

To: Members of The Family Protector Program™
From: Attorney Steve Riley & The Strategic Counsel Team
Date: Nov. 16, 2009
Re: Proposed Changes in Your Plan for 2010

I hope this letter finds you well and enjoying the Holiday Season. Naturally, I look forward to seeing each of you at your Enhancement Workshop™ in 2010.

I realize this is a long letter, and I certainly understand that you are busy, but I encourage you to read its entire contents. The information we're sharing with you can help eliminate confusion and time throughout the year. My goal is to make this as easy as possible for you, without increasing your time or costs.

The attached documents include legal updates, changes to your Trusts, and other important information.

Being Prepared for 2010

Our theme for 2009 was "Navigating." Between the 2008 Florida Trust Code revisions and our anticipation of new tax laws in 2010, we took the opportunity of "*calm seas*" to do a thorough review of your plan with you so you could reconsider the personal decisions you made and adjust them if necessary.

After another year of a tough economy, our goal for 2010 is to:

1. Provide you analysis of changes *before* they become effective so you can be proactive
2. Explain how those changes impact *you and your family*, and
3. Help you adapt to these changes *quickly*

Through the Enhancement Workshop™ process and with regular communication from our firm, we will help you navigate the "*rough seas*" of 2010 with the least amount of negative impact on you and your loved ones. We know these are confusing times, but please know that we're here to answer your questions. Don't hesitate to call on us or send an email with your concerns.

Regards,

Steven P. Riley

PRICING FOR 2010

We realize it has been a tough year for everyone. We feel the strains of a tough economy, as well. Consequently I am pleased to announce that we are not increasing our membership price for this year.

We will work through whatever we need to on our own end to help protect your family in this time of change.

ENHANCEMENT PROCESS FOR 2010

Our new format for the Enhancement Workshop has been a huge hit. This year, we plan to keep it the same. You will meet with an attorney to review your plan and your Asset Integration.

LEGAL UPDATES for 2010

The Federal Estate Tax

As most of you know, in 2001 the Economic Growth and Tax Reconciliation Act created an estate tax law which varied the exemption and state tax rates from 2001 up to Dec. 1, 2009. As of the date of this letter, the present exemption (coupon) is \$3.5 million per person with the highest tax bracket at 45 percent. Based the 2001 Act, on Jan. 1, 2010 the Federal Estate Tax is said to be repealed (suspended) for one year. During that year, if any person dies there is no estate tax; however, there will also be no step-up basis for income tax purposes.

Please note, however, if a person survives Jan. 1, 2011, the estate tax returns and the exemption will only be \$1 million per person and the highest tax rates will be 55 percent. Clearly in 2001 no one expected the law to remain in effect as the decade ended. But, through a number of twists and turns in the political arena, here we are in November 2009 with no permanent estate tax law in effect and the prospect of a “now you see it, now you don’t” estate tax is still in effect.

What can we expect? During the course of the year, we’ve been in contact with Washington, D.C., and various lobbyists have made various proposals that are presently before Congress. Unfortunately, Sen. Matt Baccus is the chairman of the finance committee in the Senate and is essentially in charge of and driving ending estate tax reform. However, Baccus is now in the middle of the health insurance debate and is one of the three key figures in designing and negotiating the largest piece of healthcare legislation since the Great Depression. Senator Baccus was unsure if there would be

enough time for it to be devoted to the estate tax in light of the current political climate and the contentious debate regarding the healthcare bill.

Although we do not have a crystal ball, and we have had indications that there will be a debate over the next 60 days regarding some estate tax legislation. It appears that the current exemption of \$3.5 million with the current highest tax rate of 45 percent will simply be extended for one year with the major debate regarding estate planning coming in the next year.

This will probably be passed in 2010 and applied retroactively! What Congress will do is anyone's guess, but we will keep you informed and we encourage you to be prepared to make any and all necessary changes to your estate plan as part of our Family Protector Program™. If there is one thing I have learned over the last two decades in practicing law is that when it comes to legislation, expect the unexpected.

