

Joseph C. Kempe

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Jupiter



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*The hiring of a lawyer
is an important decision that should not
be based solely upon advertisements.
Before you select an attorney,
ask them to send you free written information
about their qualifications and experience.*

2012 CRYSTAL BALL SAYS DEJA VU

**-IMPACT OF POLITICAL PROCESS ON TAX LAW LIKELY
MUCH LIKE 2009 -**

The impact of politics on our tax laws in 2012 will likely feel much like 2009, but within the context of one of the more important Presidential elections of our times. The Democrats have proposed reducing the estate tax exemptions to a pre-2001 level of
see Crystal Ball on page 11

DRUG TESTING WITHIN THE ESTATE PLAN

-NOTED INCREASE IN USE BY CLIENTS TO IMPROVE THEIR FAMILIES-

Family dysfunction can be costly and may lead to expensive litigation when senior family members, who have maintained control of the family dynamics, either die or become incapacitated. Drug
see Drug Testing Heirs on page 13

ELDER ABUSE AND ABUSE OF VULNERABLE ADULTS

-IT CAN COME IN A VARIETY OF SHADES AND COLORS-

Many people view the subject of elder abuse as a matter of physical abuse and a rare occurrence. The subject, however, is far broader and more common. Elder abuse can involve financial exploitation, emotional distress, or negligent care. For example,
see ELDER ABUSE on page 11

NEW POWER OF ATTORNEY LAW EFFECTIVE

- MOST DURABLE POWERS OF ATTORNEY SHOULD BE REVIEWED -

Durable powers of attorney are a core part of a basic or Phase 1 estate plan. Their place within a plan is much like a will, as a backup to a revocable living trust- which is the centerpiece of an estate plan and generally designed to avoid probate and

see NEW POWER OF ATTORNEY LAW... on page 6

STUART OFFICE CELEBRATES 25 YEARS

-NEW OFFICE AND EXPANSION ON EAST OCEAN BOULEVARD-



941 NORTH HIGHWAY A1A, JUPITER, FLORIDA 33477 561-747-7300 (MAIN OFFICE)

1101 E. OCEAN BOULEVARD, STUART, FLORIDA 34994 772-223-0700

764 SATURN STREET, JUPITER, FLORIDA 33477 (ADMINISTRATIVE OFFICES)

VERO BEACH, FLORIDA 772-562-4022



JOSEPH C. KEMPE, ESQ.

Chair, Florida Bar Tax Section,
Estate and Gift Tax Committee (1993-1997)

Member, Florida Bar, Tax Law Certification
Committee
(1993-1999)

ABA Probate and Trust Section
Vice Chair, Family Businesses
(1995-2000)

Practicing Law Institute
Faculty Member (1993-1997)

Board Certified, Tax Law
Board Certified, Wills, Trusts, Estates
(1988-Present)

Martindale-Hubbell
Register of Preeminent Lawyers
in Tax Law and Estate Planning
(1989-Present)

Post Doctorate Degree in Tax Law,
University of Miami (1983)

St. Thomas University School of Law
Postdoctorate Studies in International
and Offshore Tax Planning
Summa Cum Laude
(2001-2002)

AV Rated
(1989-Present)

National Author & Lecturer
Tax Planning
Estate Freezes
Family Partnerships
Estate and Trust Administration
Estate Tax Reduction
Estates and Trusts
Business Planning
Securities Laws

B.S. in Real Estate Finance and Appraisal
(1979)

Joseph C. Kempe

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

JUPITER STUART VERO BEACH

HEALTH AND WEALTH: POLITICS, RECESSION, AND MARKET BEHAVIOR

-SHAPING OUR OFFICE AND SERVICES TO MEET CLIENT NEEDS -

Periodically these Client Update newsletters have mentioned we have grown, expanded, or made a change to meet the needs of our clients and their families. What a difference a letter – “W” or “H” -- makes in our society today. Health and wealth are independent matters, but boy do they have an impact on one another. As you read through this Update we hope you see how our services have become more comprehensive and our depth of knowledge has been increased and shaped around the needs of our clients. Needs that may not be required by you today, but hopefully you find comfort that we are prepared to meet them should they become material to you in your future.

Laws and markets are more volatile than ever. Significant change is occurring more quickly, and preparation in 2012 for change will likely benefit those with serious estate plans. The Obama Administration and Democratic party want to increase taxes, by reducing the estate, gift, and generation skipping tax exemptions. Presently set at \$5 million each, these exemptions are under threat of being significantly reduced. Furthermore, elimination of traditional phase 2 and 3 estate tax reduction tools are proposed. Clients are advised to consider methods of preserving their exemptions and locking-in benefits prior to the effective date of reform, which could be anytime in 2012. Many clients have already reacted and have done so.

Financial markets too are more volatile than ever. Many quality common stocks, with solid fundamentals and prospects for growth, get thrown out with the bath water of bear markets. The economics of market behavior, as a fairly new academic science of its own, causes individual investment selection to be more important in times of high market volatility, where momentum investing often fails. In times like this the wisdom of passive investment styles becomes clouded and questioned,

particularly because the financial industry has created so many options. Nevertheless, bills must be paid while time horizons for investment performance to materialize may get longer. Investment policies should be revisited and risk understood.

After 30 years of practicing estate planning and growing to meet the needs of clients and their families, we have all aged. With that age has come health care issues and concerns. Growing government regulation has not made coping with this increasingly complicated area of law and our society easy. The older we get, the more expensive and necessary becomes proper health care and the more important are the means to pay for that care. Our Health Care and Bioethics Department has been created and positioned to help confront the health care issues facing our clients. Like with the story of Mr. and Mrs. Z on the top of page 4, our involvement and help has been gratifying and creating tears of happiness says to us, we are on the right track.

God bless and we wish you well in 2012!



OUR STAFF

Joseph C. Kempe

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ATTORNEYS

JOHN L. AVERY, P.A.

LISE L. HUDSON, PLLC⁶

JOSEPH C. KEMPE, ESQ.^{1,2,3}

MARNIE RITCHIE PONCY, P.A.⁵

ASHLEY M. SUNDAR, P.A.

DAVID C. TASSELL, P.A.

CHARLES R. L. WHITE, CHARTERED⁴

¹LL.M. IN TAX LAW

²BOARD CERTIFIED IN TAX LAW

³BOARD CERTIFIED IN WILLS, TRUSTS, AND ESTATES

⁴ALSO ADMITTED IN N.C. AND N.Y.

⁵REGISTERED NURSE

⁶OF COUNSEL

ANALYSTS AND TAX ACCOUNTANTS

DANIEL ALVARADO, CPA

ROMITA ASRANI, CPA

AARON BRASK, PhD

CHRIS G. BOURDEAU, CPA

FREEMAN DAIL, CPA

AARON M. FLOOD

MAUREEN LLOYD

PATRICK MANGAN, CPA

ALICE B. SALLMAN, CPA

LEGAL ASSISTANTS

DAWN CHADWICK

LOUISE M. FISHER

REGINA MAGLIO

ALISON OVERTON

MELISSA PEARCE

KIMBERLY V. TASSELL

CHRISTY L. WATERBURY

DAWN L. WIGGINS

JEAN M. WOODARD

ADMINISTRATION

ESTHER GARNER

TAMI G. KEMPE

MARGARET MULLEN

Mr. and Mrs. P have a sizeable estate and will have exposure to estate tax no matter what version of proposed estate tax reform is enacted. They have homes in Florida and New York. They desired to confront the prospect for estate and gift tax changes in 2012 while preserving their own financial security. They did not want to gift large amounts to children or grandchildren at this time, and desired to retain control of their entire estate. What we explained to them was that they were entering the realm of Phase 2 and 3 estate planning, where statutory or court approved techniques are available as tools to reduce their estate tax exposure. They didn't know that they already entered this realm, since they owned virtually all of a real estate family partnership that they created many years ago but which wasn't really being properly utilized.

