



THE BUXTON BULLETIN

Published From Time To Time For The Benefit Of Our Clients and Friends
 By **JOSEPH T. BUXTON III, PC T/A TRUSTBUILDERS LAW GROUP**
 A Professional Law Corporation, Urbanna . Yorktown, VA
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To Our Valued Clients and Friends:

Can it be June already? The year is really flying by. First, I want to wish all our clients and friends a very happy, prosperous and productive summer. Make sure you plan some fun everyday while the weather is so pleasant.

My number one tip for the summer newsletter is one that I remind my clients to do again and again. Don't wait. Time is passing quickly. Make the time now to review your plan or update your trust, will and other documents to state properly your plan of your estate before you are unable to do so.

My wife Mary, who is editing the Buxton Bulletin this summer, is already frowning at me as I draft this article because she knows as well as I know that nobody in this world wants to even think about death, let alone talk about it. But if there is one lesson my 33 years in estate planning has taught me working with as many families as I have...families who don't make plans really suffer when a loved one passes away. It is bad enough losing a beloved family member. Just imagine how much worse it is if your affairs are not in order and others have to painstakingly straighten things out without your guidance.

The kindest gesture we can all make for our family is to make plans for prompt, smooth and painless transfer of assets. It is a good feeling when everything is decided upon, in place and organized well in advance so your family will not have the added burden of probate, heartbreaking conflicts with relatives, or any other issues.

I am now advising my clients to bring members of the family together, adult children, parents, grandparents, even the family dog, and discuss what should be done to plan for carrying on the family farm, business, loving pets, dividing up real estate, stock investments and personal items like family antiques, portraits, silver, china and jewelry. A full and open discussion is a good idea. Critical family issues like who will get grandmother's bone china, how will a special needs child be cared for, what to do about second or third marriage step-children or in-laws, a divorced spouse, or an ailing parent in need of nursing care or assisted living, etc need to be fully aired and addressed by all parties involved.

No one wants to discuss the demise of our loved ones. But the more we talk now about issues the better things will be when a loss takes place. Few of us want to think about such subjects but putting off such discussions until it is too late is always a mistake. Believe me, I know this to be true after years of watching what happens to families when no plans have been made on touchy issues that have not been discussed.

Remember my staff and I are always here to help you in any way we can. Don't put it off. If you have not been in to review your plans, call us now! And have a great summer.

Joseph T. "Chip" Buxton III

Welcome Aboard Tara Newman, Paralegal

TrustBuilders is pleased to announce that Tara E. Newman is now associated with the firm. Originally from Medina, New York, Ms. Newman obtained a Bachelor of Fine Arts degree from the University of The Arts and is an accomplished ballet dancer. In 2009, she graduated from Peirce College in Philadelphia with a diploma in paralegal studies and has had paralegal experience working in the U.S. Attorney's Office for the Eastern District of Pennsylvania in the areas of mortgage fraud, identity theft and financial litigation.

Tara now serves as our Trust Administration Paralegal and Financial Planning Assistant working with Mr. Buxton and his clients in the Urbanna office. In April she was inducted into the National Paralegal Honor Society, Lambda Epsilon Chi, through her Alma Mater Peirce College and she keeps up on her dancing skills by offering ballet lessons in the Town of Urbanna after working hours. One day Tara will go to law school herself but for now enjoys learning all she can about wills, trusts, and estate and financial planning



Tara Newman

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VIRGINIA TRUST ACT

By: Joseph T. "Chip" Buxton III

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On October 1, 2003, the Virginia Business Trust Act became effective. This law permits the creation of a new type of business entity which combines features of a traditional trust, a Partnership, a Limited Liability Company and a Sub-Chapter S Corporation. The Act (VBTA) provides statutory protection to the business entity and their trustees. It also provides maximum flexibility of trusts by deferring most of the details of the governance of the organization to the organizing documents. In fact, because of the flexibility of this statute, organizers of a Virginia Business Trust can structure their particular business activities virtually any way they desire.

The Virginia Business Trust is particularly useful for the management of multiple rental properties, providing limited liability for each rental property separate from other rentals. In other words, a tenant filing suit against the landlord, i.e. the Virginia Business Trust, can only seek damages from that portion of the trust that holds that particular rental property. The VBT is therefore an excellent alternative to the limited liability company, which forces owners of rental properties to set up individual LLC's for each of their rental properties to isolate one property from the other. This is not necessary with a Virginia Business Trust, provided the Articles of Organization filed with the State are properly drafted.

New Estate Tax Laws for 2011

By: Kristof G. Koletar, Esq.

After laboring through nearly the entirety of 2010 in an uncertain tax environment, last December 17, Congress finally enacted legislation to extend and enhance the "Bush tax cuts." The Tax Relief Act of 2010 reinstated the Federal estate tax through 2011 and 2012, and changed three major taxes: estate tax, gift tax, and generation-skipping tax. Under the new law, all three have the same tax exemption: \$5 million per person.