“Put Back Your IRA Money” (Changes in Distributions for IRAs, 401Ks & Other Qualified Retirement Plans)

Due to the economic downturn in late 2008, Congress provided relief with regards to required minimum distributions from qualified retirement plans for 2009. The theory was that since many retirement planning portfolios had decreased significantly it would be a hardship if retirees (people over 70 ½) would be forced to withdraw money from their retirement plans, be taxed on the depressed value and lose the opportunity to have the monies that were withdrawn “recover” tax deferred when, and if, the economy recovered.

As most of you know, the stock market is up since the beginning of the year and any persons who have withdrawn money from their IRAs would have lost the benefit of keeping money in the retirement account and getting the tax deferred re-growth on monies that would have otherwise been distributed according to the required minimum distribution laws.

What Congress did was suspend the required minimum distributions from retirement plans for calendar year 2009. What Congress has found, however, is that the law that took effect in late 2009 was not well communicated as hoped and many retirees were on automatic withdrawals from their retirement accounts to satisfy the required minimum distributions.

As another form of relief this year, the IRS is now allowing those persons who had mistakenly taken out required minimum distributions during 2009 to roll those distributions back into their IRAs to avoid having to pay tax on the amounts withdrawn in order to get the money back into their retirement accounts!

For those of you who fit that category, please check with your accountants and/or our office as to the best way to facilitate this re-depositing of the funds back into your IRA.

2009 Legislative Changes to the Florida Probate Code

The Florida Legislature has made a number of tweaks, some major, mostly minor, to the Florida Probate Code in 2009. The statute went into effect on July 1, 2009.

First, the *minor* changes:

1. In Section 731.201, the term "Incompetent" has been changed to "Incapacitated" (and the definition revised) and the term "Minor" has been added. Additionally, whenever "incompetent" previously appeared in the Code, that term has been changed to incapacitated.
2. Section 732.108 had been clarified to provide that [Chapter 95](#) concerning adverse possession and the limitation of the claims of certain heirs in an adverse possession case, is not applicable with regards to determining whether a child born out of wedlock can inherit from its father or father's relatives.
3. Section 735.203 is amended to provide that when filing a Petition for Summary Administration (which is an abbreviated probate process for estates that are worth less than \$75,000), if the Trustee of a Trust that is a beneficiary of the estate signs on to the Petition, then each Qualified Beneficiary of the Trust shall be served formal notice of the petition, unless joinder or consent is obtained from the Beneficiary. This is actually an important provision. Some courts, before issuing an order of summary administration were requiring the consent of all qualified beneficiaries, and some were not. This amendment clarifies that if the Trustee/Petitioner is unable to obtain all of the Qualified Beneficiaries of the Trust, then it may serve them Formal Notice instead.
4. Section 736.0802 is amended to impose stricter rules on what type of investments a Trustee may make, and whose consent it must receive before doing so. (I am in the middle of deciding what to do with this change; more on this in 2010.)

One of the *major* changes to Florida probate law concerns the Elective Share rules. These rules provide that if you are married, you are not allowed to disinherit your spouse. If you leave your spouse out of your Will and give everything to your children or your mistress, or, if you leave your husband *something* but he is unhappy with it, then in Florida the surviving spouse has the right to take what's known as an *elective share*.

When people first hear about this they are often outraged. "It's my money and I should be able to leave it to whoever I want to!" they say. But the legislature decided that the state has a fundamental interest in protecting poor old widows (and in rarer cases widowers) from being kicked out on the street by the vengeful children of their recently deceased spouse.

The amount of the elective share is 30 percent. Not too long ago it was fairly easy for estate planners to avoid the elective share by certain transfers, life insurance purchases, and pay on death accounts, so that the deceased spouse did not own any property that would be subject to the elective estate upon their death.

Then, the Florida legislature changed the rules to create what is known as the “elective estate.” The elective estate includes the decedent's probate estate, interest in transfer on death accounts, the cash surrender value of his life insurance, and even property given away by him during the one year period preceding his death.

Once the elective share is determined, by adding up all of the property comprising the elective estate (and subtracting any allowable deductions), the surviving spouse is entitled to 30 percent of that. But the next question is how is that paid?

