May 2010

Wild Felice & Pardo, P.A.

Volume 1 issue 5

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.

Buy-Sell Agreements

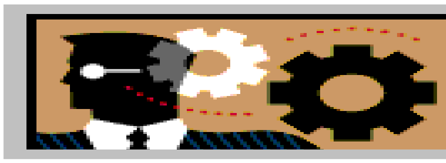
A buy-sell agreement is a legally binding document that enables you to continue your company after the death, retirement, disability, or withdrawal of a stockholder (partner). The two primary types are the cross-purchase agreement through which you directly buy the stock of your former co-shareholder, and the stock redemption agreement in which your company buys the interest of the former owner. Future articles in this series will provide more specific information on the cross-purchase and sock redemption arrangements. Two less common forms are the third-party buy-out agreement involving the purchase by a key person, outside individual, or other non-owner, and the wait and see buy-sell agreement which is a combination of one or more of the other three types.

Stock ownership or a partnership interest is often a significant portion of an individual's estate. A buy-sell plan provides you with the liquidity to cover estate taxes, probate fees, administrative expenses, and other miscellaneous cash needs at death. In addition, this arrangement may enable you to take more advantage of any federal or state estate tax exemptions, and grant you a great deal of flexibility in the distribution of your estate.

Without proper planning, the sudden death or disability of the owner and key person in the business may send the company into an unrecoverable tailspin. You or your estate would end up receiving pennies on the dollar for your largest asset. The buy-sell arrangement is the tool to make sure there is someone who will continue your business and give you top dollar for it.

Prior to the transfer of any significant amount of stock it is necessary to obtain an independent expert appraisal for tax purposes. Just like when you gift stock in your company to your children and you need an appraisal for proper completion of a gift tax return, you need an appraisal for a transfer under a buy-sell agreement in order to set the proper arms-length value of the shares.

Are you the most important person involved in your business? Would you like your business to provide wealth for your family after you are gone?



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101 N Pine Island Road, Suite 201
Ft. Lauderdale, FL 33324
954-944-2855 **office** • 954.653.2917 **fax**
info@wfplaw.com
www.wfplaw.com

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Avoiding the Dreaded "Death Tax"

In 2010, the dreaded death tax was replaced by a capital gains tax in an attempt to get more money from owners of real property and stocks with very low cost basis. In 2011, the estate tax will return with a vengeance. The level at which all estates will be taxed at will be a measly 1 million dollars.

A million dollars may sound like a large amount of money but it is really quite small when you consider that it includes life insurance proceeds, the value of your home, stocks, bank accounts, retirement accounts, jewelry, paintings, and anything else that you may have had titled in your name at the time you died. After all of your assets are probated and given a fair market value dollar amount, your family will be taxed at 55 percent for everything over the first million. That means that they will be forced to pay 55 cents to the government for every dollar you left to them. This tax has bankrupted families.

When Joe Robbie died, he left the Miami Dolphins and the stadium they played in (formerly known as Joe Robbie Stadium) to his children. He did not have a trust in place at the time he died. Since he owned all of his assets in his own name at death, the team and the stadium were probated and nine months after his death, his children were handed a $50 million tax bill.

Almost all of Joe Robbie's net worth was in the team and the stadium so the kids couldn't come up with the cash. The government had no interest in being a partner in a football team so the Robbie kids were forced to sell the team and the stadium for 50 cents on the dollar just so they could pay the tax bill. A lack of estate planning is the reason that the Dolphins now play in Sun Life Stadium.

A similar situation took the Cubs away from the Wrigley family. When the estate tax bill came due, the Wrigley kids were given the option of selling the chewing gum factory or the baseball team. Since chewing gum is more profitable, they sold the team to pay the estate tax.

The estate tax doesn't just affect millionaires; it also has taken many a farm from the unsuspecting and unprepared farmer. Many farms are worth 7 or 8 million dollars but the men and women that run them live month-to-month and hardly consider themselves to be millionaires. A lack of life insurance and estate planning leads to the common occurrence of a farmer dying and leaving the farm to his family. Along with the farm, he leaves them an estate tax bill of around $4 million. Since the kids can't pay the bill, they are forced to sell the farm.

A lack of estate planning could lead to the financial destruction of your family. You work very hard during your life so that you might provide for your family and maybe leave them a little something after you are gone. Don't let the death tax take it all away. You can protect your family with some very basic estate planning techniques.

Did you know?

Anything you own in your own name at the time of your death must be probated and may be subject to the Federal estate tax. A will does not prevent probate or the estate tax.

In order to avoid probate, limit or eliminate the estate tax, control you assets after you are gone, and protect your beneficiaries from losing those assets to creditors or litigation, your best bet is a Revocable Living Trust.

The Downside to Joint Title

Having your assets titled jointly at the time of your death means that the items will pass to the person that shared title with you automatically at the time of your death. The benefit of this form of title is that the asset titled jointly does not need to be probated and there can be no fight over the correct distribution or devise of the asset. However, the negatives of joint titling far outweigh the positives.

