



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
Summer/Fall 2009

A PERSONAL NOTE TO OUR VALUED CLIENTS

Last November the American people voted for change and change we have gotten. I am not certain it is the change many suspected, but nevertheless, we can look forward to major shifts in various national policies, and in particular, tax policy. The president has indicated that he wants to revamp the tax code by the end of this year. The future of the estate tax is therefore on the table. We know that the administration wants to keep the tax. What we do not know is what exemption from that tax will be available to taxpayers, or what tax rate will apply. For 2009, the exemption is \$3.5M per taxpayer. The maximum estate tax that can be assessed is 45% on the taxable estate. The exemption expires at the end of this year. As a result of the uncertainty of the future of this tax we are including tax exemption clauses in all our trust documents. This provision is designed to protect whatever exemption may be available to our clients. We will keep

you posted on the changes as they develop.

On the brighter side, I am pleased to announce that Attorney Kris Koletar has become a shareholder and a director for the firm. As you know Kris is our resident attorney in the Yorktown Office and has been doing a superior job for our clients and the firm. Congratulations to Kris! Also we are welcoming Monique Jackson-Fitzgerald, attorney, to our TrustBuilders team. Monique is a graduate of the University of Richmond Law School and will be working in our Urbanna office.

In addition, I would like to announce we are sponsoring, with the York County YMCA, a series of educational seminars over the next several months on various estate planning topics. The schedule of the seminars and topics are posted on our website (www.trustbuilders.net). I encourage you to take advantage of this educational opportunity and sign up for one or

more of these presentations, which will be held each month at the Victory Family YMCA building located at 101 Long Green Blvd. in Yorktown from 10:30 am to 12:00 pm. (Just off Hampton Highway (Rt 134). Once on Long Green Blvd. the YMCA is on the left.)

Finally, I would like to report that the Virginia General Assembly has revised the law of Virginia that applies to Advanced Medical Directives. We are in the process of updating our Advanced Medical Directive documents to incorporate the new provisions of the law. Please make sure you schedule an annual review of your estate plan in the next several months. At that time we will see whether or not we need to revise your Advanced Medical Directive or make changes to any of your other estate planning documents.

Chip's Tips

•**CEMETERY LOTS:** Many clients ask us ‘What should be done with cemetery lots? Do we put them in the trust?’ The answer is that Virginia Law recognizes cemetery lots as personal property, not real estate; therefore there would be no deed to the trust. You simply need to leave instructions as to the disposition of the cemetery lot, or lots, along with the other instructions of distribution of personal property. The trustee then can make arrangements with the cemetery for the transfer of those lots as you direct.

•**NEW IRA WITHDRAWAL RULE:** Late last year, Congress passed a new package of pension-related tax breaks. President Bush signed the ‘Worker, Retiree, and Employer Recovery Act of 2008’ into law December 23. Generally, you must begin taking RMDs from your qualified retirement plans and traditional IRAs (but not Roth IRAs) after you have reached age 70 1/2. If you fail to take the annual required distribution, the IRS will assess a hefty 50% penalty tax on the shortfall. The amount of the required distribution is based on IRS life expectancy tables and the value of the account on December 31 of the previous year. Thus, if the value has plummeted this past year during the stock market crisis, your distribution for the current year is disproportionately large. In light of the recent stock market woes, the new law suspends the RMD rule for 2009. Similarly, a beneficiary taking distributions following the death of a qualified plan account-owner or IRA-owner can choose to skip the required distribution in 2009.

•**COMPLEX TAX RULES FOR INHERITED IRA'S:** If you or someone in your family recently inherited a traditional IRA-or is about to-you have a dizzying array of options to sort through. The ultimate decision may depend on your relation to the account holder and whether death occurred before or after the required beginning date. This is an extremely complex area of the tax law generally requiring expert advice. If you inherited, or will be inheriting, an IRA, you may call our office at 757-877-2248 to arrange a consultation.

New Advance Medical Directives, by Kristof G. Koletar, Esq.

