginning in year 11, through the rest of his life.

That may initially sound like a good investment, but when you take into account the time value of money, he would have to wait until the 21st payment (21 years from when he made the investment) to reach a disappointing 1% rate of return. If he died after that year, his family would not receive any benefits.

The contract provided that he would receive the greater of the above, or the investment results of the plan, but the investment side of the contract is subject to significant fees and limitations that will likely cause it to greatly underperform normal market results.

It would likely be a better idea to purchase B+ rated bonds in a laddered fashion.

Products like the one discussed above will continue to be pushed on the general public due to the commissions paid to those marketing these products.

We will keep you posted as updates become available

Miscellaneous Traps: Don't Let Those Gators Get You

By Alan Gassman

Florida homestead and Power of Attorney traps are only a few of the many dangers you will find hiding in our swamps. There are plenty more out there just waiting to stump attorneys that do not take care navigating our infested waters.

A. Tenancy by the Entireties: Limitless Possibilities

The concept of "tenancy by the entireties" dates back to the English common law that existed when the United States was first founded. When Florida became a state in the mid-1800s, one of the first things the Florida legislature did was adopt the common law of Great Britain. If you look to that common law, you will see that women were not allowed to own assets. When someone gave a dowry, however, they could give it to the husband and the wife as tenants by the entireties. While it wasn't the wife's property, per se, the wife had equal ownership to her husband. It took the signatures of both spouses to make a transfer or mortgage of that property.

More importantly, perhaps in 1776, this concept prevented the husband from losing or giving away the property in a card game or having creditors seize it. This alone made it a popular method of ownership during that time.

Florida adopted this concept in full, and unlike many other states that have tenancy by the entireties, any kind of bank account, brokerage account, and ownership interest in an entity (so long as it is formed in a state that recognizes tenancy by the entireties) can be held in joint ownership.

We see a lot of mistakes in the way people title their tenancy by the entireties' assets. Many people believe that they have created a tenancy by the entirety when they actually have not. There are six qualifications that need to be met in order to create a tenancy by the entirety. These qualifications, called the "6 unities," include:

1. The unity of possession (the couple shares ownership);
2. The unity of interest (both must have equal stake in the property);
3. The unity of time (those interests must have started simultaneously);
4. The unity of title (those interests, also, must have come from the same source);
5. Survivorship (the right of one to take control of property upon the death of the other); and
6. The unity of marriage (the couple must be married at the time they receive title).

There are many different ways to fulfill these unities and establish a tenancy by the entirety. For many clients, we prefer to set up a limited partnership or limited liability company, incorporated in Florida or Delaware, which is owned as tenants by the entireties. That entity, then, could own a couple's assets and property. This Florida or Delaware entity could also possibly be owned by another entity, such as a trust for the children. This would ensure that, if tenancy by the entireties property somehow is not protected, those assets would still have charging order protection.

B. Life Insurance: Give Me Liberty (from Creditors) Or Give Me Death

Florida law provides that the cash surrender value of a life insurance policy owned by a debtor, on his or her own life, is not subject to the creditor claims of the debtor. This protection does not apply, however, if the life insurance policy was funded as a way to avoid creditors. This would constitute, what is known under Federal and Florida law as a "fraudulent transfer."

The Florida statute refers to the person insured as the owner. Many clients will get a permanent life insurance policy, let it have significant cash value, and then withdraw loans from the policy on an income tax-free basis. The proceeds of those loans should be protected from creditors in a situation where the client has a creditor with a judgment against him or her and wishes to maintain access to the funds.

The statute does not mention *term life* insurance. Term life insurance policies are ones in which the policy is only active for a "term" of years. If the policy holder were to die during this term, the policy will pay the death benefit, similar to that of a permanent policy. These policies can be enticing as they have far lower premiums in most situations. Bankruptcy and creditor lawyers rarely look at term life insurance policies as having any value, and they normally let the debtor keep the term policies.

Whole life insurance policies, universal policies, variable universal policies, and guaranteed universal policies would all be protected in the event of a creditor situation, so long as the insured is the owner of the policy. Many clients come to us in a situation where the husband, for example, owns life insurance on the life of his wife. That policy will be protected from creditors of the wife because she's the insured, but it will not be protected from creditors of the husband because he is only the owner.