If the elective estate is comprised of life insurance going to Son **A** and an IRA account where daughter **B** is the beneficiary, and property given to **C** before the decedent died, how is the elective share satisfied?

The Legislature substantially amended Section 732.2075, “Sources from which elective share payable; abatement” by providing that if certain property passing to the surviving spouse automatically does not satisfy the elective share, then the unsatisfied balance shall be “allocated entirely to one class of direct recipients of the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next class of direct recipients,” in a certain order, until the elective share is satisfied.

CHANGES TO YOUR DURABLE POWER OF ATTORNEY

Each of you have a durable financial power of attorney (DPOA). This allows the person you appoint to make decisions for you should you become incapacitated. I am making changes this year to your DPOA to address key additional powers. These powers include:

1. Ability to create an irrevocable Qualified Income Trust (QIT) to qualify someone who has too much income to be eligible for Medicaid.
2. Ability to enter into any form of Medicaid qualifying strategy. (These will be enumerated in your DPOA.)

In short, we are dealing with these issues more often. Based on my experiences, I want to improve your existing DPOA.

THE PROTECTED FAMILY TRUST™

For many clients, the downshift in the economy has decreased the values of their estates. Their property, investments and other assets are worth less. At the same time they currently face, or soon will face, the high costs of nursing home care for themselves or a loved one.

If these clients do not have long-term care insurance, they must pay for care either out of pocket or somehow qualify for Medicaid benefits without losing their remaining assets.

For these clients, we're encouraging them to consider forming a Protected Family Trust™, which is an irrevocable trust designed to last your lifetime and the lifetime of your children and grandchildren. In some cases, it is perpetual.

The strategy works as follows:

- You create the Trust; you can serve as the Trustee during your lifetime.
- You keep all the income during your lifetime.
- After certain time periods, the assets in the Trust will be protected from Medicaid look-back periods (60 months). It will also protect you from creditors after look back periods pass as it relates to fraudulent transfer and fraudulent conversions (48 months typically).
- You can access the principal if you need it through a “back door” pre built into your Protected Family Trust™.
- Your Trustee will be in charge of the Trust.
- This will include helping and advising transferring assets into the trust and no additional charge.
- Your Beneficiaries will receive their inheritance through Lifetime Protective Trusts™.

We will release a video in 2010 to further explain this strategy. Because this issue is so important, I urge you to call our office to schedule a consultation with me so that we can review whether this is something you should implement.

UPCOMING VIDEO RELEASES

In 2009, we released a copy of our [Trusted Trustee video](#) for viewing on our blog, TheProtectionZone.com.

Many clients told us they were grateful that we posted the video because they could share it with their trustees, some of whom lived far away and could not attend our in-house workshop on the same subject.

Next year, we plan to release additional videos to our clients online and hand out copies at Enhancement Workshops, including a recording of a workshop we hosted in September titled “What if he dies? – A Woman’s Perspective.”

The event produced a lot of good tips and a healthy discussion for the audience. The panelists were three long-time clients who were widowed and graciously shared their experiences and insights.

We'll also share new videos on:

- suggested planning strategies to protect your family from the high costs of nursing home care, such as the Protected Family Trust™
- significant 2010 legal changes that might affect your estate planning
- the new Asset Integration™ worksheet our firm uses
- registering for using the MyPersonalWishes.com website
- maximizing your family's use of the Family Protector Program™ binder that contains your planning documents.

If you've got requests for other videos you'd like to see us produce for you, let us know.

UPDATE YOUR CONTACT INFORMATION

Has your email address changed? Do we have your current cell phone number?

Should we be sending legal notices and documents to a particular spouse? *(Let's face it guys; sometimes our wives are simply more organized)*

It's important that we be able to reach you with important information regarding your planning right away. To do that, we need to know your most current information. If you're not sure that we have it, call or email us so that we can update your contact file.

PUBLIC SERVICE NOTICES

Do Not Resuscitate Order (DNRO)– Sign It Now If You Want

This is an issue that comes up from time to time with some of our clients. A DNRO advises medical personnel that you do not wish life-saving CPR to be administered if you are found unresponsive. If you desire, you can sign one at your next Enhancement Workshop.