As mentioned above, Virginia recently amended its statute governing the use of an Advance Medical Directive. Though the new law is designed primarily to clarify the existing law (e.g. definitions of ‘terminal condition’ and ‘life-prolonging procedure’), it also expands what a person is permitted to authorize in the document. For example, new Advance Medical Directives can authorize specific organ donations, experimental medical care, mental health services, visitation rights, and even healthcare procedures to be performed over your objection, should you become incapable of making an informed decision.

New versions of our Advance Medical Directives should be available soon, and will seek to incorporate as many of the new provisions as possible, providing you with more options than ever before. We would recommend that you schedule an annual review of your existing plan to see if these new options would be appropriate for you.

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Preserving Wealth through Modern Asset Protection Planning

By George P. Wakefield Buxton, JD, LLM (Tax), MBA

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In today's litigious society, asset protection planning has become an essential part of modern estate conservation. After all, one cannot effectively transfer wealth to the next generation if that wealth has already been transferred to a creditor. Unfortunately, there are several misconceptions about asset protection planning. It is not a way to conceal assets or defraud creditors nor is it a way to evade state or federal taxes. It is, however, a legal and morally defensible method of deterring lawsuits and promoting settlements through proper risk management.

Like anything in life, the key to asset protection lies in the timing. As a general rule, courts will not protect assets that have been fraudulently transferred. A fraudulent transfer is defined as any transaction by means of which the owner of the property has sought to place such property beyond the reach of creditors. The focus in determining whether a fraudulent transfer has occurred usually comes down to whether the transferor intended to "hinder, delay or defraud" a creditor. Because intent is hard to discern, many states have incorporated so-called badges of fraud into their laws. Common law badges of fraud included transfers to friends or family, concealment or removal of assets, transfers made after threat of lawsuit, insolvency and the use of a straw person.

The good news is fraudulent transfer laws seldom apply to the claims of *future* creditors. The bad news is most states adopt a very liberal interpretation towards the triggering of a "claim". A claim, for instance, under the Uniform Fraudulent Transfer Act is defined as "a right to payment whether or not the payment is reduced to judgment, liquidation, fixed, contingent, matured, disputed, legal equitable, secured or unsecured." The key, obviously, is to have asset protection planning done well in advance of future transactions, negotiations and events.

Assuming you are proactive in your planning, there are several prudent asset protection techniques at your disposal. Statutory protections are the first place to turn because they are state sanctioned and usually require no advance planning. The most obvious example of this is a homestead exemption which provides some protection for a debtor's primary residence. An exemption is often available for miscellaneous personal property, the cash value of life insurance contracts and the balances of individual retirement accounts as well. It should be noted that qualified retirement plans (i.e. 401Ks) are fully protected by federal law and the balances are considered near bulletproof for asset protection purposes.

Once you have considered the statutory exemptions, you may need to review your estate planning options. Joint titling can be an affective asset protection technique but its limitations are widely misunderstood. Tenancy in common and joint tenancy with right of survivorship (JTROS), for example, offer little asset protection because the debtor's interest can be attached directly or severed through sale or court order. Tenancy in the entirety (a special joint tenancy between spouses), on the other hand, is a very attractive option because an interest cannot be reached by a creditor unless both spouses are debtors to a common claim.

Protecting a closely-held business is often a primary asset protection concern because it constitutes the bulk of the family wealth. Many clients are unaware that the shares of a family corporation are vulnerable to the judgment claims of a creditor. That is, a creditor can seize control of your family business by simply attaching the stock. Estate planners often recommend the use of limited partnerships or limited liability companies as entities of choice because creditors in this case are only entitled to a "charging order". A charging order gives a creditor the right to receive the debtor's distributive share of income but no actual control over the day-to-day management of the company. Some courts have even gone as far as to suggest that the creditor, as an assignee, is liable for the taxes on that share-whether distributed by the company or not!

