Wild Felice & Pardo, P.A.

March 2010 Volume 1 Issue 3

Providing innovative legal solutions for the challenges you face.

Providing Solutions That Secure and Enhance Your Wealth and Your Legacy

Everyone understands the benefits of having insurance to protect your assets from unanticipated events. Hazard and casualty insurance is necessary to provide protection from the risks of fire, floods and wind damage. Liability insurance is necessary to provide protection from the risks of auto accidents and personal injury. But what can you do to protect your assets from claims in excess of your insurance or from risks of lawsuits or from unexpected business liabilities or from an overabundance of tax consequences? Fortunately having an asset protection plan in place can help insulate you from these potentially significant risks.

We believe in providing you with effective solutions so that you can have confidence that your assets and your legacy are protected. An effective asset protection plan needs to be in place before a lawsuit or claim is made against you, and well in advance of your retirement or death, so it is important to take the step toward greater protection today.

Wild Felice & Pardo is a full-service, Fort Lauderdale, Florida based law firm with a specialty in asset protection. We utilize a combination of estate planning, real estate law, corporate formation, family law, and asset structuring to assure that our clients are protected from potential litigation, creditors, and any other threats that may be looming. A properly designed asset protection plan can accomplish many of your most important objectives:

- Protection of family savings and investments from lawsuits and claims.
- Protection against inadequate or unavailable insurance coverage.
- Insulation of rental properties reducing your exposure to potential lawsuits.
- Protection of business assets and accounts receivable from potential claims.
- Elimination of probate.
- Reduction of estate taxes.

Owning Property as Joint Tenants May Not Be Ideal

While owning property as Joint Tenants may be helpful for direct succession, there are at least eight reasons why you may wish to avoid such a designation of ownership.

1. transfers to a joint tenant can be exposed to federal and state gift tax;
2. joint tenancy does not avoid probate, it just postpones it until the death of the survivor;
3. joint tenancy may not take advantage of the estate tax exemptions available to both tenants;
4. jointly owned property is subject to the judgment creditors of all joint tenants;
5. joint tenancy will result in the complete transfer of ownership to the surviving owner, even if that was not intended by a deceased owner;
6. joint ownership can affect qualification for public assistance programs such as Medicaid;
7. all owners must agree to sell jointly-owned real estate;
8. all owners have equal access to a jointly-owned asset, even if it is a bank, stock or other cash account.

Owning property as joint tenants may lead to some undesired tax consequences.

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A Battle of Wills

In South Florida, something as personal a preparing a will often turns into a battle of wills for too many couples and families. The creation or updating of an estate plan necessitates the contemplation of money, death and extended family. These are topics that can cause fighting in even the strongest of families. To avoid any conflict with your partner or spouse over the planning of your estate, here are a few tips to following when discussing the subject.

- **Try not to be too critical of your partner's family members.** Many fights that arise over the drafting of a will arise out of perceived attacks on relatives rather than which relative will receive what after the testator dies. If you have strong feelings that one particular relative should be left out of your will or you disagree with your partner's choice of South Florida executor, you need to be very diplomatic and describe your position without speaking negatively about the specific relative.
- **Propose compromises rather than arguing for one side or the other.** There is a greater likelihood of fights occurring when one partner or spouse feels like his or her voice is not being heard by the other. One preemptive solution to this problem is to listen to your partner's positions and look for some kind of middle ground, even if you completely disagree with their decision.
- **Discuss any issues that are potential landmines with your partner or spouse before meeting with your estate planning attorney.** Even if you cannot compromise on every issue, this pre-meeting discussion will allow you to clearly and calmly discuss any disagreements with your attorney at the free consultation. At that time, he may be able to offer some acceptable solutions.
- **Discuss each of your goals and come up with one primary objective.** What do you and your partner most want your will to accomplish? If you can agree on one primary objective, you will be less likely to bicker over the smaller details. If you have minor children, you and your spouse can likely agree that the primary goal of your will is to ensure that the children are taken care of.
- **Remember to continuously use the term "for now**." You and your partner should have your estate plans revised every time there is a change in your family or in the estate tax law. Your will can and will be amended in the future. Reminding your spouse or partner that the decisions made today are not necessarily permanent can remove some of the emotion from the discussion.

Did you know?

According to section 732.502 of the Florida statutes, in order for a will to be valid it has to be signed at the end by the testator in the presence of two witnesses who must be in the presence of the testator and the presence of each other when signing.

This means that merely writing your own will by hand, or even orally devising your assets by video, will not be valid in Florida and be treated as if you have no will at all.