Many clients have come to us, having taken out life insurance policies on their children. With this situation, and many others, some may wish to consider the creation of irrevocable life insurance trusts to hold the policies. Also, if your client may be estate taxable, it is often a good idea to use a trust instead of owning the policy outright. This provides an extra layer of protection against creditors of the beneficiaries.

When your client buys life insurance, it's important to let them know of the charges that can occur. While there is a fiduciary duty being held to you, certain life insurance plans can benefit the insurance agent more than the insured. This should at least be considered and discussed with your clients.

C. The Trouble With Hurricane Coverage of Your Florida Home

If hurricane season in Florida wasn't hectic enough, filing a claim under your homeowner's insurance for damage can make it so much worse. During and immediately after hurricane season, homeowner insurance carriers are working at full speed to keep up with all the claims being filed by their insured customers. This is why claims take so long to process and payment to cover the damage takes forever.

Florida law requires homeowner insurance carriers to pay or deny an insured's claim within 90 days of the date that the claim is reported (unless, of course, there is something outside the control of the insurer preventing them from making the claim payments).

Generally, there are four main reasons why your hurricane claim may not be covered under your homeowner insurance policy:

1. The damage was caused by flooding;
2. Homeowner failed to promptly report the damage;
3. The damage preexisted the hurricane; or
4. The damage was caused by constant/repeated seepage of water rather than a sudden gush of water;

The biggest issue that most insurance policy holders have to deal with falls under the first reason. It can be difficult for insurance carriers to determine whether damage was caused by flooding, wind-driven rain, or a combination of the two. The fourth issue, on the other hand, is the most complicated for attorneys who are not trained in the ways of Florida Homeowner Insurance law.

Insurance carriers in Florida are split in their methodology. Some apply the "concurrent cause doctrine" as the standards for coverage, while others apply the "efficient proximate cause doctrine." Much of this split is attributable to the variance of decisions in the Florida Courts. Which is used will determine whether the flood or wind-driven rain was the culprit.

Under the concurrent doctrine, if the causes were independent and the policy did not "write out" the concurrent cause doctrine, it wouldn't matter if the excluded peril caused 99% of the damage, the damage would still be covered so long as the covered peril caused at least 1%. In other words, even if the vast majority of damage to my house was caused by wind (which my policy didn't cover), so long as a tiny bit of damage was caused by rain (which my policy covered), the policy would kick in and cover all of the damage. This policy is the clear favorite for policy holders.

The efficient proximate cause doctrine takes a very different stance. Under this doctrine, if the causes were dependent or the policy "wrote out" the concurrent cause doctrine and the excluded peril caused the efficient amount of damage, the insured would not be covered under the policy.

In American Home Assurance v. Sebo, the Second DCA of Florida stated that the concurrent cause doctrine should never have been adopted in Florida. The Court further stated that when issues like these arise, it is appropriate to apply the efficient proximate cause standard and leave the determination up to the fact-finder. This fact-finder, generally a jury, would determine which peril was the most "substantial or responsible factor in the loss."

On appeal, the Florida Supreme Court quashed the decision of the Second DCA. In 2016, the Court determined that the concurrent causation doctrine was to be the one that applied when "independent perils converge and no single cause can be considered the sole or proximate cause[.]"

The moral of the story: know the terms of your policy before you decide to choose that particular carrier for coverage. If you already have coverage under an insurance carrier, read your terms and understand what will happen if, god forbid, something happens to your home during a hurricane. Be sure to read carefully. There certainly will not be a bolded "flood coverage sold separately" sticker.

Who's Really Prevailing on Renewal Options - the Court, or Business?

By Max Potter

A renewal option in a lease is valid and enforceable when the renewal option "fixes the term and leaves the rental for future agreement." Basically, if the terms for an optional subsequent lease are specifically determined in the original lease, they can be agreed to at a later time.

Future agreement becomes more difficult when the renewal option provides for a method to reach such agreement, instead of explicitly listing the agreed terms. When a method for determining the price of the subsequent lease is inadequate or left out of the contract, disagreements arise, and courts have been forced to step in.

In order to understand how the courts analyze these types of issues, we have to go all the way back to our first-year law school course, Contract Law, and refresh ourselves on what goes into creating a valid contract

Here's the simplified crash-course: a valid contract requires a clear and definitive offer, an acceptance of that offer, assent, and consideration. In essence, to enter into a contract, the parties need to have intended to enter into the contract, believe that they had entered into contract, and have given up something in exchange for what they have received.