We explained to Mr. and Mrs. P that tools were available, and some were

"give me's" that may be eliminated with reform. After an explanation of their options, Mr. and Mrs. P chose to utilize three techniques. Qualified personal residence trusts were chosen as the method of removing the value of their homes from their taxable estate, while preserving the ability to live in them without control shifting to their children. They particularly liked the ability to use this technique given the depressed values of their homes and because it would also eliminate imposition of death taxes by New York. The continued qualification of their Florida home for homestead status also convinced them that this really was a "give me." They also decided to invigorate their family partnership and to use it as a vehicle for management of family wealth. They particularly liked the idea that it could be used to hold a family meeting to talk about family values and the purpose behind their family wealth and that the government

see CHANGE IN 2012 on page 14

FIXING ESTATE PLANS THAT ARE NOT WHAT YOU WANT

-MR. AND MRS. Z'S REVELATION-

Mr. and Mrs. Z were reluctant to obtain a second opinion. Nevertheless, reviews and initial consultations were offered by us without cost and they had been referred by a happy client. They had existing wills and revocable trusts. They also had an older irrevocable trust, that was created on the death of Mrs. Z's father. Mr. and Mrs. Z decided to visit and we spoke about their affairs, made copies of their documents, and scheduled a complimentary follow-up meeting in a week so that we had sufficient time to review their present estate planning documents. They did not have a taxable estate, considering the present \$5 million exemption, but their estate remained significant. They had a son and a daughter, wanted them to control their inheritance, desired that their wealth pass to their grandchildren after the death of their son and daughter, and desired to protect what their heirs received so that it accomplished their objectives.

After review and during our next meeting, we advised Mr. and Mrs. Z that their existing estate planning documents failed to protect what passed by them to each other, and to their children and grandchildren, from those notorious "four unfriendly hands" – (1) the hands of in-laws should there be a divorce, (2) the hands of in-laws if they were not satisfied with provisions for them in a will upon the death of a child, (3) the third party liability risk of someone who may sue a family member and win, and (4) the hand of federal and state governments that impose death taxes on not only our wealth, but that same wealth as it passes and is added to the estates of our children and grandchildren. Not only did their existing documents fail to achieve any of these objectives, but so did the old irrevocable trust established by Mrs. Z's father. We explained to them that most people don't realize

see Fixing Plans page 14

Plan of Care

A Plan of Care is a holistic appraisal of a person's particular situation taking into account current health, physical environment, particular needs, working diagnosis (if any), and anticipated future. It can and often does involve both legal and medical issues. It should ask three questions: where are you now, where are you going, and how this should be accomplished. Obviously, as the goals of care change, the method of approach also changes. The most important feature in a Plan of Care is maximizing and maintaining a person's quality of life for as long as possible. When that goal is no longer viable, the goal changes to helping the person and their family through the dying process in such a way that the person's dignity and pain are adequately addressed and the family unit is supported.



MARNIE RITCHIE PONCY, ESQ.
REGISTERED NURSE
Health Care Advocacy
Bioethics Law
Death With Dignity

Joseph C. Kempe

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

CLIENTS WITH MEANS AND THE UNANTICIPATED HEALTH CARE GAP

- HELPING MR. Z CARE FOR MRS. Z IN AN IMPERFECT HEALTH CARE WORLD -

Mrs. Z had a stroke from which it appeared she would not recover. Mr. Z entered her into hospice on discharge from the hospital. This hospice care was paid by Medicare. Happily, Mrs. Z stabilized. As a result the hospice facility in question said she was no longer eligible because she was no longer dying. On our visit, it was clear she was trying to improve. This circumstance was lost within the maze and haze of the interplay between law and medicine in our society today. Where should she stay? What assistance was available to her? Who should pay the costs? Can she be assisted to regain a semblance of her prior life with Mr. Z?

Mr. Z thought her decline was at hand. He asked for our assistance because he was confused. On our visit with him to evaluate the circumstances happy tears rolled down his face. We were met, to our and Mr. Z's surprise, with her sitting up in a chair and conversing, much like her old self. From Mr. Z, "Carol, you are awake." "Hello and how are you Tom."

From us, "What would you like Mrs. Z?" "Right now, I would like some juice!" After big gulps, and a suggestion that she slow those, we turned to Mr. Z's quandary- everyone said they couldn't help her anymore and that he had to pay for her continued custodial care.....

Minutes later that evaluation changed. Directions by us (Mr. and Mrs. Z's lawyer) to her health care providers explained that their health care assumptions and legal conclusions were incorrect. She was more than stable, she was improving and qualified for Medicare provided rehabilitative services. Mr. Z is 90 years old and, perhaps more important than the money, needed an understanding of how to obtain the help "he" needed to care for Mrs. Z. He needed a Plan of Care (see left margin). Doctors, nurses, and assistants would now be provided in caring facilities or at their home and they would be able to regain some quality time together, paid for a while by Medicare.



HEALTH CARE MANAGEMENT OVERSIGHT AND REPORTING

-MONITORING LADY C'S PLAN OF CARE-

Mrs. C is a delightful, little, very old lady with Alzheimer's disease who lives in a Sonata Unit in an Assisted Living Facility. (A "Sonata Unit" is a special care unit in certain facilities especially designed for the demented elderly.) She is a widow with four adult children scattered around the country. She has lived in Sonata for several years; it has become "home."

The son, who holds the Durable Power of Attorney and Health Care Surrogate, made the decision as to where his Mom would live and participated in general treatment decisions. He asked our office for help in checking on her care. After review of Mrs. C's circumstances, it became evident that her attending physician had not issued a Do Not Resuscitate Order. As required by Florida law, this order must be signed by her physician and placed on her chart. Unscheduled monthly visits with Mrs. C and follow-up conversations with the Unit Director, were established to augment the son's own check-ups. Over

time, Mrs. C declined and a change of condition was noted. The son flew down for a Care Plan meeting with his mother, staff, and us. A decision was made to utilize Hospice to provide Mrs. C with the maximum amount of support services while protecting her from more aggressive interventions, which would not change the course of her disease. Examples of such protection are (1) keeping her in Sonata rather than a transfer to an acute care hospital for the treatment of pneumonia and (2) providing for increased nurse's aide services in her new home, rather than allowing transfer to a skilled nursing facility (nursing home). Our office was able to help with the necessary consults to support such decisions, as legally, medically, and ethically required.

In the course of this journey for both Mrs. C and her family, the issue of funeral planning has been approached. Although Mrs. C never put her wishes for cremation in writing, she expressed

see Mrs. C on page 6

Many Have Gotten Worse!

