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# THE Advisor

INFORMATION TO TRUST; EXPERTS TO RELY UPON

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## *Dynasty Trusts:*

# *Building & Maintaining Family Wealth for Generations*

### TRUST BASICS

Revocable Trust Agreements are common estate planning devices used to hold, administer and distribute assets. A Trust is established during the lifetime of the Grantor, and as the name suggests, it can be amended or revoked at will by the Grantor. In the event of the Grantor's incapacity, the Trust can prevent the need for a guardianship, and when used to transfer assets upon the death of the Grantor, a Trust offers numerous advantages in comparison to a Will. The most notable benefit of using a Trust is avoiding probate and thereby assuring a timely distribution of assets.

Recently, many clients have sought assistance regarding more sophisticated Trusts to transfer wealth to their children and grandchildren. Such descendants may already be responsible adults and the tendency by clients is simply to leave the inheritance outright to the beneficiary (as opposed to retaining the assets in a Trust). However, outright bequests are no longer advisable since Florida law has developed quite favorably regarding Trusts, and with proper planning these advantages can be extended to the beneficiaries as well.

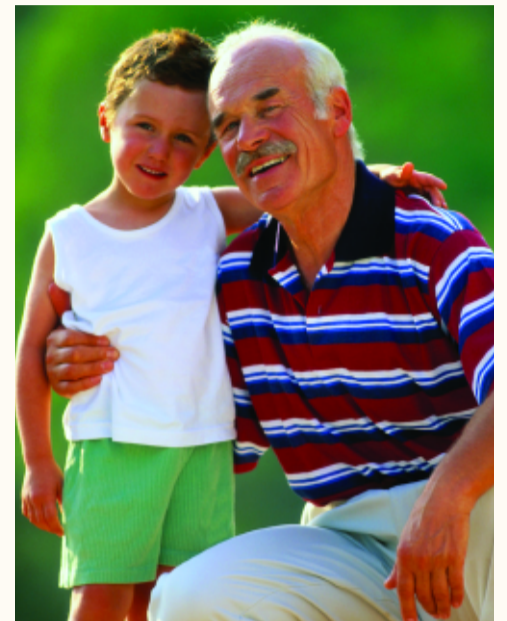
### DYNASTY TRUSTS

In lieu of an outright distribution, assets can be retained in the Trust for multiple generations after the lifetime of the Grantor. Such Trusts may be known as "Dynasty Trusts" or "Generation Skipping Transfer (GST) Trusts." Maintaining the Trust assets within the family has become a priority for many clients, and Florida law allows a Trust to continue for up to 360 years. Accordingly, multi-generational planning has become a sophisticated strategy to transfer wealth at death and preserve wealth within the family for many years.

A Dynasty Trust can be designed to take advantage of the GST tax exemption (\$2,000,000 per person in 2008) to shelter Trust funds from GST and estate tax. For example, a married couple may each leave up to \$2,000,000 in Trust for a child. At the child's death, the combined \$4,000,000, plus any appreciation, may pass to a grandchild without incurring any GST or estate tax. In contrast, if the same married couple left \$4,000,000 outright to their child and upon the child's death the \$4,000,000 passed to their grandchild, the \$4,000,000, plus any appreciation, would be included in the child's estate and would be subject to estate tax at the child's death and then again at the grandchild's death. By utilizing a Dynasty Trust, each spouse's GST tax exemption amount can be effectively sheltered from tax, and that amount, plus any appreciation, can accumulate GST and estate tax free for multiple generations.

Dynasty Trusts also increase the flexibility that the beneficiary has to design their own estate plan. The Trust can be structured to allow the beneficiary to utilize the assets for the benefit of their own family, and the beneficiary can determine whether to extend the Dynasty Trust for the benefit of future generations.

Likewise, there are advantages to leaving a beneficiary's inheritance in a Dynasty Trust, even if the beneficiary is already a responsible adult. Typically the Dynasty Trust is designed so that the Trustee has the discretion to expend the income and principal of the Trust for the health, education, maintenance and support of the beneficiary. While retaining the assets in Trust may seem to restrict the beneficiary's ability to use and manage the funds, if the beneficiary is also named as Trustee, then the beneficiary can essentially access the funds at will.



Moreover, to the extent that the funds remain in the Trust, Florida law provides certain asset protection benefits. Properly structured, a Dynasty Trust can protect the Trust assets from creditors, bankruptcy, divorce settlements and other liabilities. Therefore, with a Dynasty Trust, the inheritance actually becomes more valuable to the beneficiary.