The courts have ruled on various cases involving contract renewal options that had difficulty passing that first requirement of a valid contract: a clear and definitive offer.

When an original contract provided for a renewal option with no specified price and no guidance in determining a price, the renewal option was unenforceable, because it was too indefinite. This makes sense. It's impossible for someone to agree to a term if it's not listed in the offer. Someone might agree to buy a bucket of "finger lickin' good" KFC chicken without first agreeing to a price, but nobody would contract to buy a house without knowing the price. Renting a property is no different.

Florida courts have had the most difficulty in analyzing renewal options that list a predetermined method to calculate price. If the predetermined method calculates price definitively, then the option is enforceable.

In Ludal, the lease provided "for negotiation and agreement between the parties at the time of the extension, or, in the event that the parties could not agree on a new rental price, that appellee would be given the right of first refusal of any bona fide offer received by the landlord." The court reasoned that by allowing the first right of refusal, the amount was easily determined. The amount was calculated instantaneously when a third-party offer was made, and that offer became the new rent. Ultimately, the court affirmed that this renewal option was valid.

In a more recent Florida case, Jahangiri v. 1830 N. Bayshore, LLC, the decision went the other way. In this case, Jahangiri leased commercial property to operate a market and deli in Miami. The property was owned by 1830 North Bayshore, LLC (hereafter "Bayshore"). Bayshore (the lessor) rented to Jahangiri (the lessee) for an initial term of 5 years. There was a renewal option in the lease that provided the lessor the ability to "renew [the] Lease for two five-year renewal options, each renewal at the then prevailing market rate for comparable commercial office properties." Ultimately, the court held that the lease provision was unenforceable.

Why?

The court struggled to interpret and ultimately seemed incapable of ascertaining the meaning of "prevailing market rate." If it were not for the word prevailing, the court might have come to a different conclusion.

Instead, the court got caught up in how the word prevailing affects the meaning of market rate. The court pondered whether the full term (prevailing market rate) meant the "mean, medium, or mode of the three commercial properties," or possibly the "highest or lowest price of the comparables."

The court failed to apply the dictionary definition of prevailing, which can be read to mean "generally current."

Thanks to this, it seems to be unsettled as to whether a renewal option that provides for the price of a subsequent lease to be determined using the current market rate, or even fair market value, of the property, is valid. If current market rate is determined by the price buyers are currently willing to pay for something, then how is this any different than allowing for a first right of refusal and allowing a third party to set the price?

The court went on to say that "[i]t is pure fiction to say the court, in deciding upon some figure, is enforcing something the parties agreed to." I disagree. In determining a current market rate for the property, the court is doing exactly what the parties agreed to.

The court also states that "[b]ecause of the lack of agreement, the lessee's option right was illusory."

This statement brings us back to our first-year law school course in Contracts, and specifically to the concept of good faith. In Contracts, you learn that good faith is implied in every contract to keep parties from acting badly against each other and is especially applied in the case of illusory promises.

In Jahangiri, the court made no mention of good faith, and courts typically imply a promise to use good faith when an illusory promise is given by a party. In applying good faith to this "illusory promise," we imply that Bayshore must have been honest in fact, and fair in their offering of the option to renew. You cannot deliberately take advantage of a contract partner concerning his rights under the contract. Thus, Bayshore must have honestly offered the option because they reasonably believed that the option could be executed at a fair prevailing market rate.

Therefore, the court was not enforcing something that the parties did not agree to. It was enforcing a provision of the contract that very well might have been the reason Jahangiri entered into contract in the first place.

Looking at the facts here, it makes sense for the court to imply good faith because it must have been what the parties expected. You do not enter into a five-year agreement, with the possibility of it being fifteen years, without expecting honesty and fair commercial practices. Therefore, the court should have implied good faith because Jahangiri would not have contracted with Bayshore if he didn't expect them to act in good faith in applying the renewal option.

Additionally, it's possible that Jahangiri gave more consideration and agreed to a higher price than he would have if there was no renewal option at all. It's also possible that Jahangiri would not have agreed to the deal in the first place if there was no option to renew. If Jahangiri relied on the renewal option in making the deal, then surely Jahangiri should be entitled to some compensation to make up for the option being yanked out from under him.

In spite of this decision, it remains to be seen whether listing the term price of a renewal option as the fair market value or rate of the property is sufficient to create a valid contract. As it stands, "[a] renewal option which fixes the term and leaves the rental for future agreement is valid and enforceable." If the price is not fixed and a method for reaching an agreement on the rent is established, it better be specific.

