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THE ADVISOR

INFORMATION TO TRUST. COUNSELORS TO RELY UPON.

FALL 2010

SPECIAL NEEDS TRUST: PROTECT YOUR FAMILY

If someone in your family is one of the estimated 43 million Americans affected by a physical or mental disability, proper estate planning is vital to protecting those you love. Many disabled individuals rely on means-tested public benefits such as Supplemental Security Income (SSI), Medicaid, or other government benefits, to provide food, shelter and medical care. Unique planning is required for these individuals so that they will not risk losing these benefits should a relative pass away leaving them with an inheritance.

There are several misconceptions in this type of planning that can lead to devastating effects for those who are disabled. Many people have been told that if they have a special needs beneficiary in their family, they must completely disinherit that person in their Will or Trust. However, it is not necessary to leave that person out of the family's estate plan. Instead, a carefully drafted Special Needs Trust will allow a disabled

individual to continue receiving public benefits and still inherit money from relatives or other individuals.



A Special Needs Trust maximizes all available resources to an individual with disabilities, whether those are public benefits, inheritances, or private donations. Special Needs Trusts can provide numerous resources to a disabled person such as medical and dental care, alternative therapies,

medical equipment, educational opportunities, insurance, transportation and dietary needs. If the Trust is sufficiently funded, a disabled individual can also receive spending money, electronics, computers, vacations, pets, a private aide, and other life enhancing supplemental items.

It is also possible to customize a Special Needs Trust to the individual beneficiary's needs and also provide the Trustee of the Trust wide discretion to use the Trust assets for the particular special needs of the beneficiary. In many cases, the Trust can name other family members as contingent beneficiaries so that the funds can pass along to others should the disabled beneficiary pass away prior to utilizing all of the Trust funds.

If you have someone with special needs in your family, do not hesitate to contact us to review your estate plan and discuss whether a Special Needs Trust would be beneficial for your family.

UPDATE ON THE IRREVOCABLE LIFE INSURANCE TRUST

If you are the Grantor, Trustee, or beneficiary of an Irrevocable Life Insurance Trust, please be advised that effective July 1, 2010, the Florida Legislature enacted Florida Statutes Section 736.0902 which eliminates the Prudent Investor Rule and the Prudent Trust

Administration Rule with respect to life insurance contracts, absent language to the contrary in the trust document.

WHAT THIS MEANS IS THAT A TRUSTEE OF AN IRREVOCABLE LIFE INSURANCE TRUST DOES NOT HAVE A DUTY TO:

- Determine whether the trust has an insurable interest in the life of the insured;
- Determine whether any contract of life insurance is, or remains, a proper investment;
- Investigate the financial strength of the life insurance company;

- Determine whether to exercise any policy option available under the contract for life insurance;
- Diversify any such contract for life insurance or the assets of the trust with respect to the contract for life insurance; or
- Inquire about or investigate the health or financial condition of any insureds.

In order for this statute to apply, the trustee must give notice to the beneficiaries that this section applies to the contract for life insurance held by the trust.



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The beneficiary then has thirty days after the date the beneficiary receives the notice to object to the application of Section 736.0902 to the trust.

If notice is given under Section 736.0902, beneficiaries no longer have the option of holding the Trustee accountable for any loss sustained with respect to a contract for life insurance, except in three situations:

1. when the Trustee has knowledge that the life insurance beneficiary, at the time of the policy's origin, lacked an insurable interest in the insured;
2. when a beneficiary objects to the application of this statute; and
3. when the life insurance policy was purchased from an affiliate of the trustee or from an individual or entity from which the trustee or an affiliate receives a commission.

If you would like more information about this new law please contact our office, especially if you are either a trustee or beneficiary of an Irrevocable Life Insurance Trust, so that we may further advise you about this new law and how it may apply to you.

LEGISLATION MAY AFFECT YOUR ENTITY

The Florida Supreme Court ruled in Olmstead v. Federal Trade Commission, SC08-109 (Fla. June 24, 2010), that a charging order is not the sole remedy authorized by Florida law to a judgment creditor of the owner of a Single-Member LLC ("SMLLC"). The Florida Supreme Court came to this conclusion primarily because Florida's Limited Liability Company ("LLC") statute does not expressly state that the charging order is the exclusive and only remedy available to a judgment creditor. The Court compared the LLC statute to the charging order statute applicable to Florida Partnerships, which in contrast to the LLC statute, does specifically provide that the charging order is the only remedy to a judgment creditor.

By way of background, a judgment creditor holding a charging order, in effect has a lien against the LLC Member's ownership interest. However, the creditor cannot manage or liquidate the LLC or force a distribution to satisfy the claim. However, if and when distributions are made (as authorized by the LLC Manager), the creditor would be entitled to apply some or all of the distribution to satisfy the outstanding claim.