### THE NEW FLORIDA TRUST CODE

The State of Florida approved a comprehensive revision of the Florida Trust Code that became effective July 1, 2007. While many changes were merely cosmetic, there were some significant new provisions that have impacted estate planning decisions. Ultimately, the revised Florida Trust Code should increase planning opportunities for clients, and the end result is that Trusts in general (and Dynasty Trusts, in particular) become more valuable and more effective estate planning devices.

To learn more about the specific benefits and planning options that Dynasty Trusts offer, please contact our office. If you are concerned that your estate may be subject to estate tax, or if you simply want to protect your beneficiaries from liability, Dynasty Trusts can build and maintain family wealth for generations.

## *How Effective is Your Living Will?*

A well-known and well-respected nursing home in Palm Beach County was sued and ultimately held liable for a failure to follow the provisions of a Living Will. The crux of the case was whether the nursing home should have called 911 when the resident stopped breathing. Even though the resident had a Living Will, the resident did not have a Do Not Resuscitate (DNR) order on file, and the medical director of the nursing home instructed the facility to call 911.

Many individuals who have executed a Living Will may believe that if they go into cardiac or respiratory arrest when they are in a terminal condition, they will be allowed to pass away in peace



"usually" is intentional. Everyone placing a loved one in a health care facility, be it an assisted living facility or a nursing home, needs to read the admissions agreement or have it

without the traumatic intervention of defibrillation or the use of drugs or CPR. However, a Living Will is not a DNR. The Living Will may state what interventions should be withheld or withdrawn under certain end of life conditions, but a DNR is the doctor's order authorizing cardiac or pulmonary resuscitation to be withheld. Usually, it is only with this order signed by the doctor and the patient (or his or her legal representative) that the health care facility will not intervene.

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## Arthur R. Redgrave Recognized in Florida Super Lawyers



The firm congratulates Arthur R. Redgrave on his inclusion – for a second consecutive year – in Florida Super Lawyers (2007 & 2008). This publication honors outstanding attorneys who have distinguished themselves as preeminent in their field of practice. The designation is based on an independent search to identify deserving candidates and a peer-evaluation process to select the recipients. Only five percent of the lawyers in Florida receive this recognition, and it is a testament to their professional achievement.

As many of our clients already know, Arthur was born and raised in Philadelphia, Pennsylvania, and relocated to Florida in 1981 to establish his estate planning practice in Boca Raton. Arthur built his reputation on a genuine dedication to his clients and he remains committed to personal client service. With over twenty-five years experience in estate planning, Arthur currently serves as chairman of the Estate Planning Group and works with individuals, families and business owners to build and maintain wealth by providing comprehensive counsel in estate planning, elder law, asset protection, tax planning, business planning and estate and trust administration.

Arthur is admitted to practice law in both Florida and Pennsylvania and is licensed to appear before all Florida state courts, the United States Tax Court, the United States Court of Appeals and the United States Supreme Court. He has been Board Certified in Wills, Trusts and Estates since 1992 and has received the highest rating (AV-rated) for legal ability and ethical standards from Martindale-Hubbell.

## New Associate Joins Firm



Ryland F. Mahathey has joined the firm as an associate in the Estate Planning and Business Planning Groups. He concentrates his practice in the areas of sophisticated estate planning, taxation, asset protection, charitable planning, tax-exempt organizations, and business exit planning.

Ryland earned his B.B.A. in Accounting from Stetson University and his M.B.A. in Finance from Florida Atlantic University. He graduated magna cum laude from Washburn University School of Law and was published in the Law Review. Ryland also received an LL.M. in Taxation from the University of Florida College of Law, where he was a

Graduate Editor of the Florida Tax Review.

Ryland's professional licenses and designations include Certified Public Accountant (Florida; Kentucky) and Certified Management Accountant. He served on the Federal Taxation Committee and Personal Financial Planning Committee for the Kentucky Society of Certified Public Accountants and on the Board of Directors of the Bluegrass Chapter of the Institute of Management Accountants. Ryland was also an Adjunct Professor of Taxation at Asbury College in Wilmore, Kentucky and has authored a number of articles on estate planning and tax matters.

Ryland is a Rotary International Paul Harris Fellow and served on the Board of Directors of the Rotary Club of Delray Beach, Sunrise Foundation. He is a member of the Florida and Kentucky Bar Associations, the Florida Institute of Certified Public Accountants, the Institute of Management Accountants, the Palm Beach County Bar Association and the South Palm Beach County Bar Association. Ryland also serves on the Charitable Organizations & Philanthropic Planning Committee of the Real Property and Trust Law Section of The Florida Bar and is a member of the Business Enterprise Institute, a national network of Exit Planning advisors. He has received a Silver Medal for pro bono service from the Palm Beach County Legal Aid Society and is a Florida Bar Foundation Fellow.