The estate tax is imposed at death, and charges a tax of up to 35% on all assets over the \$5 million limit. For example, if a person dies in 2011 with an estate worth \$7 million, the first \$5 million is untaxed, and the additional \$2 million is taxed at 35%, resulting in a tax bill of \$700,000, payable within nine months. The gift tax is imposed on gifts made during your lifetime. Currently, you can make a gift of up to \$13,000 per person, per year, to as many people as you like, without having to pay any tax or report the gift to the IRS. The estate tax and gift tax are linked together, and share the same "unified credit" of \$5 million. If a gift in any single year exceeds \$13,000, your estate tax exemption is permanently reduced on a dollar-for-dollar basis. For example, if a person gives away a piece of real estate worth \$313,000, the first \$13,000 is untaxed, and the remaining \$300,000 is applied against the unified credit, resulting in a permanent reduction of the estate tax exemption to \$4.7 million.

The generation-skipping tax (GST) is a different beast – the IRS applies a new tax if assets are given to anyone more than one generation removed from you (grandchildren, great-grandchildren, etc.). The GST shares the same \$5 million exemption as the estate and gift taxes, but it is not "linked" to those taxes, and is tracked and accounted for separately. Any transfer that runs afoul of the GST results in the estate tax being imposed *twice*, at its highest applicable rate. For example, going back to the fellow who dies in 2011 with \$7 million, if he left the non-exempt \$2 million to his grandchildren, that \$2 million would be taxed at 35% (\$700,000 in taxes), then the remaining \$1.3 million would be taxed again at another 35% (\$455,000 in taxes), resulting in a total tax bill of \$1,155,000 – effectively a 55.75% tax!

Despite the complexity of this system, the current law with its \$5 million exemption is the best version of the estate tax law since the tax was first imposed in 1916. The exemption is the highest it has ever been, and on top of that relief, for the first time ever, exemptions are now "portable" between spouses. A surviving spouse can carry over any amount of the unified credit not used at the death of a deceased spouse and add it to their own. For example, if husband dies with a \$2 million estate, his remaining \$3 million exemption can be allocated to his surviving wife, giving her a total unified credit of \$8 million, to be used on lifetime gifts or transfers at her later death. The catch (there's always a catch) is that in order to transfer the unused exemption, the Executor of the estate of the deceased spouse may be required to file a Form 706 federal estate tax return, despite the fact that the estate is not subject to tax. Also note that the \$5 million GST exemption is *not* portable, which can lead to confusing tax issues when the same assets pass down to subsequent generations.

So, where do we go from here? As is typical of the U.S. Congress, they seem to be utterly incapable of permanently fixing any problems, particularly with regard to taxes. The current estate tax rules are only in effect for 2011 and 2012. The threat that the old tax rates with the \$1M estate tax exemption will someday return is still a very real one, and Congress will have to act again before January 1, 2013 if today's law is to remain in effect. Though the law in effect today is the best it has ever been, now is not the time for one to rest on one's laurels, and a well-drafted estate plan is still a necessity.

Insurance on Trust Held Real Estate

By Joseph T. Buxton III

A question comes up from time to time when we transfer a residence to a client's revocable living trust, whether or not their owner's title insurance policy still provides protection regarding the title to their property. Generally speaking, when individuals buy real estate, particularly their primary residences, the lender will require title insurance, and we generally recommend our clients buy, at the same time, an owner's property policy to protect the owner's interest in the property as they pay off the loan. When the property is transferred to the trust, title policies issued since 2005, provide coverage when a home is transferred to the owner's trust. For policies issued prior to that date, an endorsement to the existing home owner's title insurance policy is necessary to continue protection for the owners of the property while it is in their trust. We can help you to verify that you have protection. One final note, remember that your title insurance policy covers the value of the property at the time the policy was issued. If you made substantial improvements to the home or built the home on a vacant lot, you will need to update your owners protection to the current value of the property. We suggest you consult with your title insurance company about the advisability and cost of providing full protection on your title.

By Mary Wakefield Buxton

Grandmothers of the world unite! We shall take over the world yet! Watch out everybody, here we come...canes, hi-fiber diets, jars of Vicks Vapor Rub, and all the rest!

One might well ask what in the world is Mary writing about today? Well, guess what happened to me at 69 years of age? I was called back to the work force! (I wonder...is it too late for me to start saving for my retirement?!!)

I thought I was well passed the age of going into the law office each day (although I have done a lot of that in the past) and on my way to a peaceful retirement spending idyllic days with our two golden retrievers, "Lord" and "Lady" at my feet lapping up the last ounce of love from their beloved mistress and happily penning my various stories and books. Only to be rudely awakened from such reveries!!! And what was the gargantuan event that brought me back to the office???

May Ellen Oakley, our wonderful front desk gal in Urbanna moved to New Jersey to join hubby who had accepted a new job there! And for those who knew May Ellen, you know what a loss that has been. Then, you guessed it, that oily voice from the Big Cheese... "Could you come in, dear, and help us out at the office for a few weeks?" "Sure," I said not realizing the few weeks would turn out to be permanent or how hard it would be learning a slew of new technology like "TimeMatters" which keeps records of all 6000 of our client's files but also Excel, an entirely new computer system for me, plus another dozen or so machines to master.