COMPARING TRUST / DISPOSITION STRUCTURES FOR MARRIED COUPLES

	CATEGORIES	JEST TRUST	SEPARATE REVOCABLE TRUSTS	TENANCY BY THE ENTIRETIES TRUST / TENANCY BY THE ENTIRITIES OUTRIGHT
1	**Stepped-up income tax basis on first spouse's death**	Probably	Only the assets of the first dying spouse will obtain a stepped-up income tax basis	One-half of assets (or more if deceased spouse contributed more to TBE trust will receive a stepped-up basis)
2	**Creditor protection during the lifetime of both spouses**	No; each spouse's share is exposed to creditors of that spouse	No; assets held under the revocable trust of a spouse will be accessible to his or her creditors	Yes; most types of creditors of one spouse will not be able to reach TBE assets except possibly in bankruptcy if there is joint debt. Note – it can be very difficult to draft a proper TBE trust – don't assume that a trust intended to be a TBE trust will be a TBE trust
3	**Creditor protection for the surviving spouse after the death of first dying spouse**	Likely	Only the assets under the first dying spouse's revocable trust will be protected from the creditors of the surviving spouse.	No; TBE requires that the surviving spouse receive all assets held as TBE outright or with the ability to withdraw all such assets, which subjects such assets to his or her creditors. However, the surviving spouse might be able to disclaim assets inherited from the first dying spouse into a trust system that could be held in a protected manner.
4	**Simplicity of having one trust versus two trusts**	Simpler for many clients to have one trust	Often more confusing and more work to have separate trusts and separate assets	Simplest to have one trust
5	**Complexity of the trust documents**	Most complex	Less complex than the JEST	Simplest
6	**Can trust assets be "locked up" on first death or incapacity of one spouse to help assure that assets are protected for the surviving spouse and descendants?**	Yes; unless otherwise desired.	No; unless specially drafted.	No; everything must pass to the surviving spouse (and/or the surviving spouse's creditors!). However, the surviving spouse might be able to disclaim assets inherited from the first dying spouse into a trust system that could be held in a protected manner.
7	**Effectiveness for estate tax planning**	Most effective if first dying spouse's assets would not exceed the estate tax exemption amount.	Can be as effective as a JEST, but not always.	Normally not effective to avoid estate tax, but provisions could permit a surviving spouse to disclaim to a credit shelter trust if properly drafted.
8	**Ease or complexity of administration after first death.**	Will require legal and accounting advice and separate trusts and careful administration after first death.	Similar to JEST, but less complicated and there may be fewer trusts to administer after the first death.	Simplest to administer if surviving spouse inherits outright.

Humor-or something similar…

Jokes and Facts!

By: Wesley J. Dickson

Wesley Dickson is a 3L at Stetson University College of Law. He is interested in pursuing tax law after graduating and hopes to receive his L.L.M. in Taxation from University of Florida.

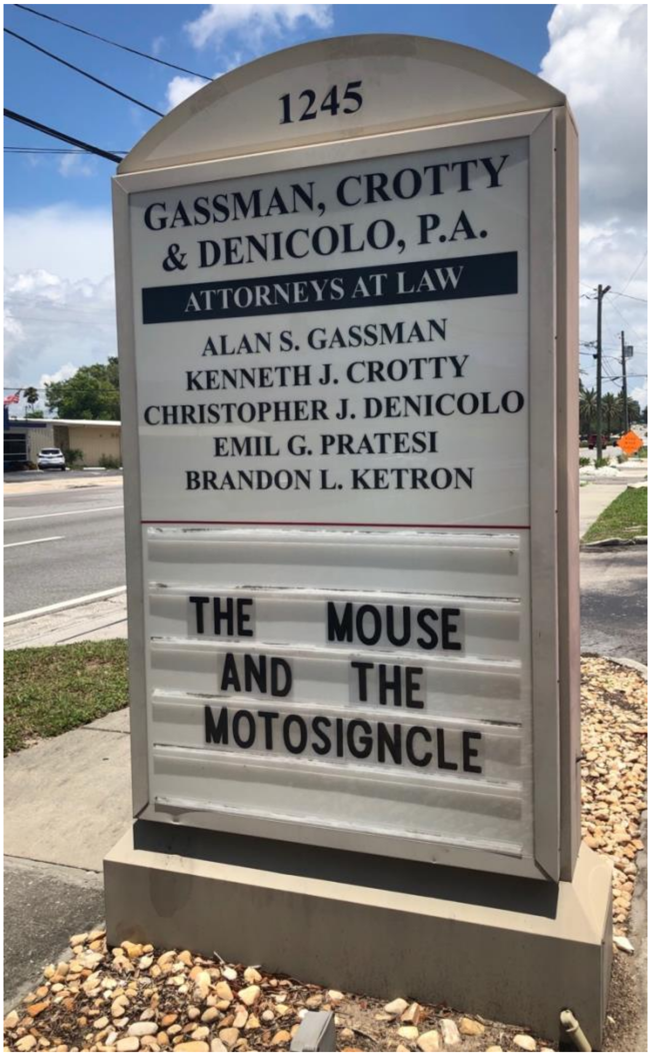
In 1900, Baron Eduard Toll, famed Baltic explorer, departed Saint Petersburg, Russia on an expedition never to return. If only Jaws had been released then, he would have known... "you go in the water. Shark's in the water... Farewell and adieu to you." Jaws, unfortunately for Mr. Toll, was released exactly 75 years later.

