

We trust that you and your family are doing well and enjoying the fall season! As a valued client of this firm we are pleased to provide you this Client Advisory as a courtesy to keep you abreast of important estate planning opportunities and events and to offer you some useful thoughts for your future estate planning needs.



Firm to Expand and Relocate to the Mercato in January:

For those of you that have visited our office recently, you may have noticed that we have experienced significant growth. Since our law firm's inception in 2003 we have expanded from 2 lawyers and a handful of staff to 11 attorneys and 22 staff.

To remedy this "problem" and to provide space for the continued growth we expect, we are pleased to announce that we will be relocating our offices in late January to the Mercato. The Mercato is a new mixed residential and commercial development located at the northeast corner of US 41 at Vanderbilt Beach Road. We will occupy the entire top floor of the building closest to the Vanderbilt Beach Road entrance. Our new office will provide us over 14,000 square feet of pristine office space - and hopefully a glimpse of the gulf.

Our telephone numbers and email addresses shall remain the same, and our new address will be:

9132 Strada Place, Fourth Floor, Naples, FL 34109

A further announcement will be sent to our clients once our new office is completed and the exact move-in date is confirmed. Once we have moved, please feel free to call us to schedule a tour of our new offices.

Estate Tax Reform Under the Obama Administration:

As we have indicated in our past Client Advisories, estate tax reform had been on hold until the presidential election was decided. Now with Senator Obama as the President-elect, it seems that we may have some direction as to what we can expect for the estate tax. The good news is that Senator Obama has been on record during his campaign as being in favor of permanent estate tax reform, consistently (but quietly) supporting a permanent \$3.5 million exemption and a 45% tax rate on estates exceeding the exemption.

However, in light of the country's recent economic difficulties, coupled with Senator Obama's many planned expenditures, a question is raised as to whether his position on estate tax reform will remain unchanged.

Most experts continue to expect that the most likely tax outcome will be permanent reform enacted sometime in 2009 at the amount and rate proposed by Senator Obama.

However, in light of the present uncertainties, our recommendation continues to be that clients with a potential estate tax liability be prepared to modify their estate plans if and when the estate tax law changes.

Important Updates and Changes in the Tax Law: The past few months have brought a number of significant changes in federal tax law - particularly under the federal "Bail-Out" legislation passed in October and under the "housing stimulus" package passed by Congress in late July. The following are perhaps the most relevant changes and opportunities now on the books:

1. Annual Gifting Exemption Increased to \$13,000. Effective January 1, 2009, the annual tax-free gifting exclusion will increase from \$12,000 to \$13,000. Thus, under the new increase one can give \$13,000 in money or property each year to as many persons as one wishes without gift or estate tax implications.

2. Residential Capital Gain Exclusion Tightened. Beginning next year, the capital gain from the sale of a primary residence is subject to a new twist. Although the well-known \$250,000 exemption for a single person and \$500,000 exemption for a married couple still continue, gain from a sale allocable to periods of "nonqualified use" (typically when the property is not occupied by either the owner or spouse as a principal residence) during the 5 year "look-back" time-frame generally will no longer be excludable from income.

Under prior law a taxpayer could claim the entire exemption if he had used the property as the principal residence any 2 of the previous 5 years. However, under the new law, if a

taxpayer owns a residence but does not use it as the principal residence during any portion of the prior 5 year period, then a proportionate amount of the gain is now subject to tax.

For more details about this law, please feel free to call us or visit the Congressional website www.jct.gov and review publication JCX-63-08.

3. \$100,000 IRA Charitable Gifting Extended Through 2009.

Congress' recent Bail-Out legislation extended a tax provision allowing taxpayers ages 70½ and up to transfer up to \$100,000 directly from an IRA to a charity without owing income tax on the transfer and yet counting the transfer toward the taxpayer's required annual withdrawal. This is a significant opportunity for those who have charitable desires!

4. *AMT "Patched" for 2008.* The Alternative Minimum Tax or "AMT" was an alternate income tax regime implemented by Congress in the 1960s to target a handful of high income individuals who avoided the income tax by reason of certain deductions and exemptions, among other things. However, the AMT has not been appropriately reformed for inflation and has been extending its reach to lower income levels. A "patch" for the AMT for 2008 only was included in the Bail-Out legislation. If the "patch" would not have been implemented, another 24 million families would have paid at least \$2,000 each in additional income tax.

GRATs Are Even More Attractive with Current IRS

Interest Rate for Gifts Reduced to 3.6%: In our last Client Advisory we discussed the many advantages of the Grantor Retained Annuity Trust (or "GRAT") – which is a trust gifting format sanctioned by the IRS. With the GRAT technique a client transfers assets into a trust - the GRAT - and retains a set annuity payment from the GRAT for at least 2 years, with the balance of the GRAT assets passing to the client's heirs when the term expires. Because the payment back to the client is not considered a gift the GRAT annuity can even be structured high enough so that the heir's gift component (the balance of the GRAT after the set term) has a zero value for gift tax purposes. For the GRAT technique to prevail, all that is necessary is that the total return on the GRAT assets during the term exceed the IRS interest rate for the month the GRAT is created (currently 3.6%) – and assets will remain in the GRAT upon the term expiration to pass to heirs free of gift or estate tax implications. If you would like more information about the GRAT technique, please let us know.

A Final Word on Leona Helmsley. As you probably know, hotel heiress Leona Helmsley passed away last year at age 87. After her death much press was devoted to her unusual estate plan which, among other things, specifically disinherited 2 of her grandchildren and bequeathed \$12 million in trust for Trouble, her Maltese dog. However, Trouble's inheritance itself has fallen into "trouble."

Shortly after Ms. Helmsley's death, her 2 grandchildren challenged the Will, alleging that she lacked the mental capacity to execute it. Rather than litigate the case, Ms. Helmsley's estate settled with the 2 estranged grandchildren. Although settlements are quite common, the unusual aspect is that the grandchildren's settlement will be coming out of Trouble's inheritance – leaving the canine a mere \$2 million to live on for the rest of his life.

What can we learn from this? First – some people really, really love their dogs – but that truth is nothing new. Second, and much more important, if a client believes the potential for a Will contest exist, extra steps should be taken to avoid the fate of Leona Helmsley's estate. These relatively small steps can ensure a client's intent is not thwarted - as seems to be the case with Ms. Helmsley and Trouble.



Robert M. Buckel*, J.D., LL.M. Kevin Carmichael, J.D., LL.M., C.P.A.



Robert H. Eardley*, J.D., LL.M. Blake W. Kirkpatrick*, J.D., M.A.

**Board Certified Wills, Trusts & Estates Attorney*

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