Having your assets titled jointly may lead to the loss of certain valuable tax savings at the time of your death. Joint titling also forfeits any future devise of your assets. If you wished for any of your children or other relatives to one day enjoy your property, they will be unable to since you retained no ownership of the property and forfeited your right to gift it to your beneficiaries after your death.

Another disadvantage to the joint titling of assets is that you might get stuck with any debt arising from the property if you are the last person standing. Any mortgage on real property or other debt arising out of the property will now fall on you to cover.

Further, a jointly titled asset restricts how you can use the property during your life. If you have equal ownership stake, you cannot sell or transfer the property without unanimous consent from all parties sharing ownership. This could lead to conflict and loss of profit. Titling assets jointly is not ideal.

The only way to truly protect your assets during life, control who gets them when you die, and protect your beneficiaries long after you are gone is to title your assets in trust for your beneficiaries.

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GIVE UNTIL IT HURTS – AND IT *WILL* HURT

It's bad enough that the Federal government has the audacity to tax your family at 55 percent on the assets that you leave them when you die (assets that you have already paid income tax and capital gains tax on during your lifetime). You'd think that taking 80 percent of everything you have ever acquired would be enough. You'd be mistaken. Another tax, known as the gift tax, will tax you at a rate of 45 percent on any transfer of assets you make during your lifetime.

The gift tax excludes transfers between married couples as a husband and wife can transfer as much as they want to each other. How generous of the Federal government to allow you to transfer assets to a person whom you most likely already share ownership of the assets with.

Each year, any one person is permitted to transfer $13,000 worth of cash or assets to any other individual with no tax consequence. You can walk down the street and hand out $13,000 to every person you meet and you will be fine. However, every dollar you give to any one person above $13,000 will be taxed at 45 percent. If you want to buy your teenage son a car, and the car is valued at $20,000, you must fill out a gift tax form and pay the Federal government $3,150 in taxes for that year.

If you want to buy a house for your daughter as a wedding present, and the house is valued at $150,000, you will owe a gift tax of $61,650. Even if you are paying for the house monthly, via a mortgage, the Federal government will not wait. You will owe the entire $61,650 for that year's tax return.

Incidentally, an easy way to get around this particular event would be to purchase the house as an investment property for yourself and rent it to your daughter for $1,000 per month. Then, you could gift her $1,000 per month in rent and avoid any taxable even as the total gift would amount to only $12,000 per year.

There are three primary exceptions to the gift tax rule. You can give as much money as you want to your spouse with no taxable event taking place. A husband and wife can transfer billions of dollars between each other and the government will not care. This allows us to transfer assets for the purpose of estate planning. You can also give as much money as you want to a legitimate IRS-recognized charitable organization which has filed a Form 501(c)(3) and been approved as such.

The third exception to the gift tax is that you can donate money or assets for the purposes of legitimate education expense or legitimate medical expense. Many older people are able to successfully reduce their pending estate tax by providing their grandchildren with college educations through 529 plans or Prepaid College Programs.

The gift tax is a nasty tax in that it levies a penalty on being generous. There are many ways to limit the amount of gift tax you will be asked to pay during your lifetime. Only a few of those ways were briefly touched on in this article. For a full rundown of all the ways in which you can limit the taxes you pay during life and after death, you should consult with a trained Florida estate planning attorney.

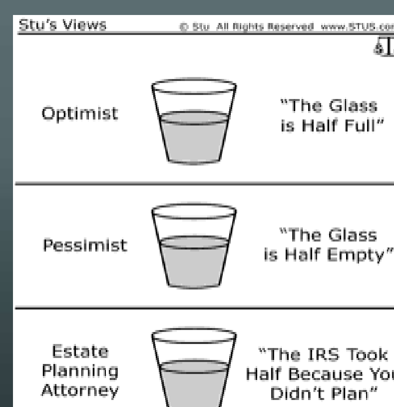
IS YOUR TRUST FUNDED?

A trust may or may not avoid estate taxes. It is possible that a number of your assets are mentioned in an addendum at the end of your trust. This does not necessarily place them in the trust.

For your assets to be in your trust, you must physically change their title, e.g. your house at the county clerk-recorder's office and your investments at their respective brokerage firm.

Unless an asset, such as a retirement plan, is set up with a named beneficiary, they may need to be retitled to your trust. Check whether your assets have been retitled to the trust and monitor your statements to confirm they are addressed to your trust.

Funding is one of the most important and most complex part of estate planning. Please consult with a trained estate planning attorney to be certain it is done correctly.



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www.wfplaw.com

WFP

MICHAEL D. WILD, ESQ.
Partner

101 N Pine Island Road, Suite 201
Ft. Lauderdale, FL 33324
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info@wfplaw.com
www.wfplaw.com

Wild Felice & Pardo, P.A. Is Growing!

Thanks to your business and the business of your friends and family, our law firm is expanding. While we are no longer at our Ravenswood Road location, we can now be found at either of our two new office locations below:

Broward
101 N. Pine Island Road, Ste 201
Plantation, FL 33324

Palm Beach
601 Heritage Drive, Ste 419
Jupiter, FL 33458

Our emails, fax, and telephone numbers will all remain the same. Please make an appointment to stop by and visit us in our new locations soon. We look forward to your visit.

Managing Partners Anthony Felice and Michael Wild