Ryland is licensed to appear before the United States Tax Court and has been admitted to practice in both Florida and Kentucky.

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## How Effective is Your Living Will?

reviewed by a professional. Some facilities clearly state that a DNR may not be enforced at all. According to one such facility, the reason for that provision is liability protection in case the cause of the cardiac or respiratory arrest is unrelated to the natural dying process.

Communication is the key to minimizing the risk of your wishes being ignored. First, a carefully drafted, specific Health Care Advance Directive should be signed. A Health Care Advance Directive is a comprehensive legal document that designates your health care surrogate and contains your Living Will and your DNR instructions. Second, the issue of long term care wishes must be discussed with the designated health care surrogate. Third, when indicated, the health care surrogate should make certain that a DNR has been signed. Fourth, but most important, lines of communication among the individual, the health care surrogate, the medical care providers and the long term care facility must always be open.

Finally, if any of your health care related documents were signed prior to 2004, it is very likely that such documents are not compliant with current law. In 2004, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) which changed the relationship between health care providers and their patients. Health care providers now face strict regulations regarding the disclosure of patient information and face stiff penalties for failing to comply. Accordingly, if your health care documents do not contain specific HIPAA authorizations, your designated health care surrogate will not be able to function as intended to make medical decisions on your behalf.

The firm strongly recommends that you execute a new, HIPAA-compliant Health Care Advance Directive to ensure that your health care documents are effective. Likewise, if there is any doubt whether your Living Will has the proper DNR provisions, the Elder Services Group at Redgrave & Rosenthal LLP is available to discuss these important issues with you.

## A Great Time for GRATs:

### Low Interest Rates Make Grantor Retained Annuity Trusts an Exciting Planning Option

The primary benefit of a Grantor Retained Annuity Trust (GRAT) is to “freeze” the value of an asset (typically closely-held business interests, securities, or real estate) so that the future appreciation on such property will pass estate tax-free to the Grantor's beneficiaries. This strategy can significantly reduce future estate tax liability.

The IRC Section 7520 rate, which is published monthly by the IRS, is used to determine the present value of an annuity, life estate, or remainder interest. A GRAT is particularly effective when the Section 7520 rate applicable to the GRAT is low. The September 2008 Section 7520 rate applicable to GRATs is approximately 4.1%. If the investment performance of property contributed to the GRAT exceeds the Section 7520 rate over the annuity term, then the GRAT will be successful and the remainder in trust at the expiration of the annuity term is distributed estate tax-free to the trust beneficiaries.

#### HOW THE GRAT WORKS

In a GRAT, the grantor contributes property to a trust and retains the right to be paid an annuity for a specified term of years. The required annuity payment is based on the afore mentioned Section 7520 interest rate. Due to the retained annuity, the GRAT can be structured so there is no gift, or a very small gift, for gift tax purposes. This is referred to as a “zeroed-out GRAT”. The amount of the taxable gift is calculated by subtracting the value of the annuity interest retained by the grantor, which is not a taxable gift, from the value of the property transferred to the GRAT. At the end of the annuity term, the remainder interest, if any, is distributed to the trust beneficiaries.

For example, a \$1,000,000 zeroed-out GRAT created based on the September 2008 Section 7520 rate of 4.1% will pay an annuity of \$205,000 to the Grantor for five years. If the trust earns 4.1% or less each year, the Grantor will receive the entire trust property and there will be nothing left after five years for the remainder beneficiaries. Although the GRAT just described will not be successful, the Grantor will be in the same position as if the GRAT was never created. If, however, the trust outperforms the IRS rate by earning a 10% annual return, the Grantor will receive the annuity payments and there will also be \$295,000 distributed to the remainder beneficiaries free of estate and gift tax after the trust term ends. If the trust return is 15% the “tax-free” remainder would be \$545,000.

#### ADVANTAGES OF GRAT PLANNING

- The appreciation and future income on property distributed to remainder beneficiaries of a GRAT is removed from the Grantor's taxable estate thereby reducing future federal estate tax.
- A zeroed-out GRAT can be structured so there is little or no taxable gift upon creation.
- A GRAT generates cash flow for the grantor in the form of an annuity.
- Several short-term GRATs can be used in conjunction with one another, each holding a different type of asset in an effort to isolate individual assets that could produce a high return to be distributed to beneficiaries.

To learn more about GRATs and other advanced planning techniques designed to limit estate tax liability, please contact our office to arrange a consultation.