Bank	Rating
Bank Atlantic	D-
Bank of America	D
BankUnited	C-
Citicorp Trust Bank	D+
Deutsche Bank and Trust	B+
Enterprise National Bank	C-
First Citizens Bank & Trust	B-
Grand Bank and Trust	E-
Gulfstream Business Bank	C
Integrity Bank	Failed
Ironstone Bank ^{1/}	Acquired
JP Morgan TC NA	D-
Lydian Private Bank ^{2/}	Acquired
Northern Trust NA	B+
Riverside NB of Fla ^{3/}	Acquired
Sabadell United Bank	C-
Seacoast NB	D
Stonegate Bank	B-
Sun American Bank ^{4/}	Acquired
TD Bank NA	C
Wachovia Bank NA ^{5/}	Acquired
Wells Fargo Bank NA	D
Wilmington Trust Co.	C+

- 1/ Acquired by First Citizens Bank
2/ Acquired by Sabadell Bank
3/ Acquired by TD Bank Bank
4/ Acquired by First-Citizens Bank
5/ Acquired by Wells Fargo Bank

Source: Weiss Ratings/The Street.com as of October, 2011. Please note that other rating organizations may have higher or lower ratings for these institutions and that these ratings may have changed.



AARON M. FLOOD
ECONOMIC ANALYST
ADVENT AXYS ANALYST

JP MORGAN AND BARCLAYS CAPITAL STRATEGIST JOINS WEALTH MANAGEMENT DEPARTMENT

Joseph C. Kempe

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

AARON BRASK, PhD

JP MORGAN AND BARCLAYS CAPITAL ANALYST
JOINS THE FIRM



In our continuing effort to enhance our ability to comprehensively represent our clients in a more volatile financial world, we are pleased to announce that Aaron Brask, PhD, has joined the Firm. Aaron is a member of our Wealth Management Department, where he will assist with our representation of Firm clients in their relationships with investment advisors and money managers. The Firm is always seeking to enhance its family office and wealth management services and believes that Aaron will further our capabilities to monitor our clients' financial affairs as attorney, free of conflicts of interest. The Firm is not a registered investment advisor or broker-dealer, but serves solely as attorney representing its clients in their relationships with the outside financial world.

Aaron has worked in top tier investment banks and has been published or quoted in many major newspapers, magazines, and financial journals, including Risk Magazine, The Wall Street Journal, Financial Times, and Barron's. He attended the University of Florida where he earned a PhD in mathematical finance (1999), a Masters in applied mathematics (1996), and a BS in mathematics and statistics with honors (1995).

After completing his PhD, Aaron joined JP Morgan in New York (2000), working in their highly regarded risk management department. He soon transferred to London to work in research so that he could better leverage his previous experiences. There he designed JP Morgan's first quantitative equity investment product. After helping JP Morgan build their initial equity derivatives research product in Europe, he was recruited by Barclays Capital to create and run a global research platform for their equity business (2004). He became Barclays' Global Head of Equity Derivatives and Quantitative Equity Research.

While building Barclays Capital's global research platform, Aaron developed a personal interest in investing and became fascinated with many of the great investors of our time (eg, Warren Buffett, Peter Lynch, Sir John Templeton, etc). He noticed that most of them relied on a common strategy: value investing. Aaron enrolled in the London Business School's executive program for financial accounting and analysis to better his own knowledge in this area. He then started another research team at Barclays Capital focused on the development of value based investment strategies. Recognizing the potential to offer these services directly to clients on a competitive fee basis, Aaron decided to pursue this effort and established Aaron Brask Capital, LLC (2010). Aaron Brask Capital is not affiliated with this Firm, or any of its attorneys or employees, and none of them have any ownership interest or fee sharing arrangements with Aaron Brask Capital, LLC. Aaron works individually with the Firm as an analyst and consultant whose expertise is utilized by the Firm's attorneys in our representation of our clients.

Joseph C. Kempe

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

JUPITER STUART VERO BEACH



JOSEPH C. KEMPE, P.A.

FATCA > FBAR

- Time to Review Your Foreign Connections -

Over the last two years the US government has mandated that US taxpayers (citizens or otherwise) disclose their foreign financial accounts or suffer severe penalty.

Various amnesty programs have been offered to encourage reporting without penalty. That's FBAR. In 2012, however, the full scope of the FATCA law of 2010 will mandate disclosure of much broader classifications of assets. For example, if you have a foreign money manager or vacation home in another country, such as the Bahamas, Costa Rica, or Canada (often owned through an entity), FATCA will mandate prescribed disclosure in 2012. Review your circumstances!



ROMITA ASRANI, CPA
TAX ACCOUNTANT
Tax Planning
Wealth Management

Joseph C. Kempe

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

NEW POWER OF ATTORNEY LAW

(continued from cover)

guardianship. A durable power of attorney ("DPOA") is often used to fix estate planning deficiencies or to continue gifting or more advanced Phase 2 or 3 estate planning after a senior family member is unable to do so as a result of incapacity. A more basic purpose of a DPOA is to assist with avoidance of guardianship proceedings and to allow certain ordinary and necessary routine matters of life to carry on without the need for appointment of a court ordered guardian. October 1, 2011, Florida law concerning powers of attorney (including those that are durable) changed and most durable or nondurable powers of attorney should be changed. (Note: durable means matters undertaken by the agent are not void if the person appointing them (the "principal") is eventually adjudicated to have been incapacitated.)

The formalities associated with creation of a power of attorney; who may serve as agent and be compensated; the agent's duties, authority, and liability exposure; the manner in which a third party must reject an agent's appointment; and the liability of a third-party, such as a financial institution, for rejecting and refusing to honor the direction of an agent, have all been changed by this new legislation. Historically, having a financial institution respect even a close family member's appointment could be time consuming, often depending upon the familiarity of and relationships with representatives of the institution. Weeks or months of time could be lost convincing a financial institution, through their legal department, to honor the appointment and requested action. After October 1, 2011, the financial institution

has four business days to accept or reject the appointment and request of a DPOA agent, except in unusual circumstances.

A common deficiency in DPOAs is a failure to authorize certain actions needed to continue or perfect estate planning, or a failure to do so in a proper way. Continuing gifts, specifying the type of gifts, and how gifts can be made; implementing or continuing additional tax reduction planning; creating or modifying trusts; issuing "cummey notices" as they relate to gift tax returns and compliance; permitting a surviving spouse to disclaim; and creation or change of beneficiary designations are examples of provisions that are often important to have in DPOAs, but are often omitted or improperly drafted. Under the new rules, these provisions may be contained in DPOAs but must be included in particular ways, that require the principal to sign or initial next to the grant of power or authority.

DPOAs are secondary to the revocable living trust in the estate plan, but can be important. Their importance is dictated by their common use in time of vulnerability, often at a time where death of the principal is imminent and timely use is needed to reduce taxes, avoid the costs of probate or guardianship, or to benefit the principal or their family in any number of possible ways. The amount of effort that has gone into this new legislation and the scope of new laws highlight the importance of DPOAs and a recognition of their use in unique circumstances that can be important to families.



Mrs. C.

(CONTINUED FROM PAGE 4)

such preference to some of her children. Since she is no longer able to communicate that decision, it must be made by others. We have placed this decision before the family in a timely fashion, not in the immediacy of needing to decide at the very time of death. They are in the process of making that decision.

As of this writing, Mrs. C is, although declining, continuing to be cared for by people she has come to know and trust, and the family, even as dispersed as they are, is coming together to take part in protecting their mom and her wishes.