Who knows? Maybe he arrived 100 years later in St. Petersburg, Florida. Just in time to watch the Wikimedia Foundation be formed. The Wikimedia foundation was created on June 20, 2003 as a way to fund and host websites such as Wikipedia.org, Brian Wilson, of Beach Boys fame, was born on June 20th. He is a Good Man.... Coincidentally, John Goodman was born exactly 10 years later.

On June 20th of 1782, the U.S. Congress adopts the Great Seal of the United States. This seal, which depicts an eagle holding an olive branch and an arrow, is now the second most important “Seal” in the country ever since “Kiss from a Rose” was released in 1994.

“Eureka!” shouted David Levy and Henry Holt as they discovered the first Mars Trojan. This Trojan, commonly considered an asteroid, would later be called “Asteroid Eureka.”

Fact: There have been 52 football games that have ended with a score of 6-20.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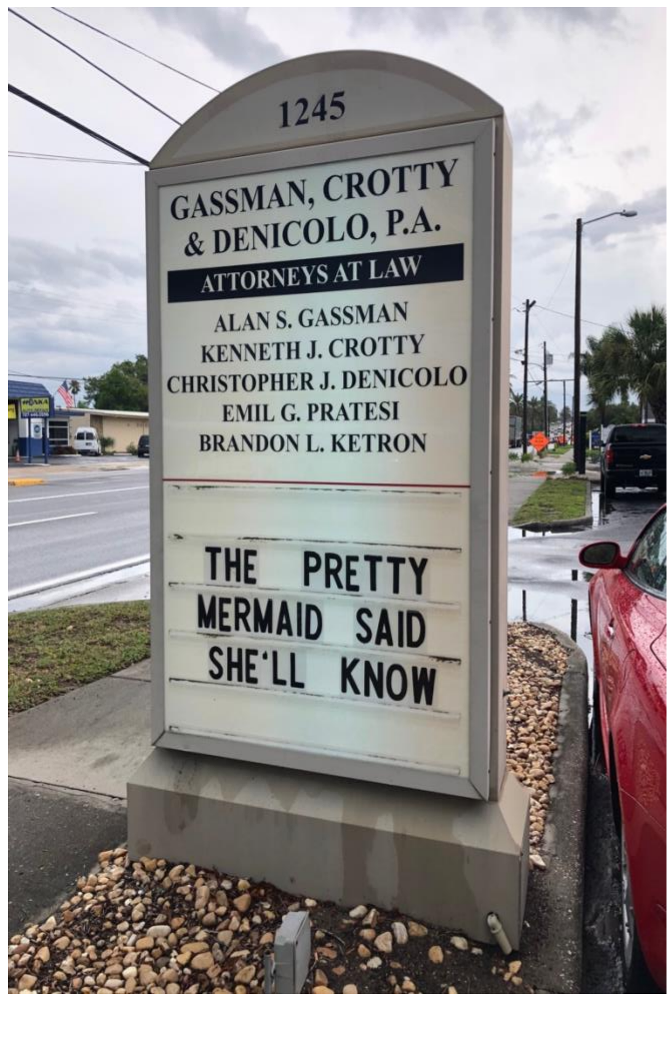
BRANDON L. KETRON
THE MOUSE
AND THE
MOTOSIGNCLE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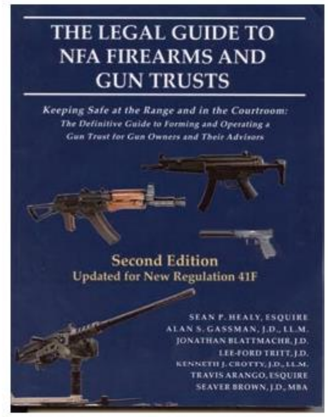
SLEPT HERE