Traditional irrevocable trusts are very useful asset protection vehicles as long as the transfers into a trust are not fraudulent. The downside to this technique, of course, is that the donor must lose control over the use of the assets transferred. Moreover, a transfer into a trust can trigger a gift tax consequence if the value of the gift exceeds the annual exclusion. Domestic and foreign asset protection trusts have become an attractive alternative to traditional irrevocable trusts because they permit them to be self-settled. In other words, they allow the grantor to also act as the beneficiary and retain significant control of the corpus. This may include the right to income and principal, the ability to change trustees and the right to remove assets from the jurisdiction.

There are an array of additional advanced asset protection techniques including collateralization and recapitalization as well as the strategic use of leasing companies, captive and private placement insurance, and other structured financial products.

Although no asset protection plan is fool-proof, there are a number of things you can do to increase your chances of success. First, seek the advice and counsel of a professional that understands wealth preservation and asset protection. Second, thoroughly document all asset protection measures you take. Third, do not mix safe assets with risky assets. Fourth, and most importantly, do your asset protection planning when you do

Your Advanced Medical Directive Available In An Emergency Anytime...Any Place!

By Kristof G. Koletar, Esq.

TrustBuilders Law Group has negotiated a reduced cost for online storage of your Advanced Medical Directive with DocuBank. An AMD includes a Living Will, Heath Care Power of Attorney and HIPPA Release. Quite simply, DocuBank stores your AMD safely for you so that you have access to it whenever it is needed. Now, with your security code, your physician, the hospital or the emergency room have access to your Advanced Medical Directive, and your vital medical information, whenever they are needed. *Twenty-four hours a day, every day of the year* .

If you would like information on recording your Advanced Medical Directive with DocuBank, please call Sharon Lester at the Denbigh office 757-877-2248 or May Ellen Oakley at the Urbanna office 804-758-2244 or e-mail info@trustbuilders.net and we will send you a descriptive brochure.

NEW RULES ON SECOND HOME CONVERSIONS

By Joseph T. Buxton III, J.O., C. E. L. A

After threatening for several years to curtail a tax break for vacation home owners, Congress finally dropped the hammer. Under the new Housing and Tax Assistance Act of 2008, you may not be able to exclude tax on all of the gain from selling a second home converted into a principal residence.

However, the crackdown applies only to “nonqualified use” occurring after 2008. Therefore, if you establish a home as your principal residence before January 1, 2009, you are completely in the clear.

First, let’s review the basic rules. If you own and use a home as your principal residence for at least two of the five years before selling it, you can exclude the tax on the first \$500,000 of

gain (\$250,000 for single filers). There is no limit on the number of times you can claim this home-sale exclusion. Titling your home or second home in your Revocable Living Trust does not affect your eligibility for the next tax break.

This special tax-code provision created a unique tax-saving opportunity for some individuals. For instance, if you own a second home, such as a vacation home in a resort area, you could:

- Sell the principal residence and pocket up to \$500,000 tax free
- Move to the second home and live in it as a principal residence

- After at least two years have elapsed, sell the second home and once again pocket up to \$500,000 tax free.

But now, appreciation on a principal residence attributable to nonqualified use after 2008 is not eligible for the home-sale exclusion. Nonqualified use includes uses as a vacation home or rental property. The portion attributable to nonqualified use is determined on a pro rata basis.

This new tax-law provision may require you to change or accelerate your plans for retirement. We may be able to provide the guidance you need to navigate through these complex rules. Simply call us.

COULD THIS TIME REALLY BE OUR “GOLDEN YEARS?”

By Mary Wakefield-Buxton

The Big Cheese and I enjoyed a few weeks vacation this winter in Florida (this column was penned in Naples in January on his laptop) basking in sunshine, drinking fresh squeezed orange juice every morning, and trying to forget Old man Winter back home. But what a winter it was! I almost dread coming back to what many have called the worst winter in decades in Tidewater and elsewhere.

But every year I fly down to Florida soon after Christmas. You see, I suffer from this illusion that if I go to Florida every January, then I will miss winter and when I return at the end of the month, I will somehow come home to June.