LETTER OF INTENT TO MY TRUST PROTECTOR

- USE OF TRUST PROTECTORS HISTORICAL AND ON THE RISE -

Trust Protectors are incorporated into trusts to protect the trust, protect the beneficiaries, and to secure the wishes of the creator of the trust. Their purpose is to avoid conflict, while preserving the intent of the trust creator. Florida recently made their use statutory, though their prevalence emanates from English law.

TELEPHONE AND WEB CONFERENCES

- PLEASE SEND US YOUR
EMAIL ADDRESS FOR
FUTURE EVENTS -

In order to obtain periodic notices and invitations to our special lectures and forums, and more timely updates, please email us at

joekempe@jckempe.com.

We will then send you links to our events.



ASHLEY M. SUNDAR, ESQ.
ASSOCIATE ATTORNEY
Probate Litigation
Estate Administration

Joseph C. Kempe

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

Mr. John Doe Smith
123 Tuck Street
Jupiter, Florida 33477

To My Trust Protector:

When called upon, I desire that this writing serve to evidence my intent and to serve as a guide to you for resolving conflict on my death or in the event of my incapacity.

My number one priority is that the Trust provide financial security for me and my family. We (my wife and I) do not live extravagantly and desire that the Trust first be used to provide for our health, well being, and our comfort care. We desire to live together in our home as long as reasonably possible, and desire that our financial resources support us even if principal is being reduced, provided it will not be put in jeopardy of exhaustion. Liberal discretion should be used to provide for my wife's well being and comfort care after my death. Secondly, I desire that decisions regarding estate and tax planning are made in a businesslike manner.

After our deaths, I desire to avoid conflict within my family and desire that the Trust Protector resolve conflicts without lawsuits by mediating any differences and resolving any legal conflicts that may arise between a trustee and beneficiary or between beneficiaries. My desire is that the Trust provide financial security for my descendants and, in order of priority, (1) provide for their health, (2) provide for conventional education to enhance the human and intellectual capital of my family, (3) provide for support not otherwise provided by the means which each descendant has to be gainfully and productively employed, and (4) provide for the maintenance of my descendants. To the extent the provision of maintenance for any of my descendants would jeopardize the reasonable share of family wealth for their benefit, my Trust Protector may direct the Trustee to withhold payments for maintenance and to suggest to any such beneficiary living beyond their reasonable means that they should reduce any extravagant living.

Nevertheless, should the Trust Estate be sufficient to reasonably enhance the standard of living of my descendants without jeopardizing the priorities I have above provided, discretion may be used to enhance the standard of living of any or all of my descendants, provided no lavish lifestyles are supported, such descendants who are able are productive and creating human, intellectual, or family capital, waste is not occurring, and the integrity of the trust corpus is not jeopardized.

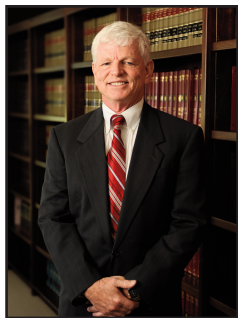
My love of my family should not be questioned, but my purpose is to protect them and lead them to productive, secure, and loving lifestyles.

Sincerely,

John Doe Smith

Interest Rates and Inflation

Fed representatives and other economists are predicting moderate 2% growth in 2012 and are optimistic about interest rates remaining low, but are concerned about the risks of inflation. Slight increases in rates and inflation are tolerable but a spike would cause major problems and will be strongly fought against by the Fed.



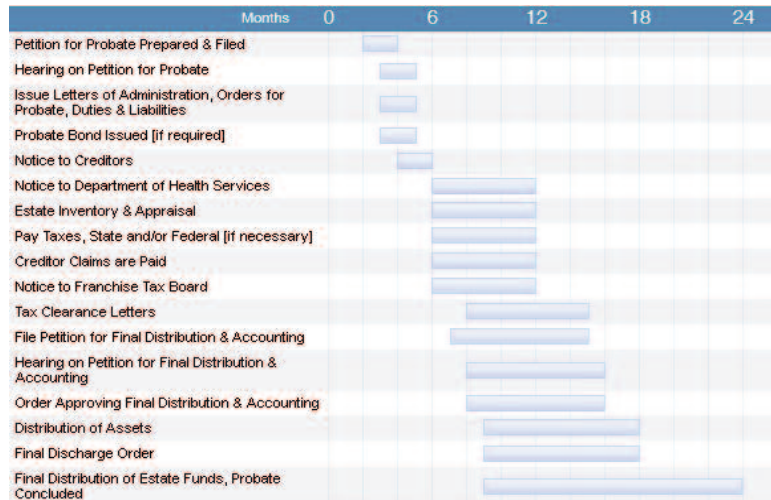
JOHN L. AVERY JR., ESQUIRE
Trial and Litigation Attorney
Appellate Law

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

JUPITER STUART VERO BEACH

ESTATE SETTLEMENT

- AN OVERVIEW OF THE PROCESS FOR TAXABLE ESTATES,
WHERE PROBATE OCCURS, OR WHERE PORTABILITY IS USED -



ONE OF THE MORE IMPORTANT TIMES FOR ADVANCED ESTATE PLANNING

- COMBINATION OF THE ECONOMY AND TAX REFORM ON THE HORIZON CAUSE A FOCUS-

Estate tax is imposed on the value of all property owned by someone that dies and passes property to others, subject to a threshold amount of exemption. Three factors are causing clients to consider taking steps to reduce their estate tax exposure: (1) property values are

down, (2) the exemption may be decreased, and (3) advanced tools that work best in low interest rate environments have become even more valuable. There are a variety of lawful tools that are used to avoid estate taxes.



THE MOST TAXING STATES TO LIVE IN

- THEY ARE FAMILIAR TO MANY CLIENTS -

According to the National Association of State Budget Officers, the following states are the most taxing:

1. **New York:** income tax (8.97%), sales tax (4%), inheritance tax (up to 16%, with a \$1 million exemption).
2. **Massachusetts:** income tax (5.3%), sales tax (6.25%), inheritance tax (up to 16%, potentially without exemption, unless estate and all prior gifts are less than \$1 million).
3. **Connecticut:** income tax (5%), sales tax (6.35%), inheritance tax (up to 16%, with a \$2 million exemption).
4. **New Jersey:** income tax (6.37%), sales tax (7%), inheritance tax (none on wealth to spouses and lineal descendants).
5. **Maryland:** income tax (5.5%), sales tax (6%), and inheritance tax (up to 16%, with a \$1 million exemption).



Not Out of the Woods Yet!

The US economy is on the rise and many US companies seem strong, but banks are still cautious and working on their balance sheets. Debt financed growth is thus tepid, and there remains risk to banks, their lending, and thus the economy. Bank exposure under credit default swaps securing debt of GIIPS (Greece, Italy, etc.) countries in Europe may not be fully understood. Being on the wrong side of this issue has already claimed Corzine's MF Global- as Buffett likes to say, the tide went out and MF Global was swimming naked.