I can tell you at age 69 learning "something new" is much harder than I had thought it would be. But I persevered and with a lot of help from our marvelous staff managed to survive the sudden stress delivered so heartlessly to my brain. It was lots of fun mastering each new skill...there is nothing quite like getting a "Docubank" medical health directive off properly on the Ricoh equipment and such a great feat (which I admit may not sound that exciting to others,) has delivered a real sense of achievement to me.

Life is full of surprises. Who would have guessed how much I would have enjoyed returning to the work force at 69? Truthfully, I've had the best several months in my life. It's great to be active again and especially having the chance to meet our lovely clients and work with our outstanding staff. I am not exaggerating when I say our clients and staff are the nicest people I know.

I look forward to meeting you and your family in the Urbanna office one of these days. It's never to late too start a new job or take on a new interest in life...just remember our battle cry... "You go, Granny!!!"

Family Limited Partnerships for Asset Protection

By George P. Wakefield Buxton, JD, LL.M., MBA

The family limited partnership (FLP) has emerged as one of the most popular estate planning vehicles for preserving and transferring significant wealth. This is due, in large part, to the fact that significant tax savings can be accomplished by leveraging valuation discounts-lack of marketability and lack of control-in the form of gifts of partnership interests. In addition, many clients are attracted to a unique feature associated with FLPs that allows one to make completed gifts for estate and gift tax purposes, thus, avoiding taxation of future appreciation, while maintaining effective control of the underlying assets.

Although the tax benefits of FLPs are well established, many fail to recognize their value as an effective asset protection tool. Assets transferred into a properly drafted FLP are fully protected against the claims of future creditors, including the IRS. A creditor of a general or limited partner will be prohibited from seizing a limited partnership interest and, instead, will have to obtain a court-ordered "charging order" against the FLP. This gives the creditor the right to claim distributions of profits from the partnership to the debtor-partner, but does not make them a substitute partner. The creditor cannot sell partnership interests, vote as a limited partner or even inspect the books.

The creditor also cannot order partnership distributions as this right remains solely with the general partners. Consequently, the FLP can simply choose to defer distributions until the creditor loses patience or decides to settle. It can also allocate a greater percentage of the otherwise attachable profits to the non-debtor limited partners and compensate the debtor-partner by way of a salary, consulting fees or loans. These types of remuneration are not considered partnership "profits" per se and are generally beyond the reach of the charging order.

To make matters worse, the creditor is considered by the Internal Revenue Service to be an assignee of the debtor-partner for federal income tax purposes. This means that the creditor receives the K-1 and is subsequently responsible for the tax liability on the debtor-partner's allocated earnings. This may be the case *even if distributions are never made*. Although this result is still being debated within the legal community, the mere possibility of incurring tax liability for undistributed profits should have a chilling effect on all but the most determined creditor.

As with any asset protection strategy, the FLP has its limitations. In the first place, it can only be used to protect assets against future creditors. Any transfer made with the intent to "hinder, delay or defraud" a present or foreseeable creditor may be deemed a fraudulent transfer and, thus, null and void. In addition, certain assets such as S-corporation stock, IRAs and annuities, as well as ones personal home, should not be held in an FLP. It is also unadvisable to use a FLP to operate a business unless its general partners are LLCs or corporations as the general partners would be subject to the partnership debts.

A properly drafted FLP is an extremely valuable and highly flexible tool for managing wealth and protecting assets. When combined with adequate insurance and other risk management strategies, the FLP offers a very effective first line of defense against future creditors. It also bridges the gap between the rather negligible protections offered through state and federal statute and the more costly and complex off-shore alternatives.

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TRUSTBUILDERS
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*Providing Peace of Mind through Comprehensive
Estate Planning & Private Wealth Management*

**Check out our
website @**

www.trustbuilders.net

Client Information Corner - Summer Seminars and Brochures

- Join us for Lunch and Learn. TrustBuilders Law Group will be holding three luncheon estate planning seminars this summer for our estate planning clients and their friends. The dates, locations, and topics are as follows:
 - ◆ June 21, 2011 @ 11:30 am - Piankatank Golf Club, Hartfield, Virginia: “Long –Term Care Choices”
 - ◆ July 7, 2011 @ 11:30 am - Montross Inn, Montross, Virginia: “Estate Planning for the Future”
 - ◆ August 18, 2011 @ 11:30 am - Joe and Mimma’s, Yorktown, Virginia: “Long-Term Care Choices”

*Seats are limited so call early to reserve your spot (800) 966-2880 or (757) 877-2248
- Our office have several brochures available upon request: “Understanding Funding Your Trust,” “Understanding the Duties and Responsibilities of a Successor Trustee,” “Understanding Life Insurance Trusts,” “Understanding Charitable Remainder Trusts” and the new information package on Virginia 529 College Savings Plans.” Call us for a copy!
- Financial Planning Tip: Reserve your free, no obligation personal wealth care review with our affiliate TrustBuilders Planning Group; 110 Grace Avenue Urbanna, Virginia 23175 (804) 758-8290.

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