Of course, this isn’t true. I will probably come home in a snowstorm and have to bear another 8 weeks of dark, cold weather which is always doubly unpleasant because in the few weeks in Florida, I have managed to acclimate to light and warmth. February and March are worse for me than if I had stayed home with the dogs. Odd, how every year I still believe if I go to Florida, I will beat Old Man Winter, anyway.

Do you notice how as we get older we hang on to the silliest illusions? Like this one....who said growing old was our “Golden Years?” Ha! That is all I have to say on that illusion. I sure haven’t seen any gold yet, have you?

It seems to me Growing Old is the onset of Big Trouble squeezed in between as much fun as we can manage to arrange. I say if we are going to have Big Trouble, well, let’s be sure to double up on the fun.

Planning on a trip to the sunny south in the midst of winter is a good idea. Sunshine is good for what ails us. Laughter too. And let’s also stick to a sensible diet as we grow older and limit alcohol consumption too, along with getting some exercise every day. Also, make sure we keep up with dental check ups and physicals every year with our doc. No sense in tempting the fates by not keeping up with regular medical attention.

Here’s another tip. Get rid of friends, yes, lose them, who are always complaining about something in life. Rather, cultivate people with a positive attitude who will help you stay cheerful. I suppose that sounds a bit hard-boiled. But, let’s face it, we are now in a phase in life when things are getting a bit tough. We are losing dear friends. We are facing health problems. Not to mention what has happened to our pension and savings programs that we have spent so many years building up for...you guessed it...our “Golden Years.”

Get a dog if you don’t already have one. Dogs love us and take care of us, (I call them furry angels! My religion teaches that God sends down dogs to attach themselves to humans in order to watch over us) and they are especially good companions as we age. I have read that those who own a dog have lower blood pressure, get more exercise and feel happier than those who don’t.

Last of all, get your estate in order. Don’t wait another minute. Start passing out special heirlooms to children and grandchildren now, to make sure they go to the person you want them to go to...It’s a good feeling to know that our family is taken care of and won’t be left with extra problems to settle, (like the horrors of probate or family disagreement) should we pass away.

And keep smiling, stay happy, and be well. Let’s count blessings every single day. After all, if these really are our “Golden Years,” then we better enjoy them while we can!

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ADDRESS CORRECTION REQUESTED

Joseph T. Buxton III, P.C.
914 Denbigh Blvd.
Yorktown, Virginia 23692
Phone: Yorktown 757-877-2248
Fax: 757-890-1300



Trustbuilders Law Group

Providing Peace of Mind through Comprehensive Estate Planning & Integrated Wealth Management

**Check out our
website @
www.trustbuilders.net**

Client Information Corner

TrustBuilders Law Group mails out this newsletter a couple times a year. We are mindful of all the extra mail you receive and we would like to help you in your efforts to reduce volume in your mailbox. Therefore, we will be happy to send you a copy of our newsletter via e-mail. If you are interested in receiving our newsletters regularly via e-mail, please send your name, mailing address and e-mail address to awoh-lever@trustbuilders.net or call our office at 757-877-2248.

Also available are several brochures upon request: "Understanding Funding Your Trust," "Understanding the Duties and Responsibilities of a Successor Trustee," "Understanding Life Insurance Trusts," "Understanding Charitable Remainder Trusts" and "Commonwealth of Virginia 529 College Savings Plans." Call us for a copy!

A Profound Quote

"You cannot legislate the poor into freedom by legislating the wealthy out of freedom.

What one person receives without working for, another person must work for without receiving.

The government cannot give to anybody anything that the government does not first take from somebody else.

When half of the people get the idea that they do not have to work because the other half is going to take care of them, and when the other half gets the idea that it does no good to work because somebody else is going to get what they work for, that my dear friend, is about the end of any nation.

You cannot multiply wealth by dividing it."

~~~~~**Dr. Adrian Rogers**, 1931-2005

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