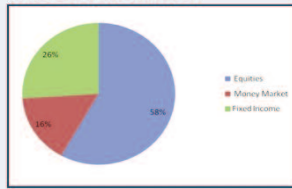


PATRICK E. MANGAN, CPA
TAX ACCOUNTANT
BUSINESS ACCOUNTING
WEALTH MANAGEMENT

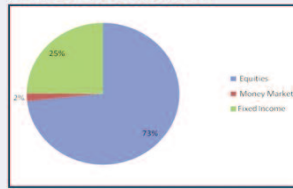
Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Wealth Monitoring Services

Asset Allocation



Yield Distribution



Significant Transactions

JOSEPH C. KEMPE

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW



Client Name: **Jane Doe**

Client #: **999**

Date: **01/01/2012**

Client Snapshot

CURRENT

Total Family Wealth:	12,500,000
Tax Exempt Trusts & Entities	5,000,000
Husband Estate Size:	Deceased
Wife Estate Size:	7,500,000
Joint Estate Size:	0
Current Estate Tax:	875,000
Percent of Current Estate:	7%
*Projected Gross Estate:	16,500,000
*Projected Estate Tax:	8,695,000
Percent of Projected Estate:	53 %
Marginal Tax Bracket:	35 %
IRA Portfolio:	1,000,000

* Based upon a 3% return, net of expenses over life expectancy.

FOR PERIOD ENDING 2011

Total Estate Value:

\$ 12,500,000

Total Income:	\$ 300,000
Adjusted Gross Income:	250,000
Taxable Income:	180,600
Tax Free Income:	50,000
Marginal Tax Bracket:	28 %

The current Estate Tax estimate assumes new law implementing a \$5,000,000 exemption and 35% tax through 2012. The Projected Estate Tax assumes repeal of that law after 2012.

Estate Planning Developments

Reviewed & Current YES NO

Will:	X
Trust:	X
DPOA:	X
HCP:	X
Living Will:	X
IRA Integration:	X
Recommendations	Estate Freeze
Document Code:	Single 80-20

Miscellaneous

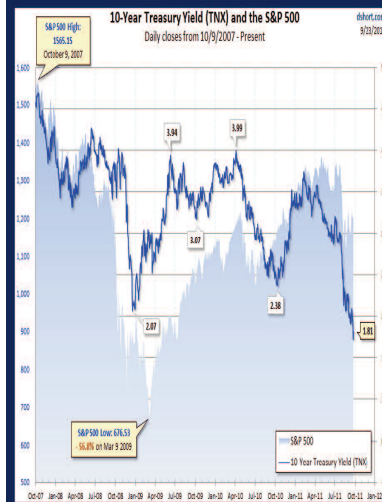
QPRT Termination Dates:	5-10-13
Crummey notices verified:	Yes
Family Partnership	
Records Current?	Yes
RBD Date: H/W	4/1997
RBD Compliance:	Yes
IP = RBD In Progress	

Legal Developments

The Obama Administration's Greenbook represents the Obama Administration's current thinking with respect to estate taxes. Specifically, the Greenbook proposes:

- Returning the estate, gift, and generation-skipping transfer (GST) taxes to 2009 levels.
- Making "portability" permanent.
- Requiring estate tax value to be used as basis.
- Limiting the use of valuation discounts.
- Imposing a minimum ten-year term on GRATs.
- Limiting GST exemption to 90 years.

Economic Developments



		Historically		Currently	
		Date	Value	Date	Value
S&P 500	Actual	Jan-11	1,281.60	Sep-11	1,175.60
	Forecast	Jan-14	1,630	Sep-14	1,590
			27%		35%
Dow Jones	Actual	Jan-11	11,794.00	Sep-11	11,190.00
	Forecast	Jan-14	15,100	Sep-14	15,400
			28%		38%
NASDAQ	Actual	Jan-11	2,715.60	Sep-11	2,525.30
	Forecast	Jan-14	2,960	Sep-14	3,050
			9%		21%
GDP Growth	Actual	Sep-10	3	Sep-11	1.2
	Forecast	Sep-13	1.4	Sep-14	3.1

Source: Forecasts.org

Current Economic Indicators	
Indicator	Value
Inflation %	3.39 %
GDP Growth %	1.33 %
Unemployment %	9.10%
London Gold \$/oz	\$1,617.00
WTI Oil \$/bbl	\$ 79.68

October 5, 2011

Source: Forecasts.org

Observations:

1. The FOMC initiated "Operation Twist" in an effort to keep long term borrowing rates down by purchasing long term bonds and selling short term treasuries. Lower long term rates would hopefully stimulate consumer spending, however concerns loom over rising inflation overtaking falling yields on long term rates which have dropped from 3.74 in February to as low as 1.70 in September.
2. Improvements in economic factors such as lowered consumer debt, stronger capital spending, rising bank lending, reduced unsold homes inventory, and falling commodity prices have some economists pointing toward a return to normalcy in the business cycle.
3. With the addition of 103,000 jobs in September, a boost in construction spending in August and increases in manufacturing in September has some forecasting GDP growth as high as 2.5 % in the third quarter of this year.

October 5, 2011

Source: Forecasts.org

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AN UPDATE ON PASSIVE INVESTING

- AVOIDING OVERWEIGHTING HIGH PRICED STOCKS -

International Banking and Investment

- Crack Down May Cause Surge in Foreign Investment Abroad -

Often government regulation leads to unexpected consequences. New rules aimed at causing disclosure by US citizens of their non-US investments may actually streamline and open-up greater access to investment opportunities generally only used by the wealthy. Furthermore, recent proposals for tax reform actually encourage international investing. As one noted international tax law scholar is quoted, "The tax code is riddled with features that allow U.S. taxpayers to reduce their tax liability by operating through tax haven companies. Some of the provisions are historic anomalies."



CHRIS BOURDEAU, CPA
TAX ACCOUNTANT
WEALTH MANAGEMENT

Joseph C. Kempe
PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

As we discussed in our past Client Update newsletters (New Study Suggests Index Funds Win Again), actively managed mutual and hedge funds must generate significant alpha (return above and beyond that of the broader market) in order to compensate for their generally higher fees, transaction costs, and tax bills.

While many studies favor passive index funds over most mutual funds¹, some believe there are ways to improve performance. For example, two pitfalls relating to most index funds that significantly dampen returns over the long term are described in this article as well as how some managers overcome these issues and consequently increase returns.

The first index fund issue relates to a phenomenon called index arbitrage. The basic idea is that hedge funds and other professional traders front-run much of the buying and selling done by index fund managers because they know with a high degree of certainty which stocks will be going in and out of the indices and when. Indeed, the rules for index rebalancing are well known and published on index providers' websites. Below we highlight the average performance of the stocks that went into and out of the S&P 500 index from 2000-2009 in the two weeks leading up to their inclusion or deletion.

Table 1: Average Performance of S&P 500 Additions and Deletions Two Weeks Prior to Rebalance

Year	Additions	Deletions
2000	+11.7	-8.3
2001	+3.8	-1.7
2002	+3.8	-15.8
2003	+0.6	-13.4
2004	+4.2	+7.2 ²
2005	+4.3	-2.0
2006	+5.2	-2.2
2007	+2.8	-0.3
2008	+2.7	-17.8
2009	+4.0	-3.2
Average	+4.3	-5.8

Source: Aaron Brask Capital, Bloomberg

The stocks going into (out of) the index increased (decreased) by an average of 4.3% (5.8%) over this period. Virtually every time an index fund manager pur-

chased (sold) stocks to match the index, the prices had been pushed higher (lower) over the previous two weeks. This amounts to a loss of more than 10% on all index turnover. Estimating index turnover between 5-10% per annum, this translates into an annual cost of 50-100 basis points for S&P 500 index investors.