The result in the Olmstead case is bad news for owners of SMLLCs who are relying on a SMLLC to protect assets inside the LLC, such as securities or real estate, from potential future creditors whose claims arise outside the LLC (for instance, from a malpractice claim or claim arising from an automobile accident). Further, the result is troubling for owners of multi-member LLCs. Since the Court reached its decision based on the LLC statute (applicable to both SMLLCs and multi-member LLCs) which does not specifically state that a charg-

ing order is the only remedy available to a judgment creditor, the decision would appear to open the door for creditors to attack all LLCs, including multi-member LLCs. The good news is that this case seems to solidify the creditor protection aspects of the Florida Limited Partnership statute which specifically states the charging order is the only remedy available, and is generally thought to be one of the most protective statutes in the United States.

It should be noted that Olmstead does not affect or reduce asset protection for those using LLCs as a "fire-wall" to shield personal assets owned outside the LLC from claims that may arise from property owned inside the LLC. Olmstead only applies to claims arising outside of the LLC where the LLC owner is using the charging order to shield assets inside the LLC.

If you currently own an SMLLC, a possible solution, depending on your specific circumstances, may be to create a Florida Limited Liability Limited Partnership (LLLP) and then contribute your SMLLC interests to the LLLP. At the end of the day, you (along with a minority partner) would own the LLLP, which would be the owner of the SMLLC, which would own the assets you wish to protect.

IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING YOUR ENTITY'S CURRENT MODEL, PLEASE FEEL FREE TO CONTACT RYLAND MAHATHEY AT (561) 362-9821 OR RMAHATHEY@REDGRAVEANDROSENTHAL.COM.



BILL WINSLOW

The Firm is pleased to announce the arrival of Mr. Winslow as our new Controller. Mr. Winslow joins Redgrave & Rosenthal following his role as Chief Financial Officer of a boutique certified public accounting firm in Melbourne, Florida. Prior to his post as CFO, Mr. Winslow worked for nearly 20 years at Deloitte in various finance and human resource management roles.

Mr. Winslow is a member of the Florida Institute of Certified Public Accountants and American Institute of Certified Public Accountants. He also serves on Florida State University's Accounting Department Professional Advisory Board.

In addition to his professional commitments, Mr. Winslow participates in numerous charitable events, including the National Multiple Sclerosis Society's Bike MS Fund raiser and the Lance Armstrong Foundation's Livestrong Bike Challenge.



RYLAND MAHATHEY

The Firm is pleased to announce that attorney Ryland F. Mahathey has recently achieved board certification in tax law by The Florida Bar. This certification is the highest level of recognition by the Bar of the competency and experience of attorneys in the areas of law approved for certification by the Supreme Court of Florida. Only certified attorneys are allowed to identify themselves as "Florida Bar Certified" or as a "Specialist."

Mr. Mahathey is chairperson of the Firm's Business Succession Planning Practice group and has spent the majority of his 15-year legal career focusing in the areas of sophisticated estate planning and asset protection matters.

ASSET PROTECTION SEMINAR

It does not make sense to work your entire life a building or accumulating personal investments only to lose them to a creditor or to an unforeseen or even frivolous lawsuit. To protect yourself, you must do planning BEFORE there is a claim or lawsuit.

To learn more, we invite you to attend our complimentary seminar on Wednesday, November 17 beginning at 8:30am. This one-hour seminar will explore various asset protection strategies from simple (titling assets for maximum protection) to complex (Limited Partnerships and Domestic Asset Protection Trusts).

SOCIAL SECURITY WORKSHOP

Do you have questions about social security? Join us for this popular workshop on Thursday, November 18 from 8:30am to 9:30am with Wright Thompson, Jr., of the Social Security Administration. Mr. Thompson will provide a comprehensive overview of the often complex topic of social security, including:

- When to apply.
- How to maximize benefits.
- How benefits are calculated.
- What if you are a non-working spouse, a widow, or are divorced?
- Will your benefits be taxed?
- Will you be penalized if you work while receiving benefits?
- What if you have a government pension?

PLEASE RESERVE YOUR SEAT AT ONE OR BOTH OF OUR SEMINARS BY CALLING (561) 226-4279 OR E-MAIL ALAGO@REDGRAVEANDROSENTHAL.COM WE LOOK FORWARD TO SEEING YOU!

MR. THOMPSON WILL BE AVAILABLE FOR A Q&A SESSION FOLLOWING HIS PRESENTATION, SO COME WITH YOUR QUESTIONS!