Where are my herbs and spices?
Get me off of this bucket!
Kentucky Fried Chicken



The Legal Guide To NFA Firearms And Gun Trusts

One of the most useful books to come across my desk in some time is *The Legal Guide To NFA Firearms And Gun Trusts*. Written by seven attorneys that specialize in firearms law, National Firearms Act (NFA) law and gun trusts, it does a lot more than just explain the legal process of owning an NFA gun or forming a trust. It is one of the best explanations of federal gun laws I have seen, making the book worth a look just for that information.

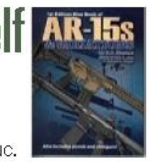
While intended for both lawyers and NFA gun owners, the language is easy to comprehend, and definitions are given throughout for words with specific legal meaning. There are 13 chapters, covering everything from firearm safety to individual ownership of Title II firearms to the specifics of forming gun trusts.

In recent years, there has been a large increase in the number of firearm trusts for multiple reasons. One of the foremost has to do with the acquisition and ownership of NFA items, especially suppressors. Under current law, an individual lawful owner of a suppressor could not let his wife or son have access to it or take it to the range. That's where firearm trusts come into play. If a trust is formed, then any of the trustees, so long as they are not prohibited persons, would be allowed to possess the NFA item without fear of prosecution. There are also good reasons to form a trust for estate purposes, which are explained clearly in this book. In particular, there was a new rule that came into effect in 2016 called "Regulation 41F" that changed the nature of gun trusts, and both the positive and negative aspects of that change are explained.

Finally, there are appendices of ATF forms, FAQs and a very useful explanation of the specifics of an NFA trust by attorney Sean F. Healy. Now in its second edition, the book is subtitled "Keeping Safe at the Range and in the Courtroom: The Definitive Guide to Forming and Operating a Gun Trust for Gun Owners and Their Advisors," and the paperbound, 8½"x11", 261-pp. guide is well worth the asking price of $40.
legalguidetonfafirearms.com

—Mark A. Keefe, IV, Editor In Chief

Also On The Shelf



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Join Alan Gassman and an impressive cast of attorneys, CPAs, Medical Experts and other professionals as they discuss numerous useful topics in a series of programs designed for practitioners (estate planners, attorneys, wealth advisers, insurance consultants, etc.) addressing how professional advisers can educate current and prospective clients on the importance of estate, financial and related planning (as well as picking up some tips, tricks, and pitfalls to watch out for on the way).

Including such useful topics as:

- *What tax advisors need to know about charitable giving.*
- *What is and isn't a fraudulent transfer.*
- *Hiring and terminating employees.*
- *Recognizing the signs of addiction.*
- *and much, much more!*

This series will run every Thursday at 12:30 PM and will continue through the rest of the year.

To register for the series please go to:

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Michael Lehmann

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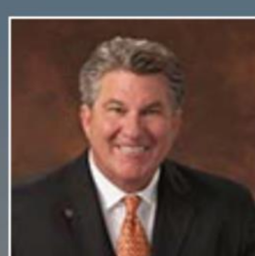

Larry Heinkel

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John Beck

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Presented by:

Larry Heinkel

Host and Moderator: Alan Gassman

Thursday, June 27, 2019

Top Ten Things CPAs and Tax Lawyers Must Know When Dealing With the IRS

To Register, please CLICK HERE

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Calendar of Events

Newly announced events in RED

EVENT	DATE/TIME	DESC.		REGISTRATION
Maui Mastermind Wealth Summit Bonus Webinar	June 20, 2019. 3:00 PM	Legal Protection Package: Nuts and Bolts of Estate Planning, Personal Creditor and Estate Tax		Please Click HERE
Maui Mastermind Financial Pillar Super Course	June 22-23, 2019	Hilton-Atlanta Airport	Crucial Legal and Tax Principals for Accumulating Wealth	Please Click HERE
Learn at Lunch Webinar Series	June 27, 2019, 12:30 PM gotowebinar.com	Common CPA Mistakes That Cause IRS Catastrophes with Larry Heinkel	Click HERE	
Learn at Lunch Webinar Series	Ju.y 11, 2019 12:30 PM gotowebinar.com	My Favorite Estate Plan with David Blain		Click HERE
Learn at Lunch Webinar Series	July 18, 2019 12:30 PM gotowebinar.com	With Larry Heinkel		Click HERE
Learn at Lunch Webinar Series	July 25, 2019 12:30 PM gotowebinar.com	What I Wish Lawyers and CPAs Knew About Pension Plans with David Blain		Click HERE
Learn at Lunch Webinar Series	August 15, 2019, 12:30 PM gotowebinar.com	Throw All You Thought You Knew About Real Estate to the Curb with David Blain		Click HERE
Learn at Lunch Webinar Series	August 29, 2019, 12:30 PM gotowebinar.com	with Larry Heinkel		Click HERE
45th Annual Notre Dame Tax Institute	September 26-27, 2019	South Bend, Indiana	Alan's topic will be, "Application of Section 199A and its	Contact: Agassman@gassmanpa.com

			interaction with other Prominent Tax Laws to Real Estate Investors, Developers and Others”	
Learn at Lunch Webinar Series	October 3, 2019, 12:30 PM gotowebinar.com	New York Best Interest Rule for Life Insurance: A Game Changer with Barry Flagg		Click HERE
Learn at Lunch Webinar Series	October 17, 2019, 12:30 PM gotowebinar.com	Five Simple, Easy Ways to Increase Your Professional Practice’s Productivity with David Finkel		Click HERE
FICPA Accounting and Tax Conference	October 24, 2019	Estero, FL	TBD	Contact: Agassman@gassmanpa.com
Special Asset Protection Presentation	Friday, October 25, 2019	University of Miami Law School	Advanced Asset Protection Workshop with Les Share	Contact: Agassman@gassmanpa.com
Learn at Lunch Webinar Series	October 31, 2019, 2019, 12:30 PM gotowebinar.com	Indexed Universal Life: Who Says Hedge Funds are Only for the Wealthy? With Barry Flagg		Click HERE
2019 Maui Mastermind Wealth Summit	November 10 – 15, 2019	The Fairmont Orchid, Big Island of Hawaii	Alan’s topics will include: (1) The Magical and Mystical Aspects of Tax Planning for the Successful Entrepreneur, and (2) Estate Planning Meets Creditor Protection Planning - Making Sure That You Have Covered the Bases.	Please Click HERE
Learn at Lunch Webinar Series	December 5, 2019, 12:30 PM gotowebinar.com	Should Irrevocable Life Insurance Trusts Be Domiciled in New York? With Barry Flagg		Click HERE

Mote Vascular Foundation Symposium	December 7, 2019	TBD	Estate, Medical Practice, Retirement, Tax, Insurance, and Buy/Sell Planning – The Earlier You Start the Sooner You Will Be Secure	Contact: Agassman@gassmanpa.com
Learn at Lunch Webinar Series	December 12, 2019, 12:30 PM gotowebinar.com	What to Ask for to be Able to Actually "Read" A Life Insurance Illustration		Click HERE
Certified Contractors Network Presentation	January 4, 2020 - Orlando	Orlando, FL	Creditor Protection for the Intelligent Construction Family – It Wasn't Raining When Noah Built the Ark	Contact: Agassman@gassmanpa.com
Learn at Lunch Webinar Series	January 9, 2020, 12:30 PM gotowebinar.com	Four Steps to Grow Your Business Without Sacrificing Your Family, Health, or Life with David Finkel		Click HERE
Venice Estate Planning Council Presentation Hosted by Community Foundation of Sarasota County	Tuesday, January 21, 2020, Venice then Sarasota, FL	For the Venice Estate Planning Council and Sponsored by the Community Foundation of Sarasota County, Alan will be conducting a morning presentation, "Innovative Charitable Techniques, Asset Protection Strategies You Didn't Know and Creative Planning Under Section 199A" He will be answering questions (and telling many bad jokes) for VIPS at the hosted luncheon and will be the dinner speaker to finish the event off. Starting in Venice, these events will conclude in Sarasota.		Contact: Barbie Gonzalez: BGonzalez@CFSarasota.org