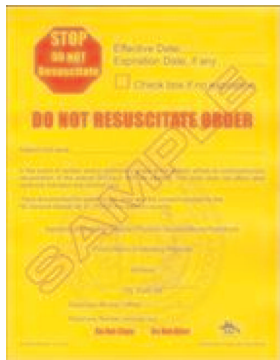
The second but perhaps more important pitfall relates to index construction. Almost all stock market indices are market capitalization weighted. That is, a stock's weight in the index is proportional to its total market capitalization (number of shares x share price). Unfortunately, this weighting scheme creates a bias that significantly dampens returns. In particular, if a stock is overpriced, then it will have a higher weighting in the index. Conversely, if a stock is underpriced, then it will have a lower weighting in the index. This is the exact opposite of what any investor should desire.

While there is plenty of research evidencing the negative effect market capitalization weighting has on returns, one way to observe this in practice is to compare the performance of a market capitalization weighted index to that of an equally weighted version of that same index. Accordingly, a comparison of the performance of the most popular S&P 500 ETF, "SPY," to that of "RSP," the Rydex S&P 500 Equal Weight ETF, reveals this difference in performance. Over the last eight and a half years since RSP was created, it has outperformed the SPY by an average of 3.3% per year. It is worth noting that this out-performance comes in spite of the RSP's higher management costs (0.40% vs 0.09% for SPY) and its presumably higher transaction costs (higher turnover is required to maintain its equal weights). [see PASSIVE INVESTING on page 12](#)

¹ We do believe there are some fund managers who can consistently outperform the market.

² The deletion calculation for 2004 includes one stock (SOTR) that significantly changes the results with its 130% return. The average deletion return for this period would have been -1.5% omitting this one stock.

CLIENTS LEARN: A LIVING WILL IS NOT A DNR



More and more of our clients are realizing that having a Living Will is not the same thing as having a Florida yellow DNR order. This understanding has become increasingly important as the population is aging more independently and in a more healthy manner. The difference and whether one should have a DNR is a subject that should be addressed by persons toward the end of life.



CHARLES R.L. WHITE, ESQ.

Civil Litigation Attorney
General Practice

Joseph C. Kempe

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

CRYSTAL BALL

(continued from front cover)

\$1 million, while also increasing dividend and capital gains rates. The Republicans either want to eliminate it all together or hold the \$5 million estate, gift, and generation skipping thresholds. This backdrop had favored the Democrats for two primary reasons: (1) our National debt and deficit have to be reduced and (2) by law, what the Democrats want automatically happens in 2013, absent legislative reform.

The above explanation is essentially like the circumstances that existed in 2009. A Republican controlled Congress, however, was recently able to use the recession to avoid tax increases for two years and to form a Super Committee to reduce fiscal spending. The Super Committee failed, causing automatic spending cuts in 2013 absent additional legislative reform. The Republicans realized their backs would be against the wall in 2013 and negotiated these spending cuts to dampen the consequences of the sunseting of Bush's tax reduction, should the Super Committee

fail- one could have guessed it would fail and it has.

Between now and 2013, when current law causing automatic spending cuts and tax increases to occur, stop gap measures to avoid government shut-down and avoid risk of further recession have become the norm. Uncertainty, however, caused by an absence of clear law, hasn't helped the economy and makes estate and business planning more difficult. Furthermore, as occurred in 2009, unexpected change can occur very quickly.

What to do now? Our concern is the ability of the Democratic party to mobilize the masses. Our advice to our client's is to revisit their planning and seek to use present laws to benefit their circumstances. Using presently available techniques and locking-in use of exemptions is the order of the day. See [*Planning for Change in 2012*](#), on page 3.



ELDER ABUSE

(continued from cover)

Mrs. M, a widow and aged, had a 2000 Cadillac with 26,311 miles and bought a brand new Volkswagen beetle "for around town." She returned to the dealer and was convinced to trade-in her old Cadillac for a new one. She was provided a \$500 trade-in allowance (Kelley Blue Book listed its value at \$6,150) on a new Cadillac, for which she paid full price and bought all the options and extra warranties: the Car Care Elite Service Plan, the Road Hazard Tire Coverage Service Contract, the Premier Paint Protection II Plan, and the Secure Etch Silent Guard Security Systems Service Agreement. Mrs. M actually paid \$3,750 over list price for the vehicle and lost \$5,650 as a result of the trade. Mrs. M has been financially exploited, and Florida law entitles her to damages. The Florida legislatures views this type of action as so serious, that treble (threefold) damages are available to an

aggrieved party.

Elder abuse can also involve actions of others that cause emotional distress or are a result of negligent care. These are growing areas of concern in our society and a direct result of our aging population. As a result, state legislatures are actively seeking to protect this class of persons. The elderly and dying are entitled to various rights, including the right to comfort care and the right to be left alone and free of physically and emotionally invasive measures by others. Not only are compensatory damages available for those physically or emotionally injured, but Florida law extends punitive damages to aggrieved parties, as a forewarning to those who might seek to violate these rights of a growing population who deserve more respect than others. It is important to

[see](#) ELDER ABUSE on page 12



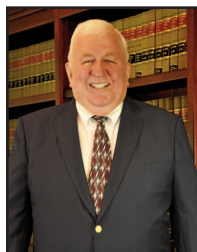
Mr. Kempe Goes To Washington



Mr. Tassell Goes To Washington



Conner R. Kempe (Dartmouth '12)
Interns with Congressman
Rooney



FREEMAN M. DAIL, CPA
TAX ACCOUNTANT
BUSINESS ACCOUNTING
WEALTH MANAGEMENT

WE ARE PLEASED TO ANNOUNCE
DANIEL ALVARADO, CPA
HAS JOINED THE FIRM'S
TAX AND WEALTH MANAGEMENT
DEPARTMENTS



Mr. Alvarado comes to us after spending four years with the West Palm Beach, Florida office of WTAS, LLC, the successor to Arthur Anderson, where he was a senior associate. While there he focused on income and transfer taxation and compliance for high net worth individuals and closely held businesses.

Mr. Alvarado is an adjunct professor of taxation at Palm Beach Atlantic University, where he teaches introductory level courses on individual, corporate, estate, and trust tax law, planning, and compliance. He is an honors graduate of Palm Beach Atlantic University with a B.S. in Applied Finance and Accounting and an honors graduate of Florida Atlantic University, with a Masters of Taxation. A Phi Kappa Phi Honor Society member at FAU and a recipient of the Outstanding Graduate of the Rinker School of Business at Palm Beach Atlantic, Mr. Alvarado will join our tax compliance and wealth management departments.

Mr. Alvarado is fluent in Spanish and is a member of the American Institute of Certified Public Accountants. He is an active member of his church and assists with the coordination of international youth missions.

ELDER ABUSE

(continued from page 11)

recognize that the elderly are not the only ones who are protected under some of these laws. Elder abuse laws generally extend to those over age 65. Financial exploitation laws will extend to any adult over age 18, whose ability to perform the normal activities of daily liv-

ing or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, in addition to the infirmities of aging.



PASSIVE INVESTING

(continued from page 10)

These two pitfalls can dampen index investor returns by 3-4% per year over the long term and thus pose a serious threat to any attempt at wealth preservation, let alone growth. The financial industry has responded to these issues and started to construct improved benchmarks.