Protecting Unmarried Couples

Living together while remaining unmarried has never been more popular. According to the 2009 Census data, over 6.4 million opposite-sex unmarried couples live together (which translates into 12.8 million people). There are an additional 750,000 same-sex unmarried couples in the United States (which translates to an additional 1.5 million people). This is a whopping 92% increase since 1990.

Over half of all unmarried households have children. The number of cohabiting seniors has tripled in the past 10 years and is continuing to rise. The average American spends the majority of his or her life unmarried. If you are part of an unmarried couple living together, it's probably comforting to know that you are far from alone. However, this doesn't mean that you can ignore how the law affects your relationship.

Because the law considers there to be no formal relationship between the members of same sex and unmarried couples, estate planning is particularly important and must provide as much protection as possible. Common estate planning tools for same sex and unmarried partners include:

- Domestic partnership agreements
- Last Will and Testament
- Revocable Living Trust
- Irrevocable Trust
- Durable power of attorney for finances
- Living will and health care surrogate
- Restructuring of assets into joint tenancy

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Top 10 Estate Planning Myths

Everyone thinks that they are an expert. Well here are ten of the more popular "expert tips" you may have heard concerning estate planning and why they are completely wrong.

1. **A living trust avoids estate tax.**
   A trust is an agreement between you and your trustee to carry out the instructions contained in the document. A trust will not help you avoid taxes unless specific terms are added for that purpose.
2. **If I don't have a will, the State of Florida will get everything.**
   Without a will, property will be distributed to a person's next of kin in accordance with a statutory priority list. However, the statutory list rarely matches a person's desire for distribution of their property.
3. **Having a will avoids probate.**
   A will must be admitted to probate for it to be carried out. The general purpose of probate is to transfer title to assets that a person owns at the time of death. Probate can be avoided by utilizing a series of trusts.
4. **A will covers all of my property.**
   A will only covers property titled in a deceased person's name at the time of death. Certain property such as jointly held assets, life insurance, and retirement plans will pass to the surviving owner or beneficiary.
5. **I can complete my own estate plan.**
   You cannot create an estate plan unless you understand when and how your property will be transferred. One simple mistake can waste time and money during the administration process. A professionally prepared estate plan will save more money than it costs.
6. **I don't need to plan because all of my property is owned jointly.**
   Sometimes owning property jointly with another person is a good idea. However, most people do not understand the legal implications of joint ownership. See article on page 1.
7. **Estate planning is just a bunch of forms.**
   The choice to use a specific estate planning tool depends on a variety of factors. No two estate plans are exactly alike.
8. **Estate planning is only for the wealthy.**
   Many factors other than wealth affect the need for estate planning, such as: (1) caring for a minor or disabled child; (2) transferring ownership of property; (3) caring for a surviving spouse; (4) transferring business interests; (5) transferring ownership of property in another state; (6) charitable giving; (7) avoiding probate; (8) avoiding taxes; and (9) care of pets. There are an infinite amount of reasons to plan your estate.
9. **Living trusts are the only way to avoid probate.**
   There are several ways to avoid probate, and a living trust is only one of them.
10. **I have plenty of time to plan.**
    True, as long as you know when you will die or become incapacitated.

We Can't Afford To Die

While Congress congratulates itself on barely passing a bill that may or may not affect the health care of 15 million people, the estate tax –which will affect over 200 million people- remains unchanged.

In 2010, Congress allowed the estate tax to sunset which provides for no estate tax threshold this year, but also provides for no step-up in basis for any property that has grown in value since purchase. This means that if you die in 2010 and wish to transfer real property, stocks, or any other item that has grown in value over time, your children are looking at a very large capital gains tax bill.

For those of you that are mostly liquid, you should be so lucky to die in 2010 because in 2011 the estate tax comes back with a vengeance at 55 percent and with a threshold of only $1 million. Unless Congress gets moving on something that concerns us all, none of us can afford to die an time soon.

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Wild Felice & Pardo, P.A. Offering Estate Planning Stimulus Package

We at Wild Felice & Pardo wish to help our clients in these tough economic times. This is why our firm is offering 30 people the opportunity to have their complete will-based estate plan drafted and executed for **only $500**. This is a savings of over $1000. This offer is only available to the **first 30 people** that contact our firm and make an appointment for their free consultation. 30 days. 30 clients. 30 estate plans at only $500 each.

We realize that each client's needs are unique and treat each of our clients as if they are our only client. We hope you will take the time to contact us and truly experience all of the benefits that our law firm has to offer.

Managing Partners Anthony Felice and Michael Wild