To be clear, these indices do not attempt to relate the fundamentals to the stock price. They are solely concerned with

the magnitude of those fundamentals and constructing improved market indices that remove the negative bias stemming from market capitalization based weights.

Some managers take this analysis a step further by comparing the fundamentals to the stock price. In other words, they take a step in the direction of value investing by constructing indices or strategies based on value metrics.



7520 Rate
All Time Low

The IRS prescribes interest rates (the “7520 rate”) for various techniques used to reduce estate taxes. With many of these tools, the lower the rate the better. The first 7520 rate was 11.6% in 1989. The rate for January 2012 is 1.4%. As mentioned elsewhere in this Client Update, now is a particularly important time to consider estate tax reduction tools that may be eliminated with tax reform.



Kirby C. Kempe, a Rice University Century Scholar under Trustee Distinguished scholarship, interns with Prof. Dr. Ulrich Witt at the Max Planck Institute of Economics in Jena, Germany.



MAUREEN LLOYD
TAX ACCOUNTANT
WEALTH MANAGEMENT
ADVENT AXYS

DRUG TESTING HEIRS

(continued from cover)

and alcohol abuse are contributing factors to family dysfunction. Furthermore, more and more clients are viewing estate plans as a means to motivate their heirs to become productive.

Some clients are modeling provisions for receipt of estate or trust dispositions on recent Florida law, that requires the passing of a drug test before receipt of welfare benefits. Failing a drug test can be designed to disqualify an heir from receipt of estate or trust distributions for

one (1) year, except that if qualifying drug rehabilitation treatment is undertaken an heir may apply again after six (6) months. After the period of denial another drug test must be taken before distributions may begin. Failing the test on two occasions will disqualify the heir for three (3) years. Should an heir denied benefits be a parent, the trust can be drafted to permit distributions for qualifying benefits to the parent's children.



TAX BREAKS FOR CARE GIVING EXPENSES

-THEY CAN HELP THE MIDDLE GENERATION -

It is not uncommon for some of our clients to arrange and pay for the costs of caring for their parents. Often a Plan of Care (see page 4) will encompass an in-home companion supervising daily functions, such as the taking of medications, cooking a healthy meal, helping with bathing, and providing necessary transportation. If not properly planned, available tax deductions for these pay-

ments can be lost. For example, the person being cared for must be considered “chronically ill” (eg., a diagnosis of dementia) and a licensed health care professional has to prescribe a plan of care. Deductible costs can include wages, employment taxes, meals, and utilities and rent on a larger apartment needed to house a live-in care giver.



PORTABILITY CAUSES A FLOOD OF ESTATE TAX RETURNS

-NEW LAW FORCES FILING, OR A FORFEITURE OF BENEFITS -

Fewer than 3,300 estates owed federal estate tax in 2011, the smallest number in more than 75 years, with the exception of 2010 when there was no estate tax. Nevertheless, a far greater number of estates will be required to file returns than ever before. The reason is “portability,” the new law that requires any unused estate tax exemption of a deceased spouse to be carried forward for use by a surviving spouse. For example, if Mr. and Mrs. R have an estate that is jointly owned and equal in value to \$6 million, and Mr. R dies leaving all of his assets to Mrs. R, Mr. R's estate will have no tax but Mrs. R's estate will (potentially well over \$350,000), since her estate exceeds her exemption (presently \$5 million each) by \$1 million. Unless an estate tax return is filed on Mr. R's death, his \$5 million exemption will have been wasted. This waste can be avoided by Mr. R's estate

filing an estate tax return that elects portability of his exemption to Mrs. R and her estate.

Portability has created confusion for people and we advise clients not to rely on it in designing their estate plan; for example, by avoiding common use of an A-B or credit shelter trust format. The reason is that proper estate planning incorporates trusts to protect wealth and most clients desire to use their generation skipping tax (“GST”) exemption, once they understand how doing so benefits their surviving spouse and children. The GST exemption is not portable. Portability fosters a complacency and, as described in this note, use of portability requires the unnecessary and involved process of filing an estate tax return. Clients should avoid reliance on its use.



I've
learned....
That some-
times all a
person needs
is a hand to
hold and a
heart to
understand.

I've
learned....
That being
kind is more
important
than being
right.

ENLIGHTENED
PERSPECTIVE

WRITTEN BY:
ANDY ROONEY



ALICE B. SALLMAN, CPA
TAX AND FIDUCIARY ACCOUNTANT
ESTATE ADMINISTRATION

Joseph C. Kempe

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

JUPITER STUART VERO BEACH

CHANGE IN 2012

(continued from page 3)

would subsidize the cost of annual meetings, by permitting that cost to be deducted for income tax purposes. After offering them a method of locking-in the benefit of their family partnership, should 2012 legislation be enacted to curtail those benefits, they hesitated because it involved them selling their ownership to a trust for their children. However, once they understood this could be done without income tax and that they would be able to retain the cash flow that they thought they would need they opted to pursue it because they didn't feel their circumstances would significantly change.

Lastly, Mr. and Mrs. P were excited to

FIXING PLANS

(continued from page 3)

these protections can be provided under properly written documents. We also explained to them that the laws of most states have evolved to permit even irrevocable trusts to be changed to accomplish these objectives.

Once Mr. and Mrs. Z confirmed that they appreciated our observations and were surprised that their existing wills and trusts omitted these protections for their family, they asked us to proceed with a proposal. The next day we provided them with a written fixed fee proposal to update their base level estate plan- their wills, revocable trusts, durable powers of attorney, health care proxies, and living wills. Our proposal also included a

learn that they could create a trust for each other utilizing what was left of their exemptions not otherwise used in the above techniques. They hadn't realized that they could create a trust for each other, and that those trusts would allow them the financial security and cash flow they desired while removing the value from their taxable estates. A decision, however, was made to create the trusts, but not to fund them until they believed the \$5 million current exemption was under imminent threat of reduction. This decision was made because use of the exemption for other reasons would become more difficult and if the exemption was not being reduced, it was really not needed.



fixed fee to legally modify Mrs. Z's father's irrevocable trust, so that the benefits and changes we were making included the old trust. They accepted our fixed fee and two weeks later we visited and reviewed revised documents and Mr. and Mrs. Z went home to review drafts. A week later slight changes were made and the documents were executed. New IRA beneficiary designations, properly integrating Mr. Z's IRA, were sent to the custodian of Mr. Z's IRA and a deed to their home was titled in Mrs. Z's revocable trust. Mr. and Mrs. Z's estate plan was finalized and they became content that they have done the best they could for their family.



INVESTMENT SELECTION BECOMES MORE IMPORTANT IN VOLATILE MARKETS

-INVESTMENT POLICY ON ALLOCATIONS STILL REIGNS, BUT RESEARCH CAN SHINE-

Passive investment styles are a form of behavior investing, where the madness of crowds can push particular markets to extremes that become bubbles and burst. Proper asset allocation is designed to mitigate the risk of allocating too much to those markets while capturing the upside. Nevertheless,

research to find the best investments in those markets provides some level of insurance that the mispricing of market swings is realized and true value shines. Some managers specialize in markets, while others may focus on value.





ALISON OVERTON WAS A LEGAL ASSISTANT IN OUR ESTATE PLANNING DEPARTMENT BEFORE DEPARTING FOR NORTH CAROLINA IN 2003, WHERE SHE HELD MANAGEMENT LEVEL POSITIONS IN SEVERAL BUSINESSES. ALISON RETURNS TO US MARRIED AND AS THE MOTHER OF GRACIE.



REGINA MAGLIO WAS A SECRETARY IN THE FIRM'S ESTATE ADMINISTRATION DEPARTMENT IN THE EARLY '90S. SHE HAS RETURNED TO HER OLD DEPARTMENT AS A LEGAL ASSISTANT AND GRANDMOTHER.

MEET MELISSA



MELISSA PEARCE JOINS THE FIRM'S ESTATE PLANNING DEPARTMENT AS A LEGAL ASSISTANT. MELISSA HAS HAD 6 YEARS OF PRACTICE WITH MARTIN COUNTY LAW FIRMS. MOST RECENTLY SHE HELD OFFICE MANAGEMENT AND HEAD LEGAL ASSISTANT POSITIONS, WHERE SHE GAINED VALUABLE EXPERIENCE IN ESTATE PLANNING AND REAL ESTATE.

Joseph C. Kempe

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

SPECIAL PROBLEMS: GUNS AND OTHER COLLECTIBLES

-ESTATE PLANNING FOR THE USE AND LONGEVITY OF THEIR CARE -



It is not uncommon for clients to find difficulty passing certain collections of personal property down to heirs. It is often hard to divide a collection amongst heirs, and doing so can decrease the value of each item and the collection as a whole. Special trusts are often used to overcome these and other issues and can be written to consider how the items are to be used; conditions of use; how items are to be insured, maintained, and passed-down to further descendants; and whether or not and how items are to be sold.

Firearms create special considerations. Acquisition (by inheritance or purchase)

of some are regulated by the Bureau of Firearms and Tobacco ("BATF"). If owned by a special Gun Trust, inadvertent violation of these rules can be avoided and ease of use in a lawful manner facilitated. Inadvertent violation can be a criminal offense, and may involve simply using, holding, or transferring possession of certain firearms. For example, a regulated firearm owned by a Gun Trust may be used by a father, as trustee and beneficiary, and within the presence of the father, as trustee, a son who is also a beneficiary may too. Without the trust, the son's use or possession may violate the National Firearms Act.



HOW CAN SINGLE INDIVIDUALS LOCK-IN THEIR ESTATE TAX EXEMPTION

-EASIER FOR MARRIED COUPLES, BUT THERE STILL IS A WAY WITH DAPTS-

Single individuals, concerned about estate tax reform or about personal liability, can use some or all of their \$5 million exemption to shift assets into protective trusts – the most popular are domestic asset protection trusts ("DAPTs") formed in one of the four states of Alaska, Delaware, Nevada, or South Dakota (although other states per-

mit these trusts as well). Today's large gift tax exemption and available valuation discounts (e.g., from family partnerships) may enhance the ability to transfer wealth into a protective structure, but the necessity of using institutional trustees in these jurisdictions detracts from the desirability of DAPTs.



FDIC INSURANCE ON BANK ACCOUNTS

-LAST YEAR FOR GUARANTEED COVERAGE-

There has been some confusion over the level of cash in bank accounts that is guaranteed against loss from bank failure. Noninterest bearing transaction accounts, generally used by a variety of businesses and law firms, are federally guaranteed (fully insured) without regard to balance through 2012. This guarantee expires in 2013. All other bank accounts are guaranteed indefinitely up to a total account balance of \$250,000. Originally the threshold was \$100,000, which was increased to \$250,000 as a

result of our recent economic crisis. This increase was also set to expire in 2013, but legislation was passed permanently increasing the \$250,000 threshold.

The \$250,000 is a per account owner threshold. There are methods to multiply coverage by, among other means, creating accounts in trust names and the names of other appropriate owners that are consistent with existing estate plans.



REAL ESTATE "FORM CONTRACTS" ARE BINDING

-THEY HAVE POTENTIALLY SEVERE CONSEQUENCES -



DAVID C. TASSELL, ESQ.

Real Estate Attorney
Counselors Title Company, LLC - President
Mortgage Law
Real Estate Sales and Purchases
Commercial Transactions

REAL ESTATE SYNDICATION AND INVESTMENT

**- THE REAL ESTATE MARKET
ON THE TREASURE COAST -**

*SINCE THE SPRING OF 2011 WE
HAVE WITNESSED A MARKED
INCREASE IN REAL ESTATE
ACTIVITY. BOTH
RESIDENTIAL AND
COMMERCIAL ACTIVITY IS ON
THE RISE, PARTICULARLY
"PRIZE" PROPERTIES!*

AFFILIATED PERSONAL SERVICE ORGANIZATIONS

Counselors Title Company, LLC

Counselors Realty, LLC D/B/A
Coastal Estates

Asset Monitor, LLC

These days people frequently ask me if I am seeing an increase in activity. I tell them that the market has definitely picked up, in no small part due to the banks being easier to work with in short sales and given price reductions, even on the more expensive properties.

For example, a firm client just purchased a 4200 square foot waterfront home with two docks for \$800,000. The home was on the market for \$1.9 million three years ago. Another waterfront home sold for \$1.7 million six years ago, and the owners invested an additional \$250,000 to update it. It is now under contract for \$1.2 million. Needless to say it is a buyer's market and if one's plan is to eventually live in Florida, there may be no better time than now to buy property.

Another question I frequently receive from people either buying or selling property is whether they need to hire an attorney. The call goes something like this:

"Dave, I am going to purchase a condominium and my real estate agent tells me that I really don't need to hire an attorney because we use form contracts in Florida and there is really nothing to negotiate or change and the title company will make sure the title is clear. Do you think I need an attorney?" (Or stated differently, do I really need to incur the cost of legal representation for this real estate transaction?)

My experience is that an experienced real estate professional would never make such a statement. Real estate agents in Florida usually act as transaction brokers and technically do not represent the buyer or the seller. When presented with a "form contract" it is easy to forget that the "form" contains binding terms and conditions that may not serve your interests. Never fall for the line, "Don't worry, it's just boilerplate." Real estate contracts are anything but "inconsequential." The following are a few examples of issues that might concern the parties to a real estate transaction:

1. If the buyers' obligation to close is con-

tingent on their getting a mortgage, what happens if after they receive their approval letter, they are unable to meet all conditions of the loan commitment? Did you know that unless you take certain action, the day before the closing the buyer can cancel the contract and get their deposit back?

2. Should you sell your home in "AS IS" condition or with warranties that cap your exposure in the event minor defects are discovered? If you do sell with warranties, what are you required to repair under the contract?

3. What closing costs should you expect to pay as a seller? It is a matter of custom in the county where the property is located and the answer differs depending on whether the property is in Martin or Palm Beach County.

4. What are you as a seller obligated to disclose to the buyer about your home that might not be visible to the naked eye? What is your liability for failure to disclose what are known as "latent defects."

5. Can you continue to market your home if you're concerned about some of the contingencies in the contract, for example, the buyer having to sell their home? What if a new offer is presented, can you force the buyer to waive the contingency?

6. What are my risks in purchasing a condominium regarding deferred maintenance? Is the budget adequately funded?

7. How much of a deposit is reasonable and is there any risk as to who holds the deposit?

8. How serious are the title exceptions and should you accept them?

9. What does "time of the essence" mean and if you need a "couple of extra days to close", does the seller have to extend the closing date or will your deposit be at risk?

Real estate contracts become binding and should be reviewed by legal counsel.

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

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