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Newsletter

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FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND A HOMEOWNER'S LAST RESORT

By: Will W. Sunter

Many homeowners in Charlotte County who have built a home or had one repaired have faced the unpleasant reality that not all contractors are honest and trustworthy. Some homeowners have lost thousands of dollars due to contractors' poor workmanship, negligence, or even fraud. A homeowner may then be faced with another harsh reality that when he or she receives a judgment against the contractor, there may be no assets from which to collect. Fortunately, the Florida Legislature has provided a possible vehicle for recovery to these homeowners under Chapter 489, Florida Statutes, entitled the "Florida Homeowner's Construction Recovery Fund" (the "Recovery Fund").

It was the intention of the Legislature in creating this Florida Statute that this fund provide relief to homeowners who received a judgment against a contractor, but could not collect on it due to a lack of assets on the part of the contractor. There are many conditions that need to be satisfied prior to filing an application with the Recovery Fund, but the main conditions are as follows:

- A homeowner must have received a judgment award or restitution order for the actual damages suffered as a consequence of the contractor's violations. The actions of a contractor that qualify for recovery from the fund are the following: contractor mismanagement; contractor misconduct that has caused financial harm to the homeowner; contractor abandonment of a construction project; the contractor has signed a statement that he has bonded the job that has caused harm; or the contractor has made payments to sub-contractors for materials that have resulted in a financial loss for the owner.
- The homeowner has made a diligent attempt to collect the judgment from the contractor, including performing an asset search on the contractor, attempting to levy and execute on the assets of the contractor, or garnish sums due to the contractor.
- Application to the Recovery Fund Board must be made within one year of any judgment, award, or restitution order.

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The Farr Law Firm offers a monthly newsletter that covers a wide variety of legal topics including personal injury and wrongful death, commercial and civil litigation, marital and family law, real estate and title insurance, estate planning, business, land use/environmental law, taxation, elder law, and asset protection.

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TAX WINDS BLOW HARD, DON'T LOSE YOUR CAP!

By: Guy S. Emerich
March 2004

Most Florida homeowners are unaware of the rapid appreciation in the value of their property. This increase, which is not reflected in the one hand one's net worth increases, on the other hand, is artificially reduced and when and how that tax liability is calculated.

benefactor of the rapid appreciation in the value of their property. This increase, which is not reflected in the one hand one's net worth increases, on the other hand, is artificially reduced and when and how that tax liability is calculated.

PROPERTY OWNERSHIP

When you own real property, you must decide how to "hold title," or take ownership of the property. There are four main ways a "natural person" (as opposed to a partnership or other entity), can own property. These are:

- Sole Ownership
- Joint Tenancy with Right of Survivorship
- Tenancy in Common
- Tenancy by the Entirety

Each individual's interests can vary but is usually proportionate to the number of owners. Each owner may sell, give away or dispose of their share of the property. Tenancy in common allows for control after death, because the owners can pass their share of the property to heirs.

There are many issues to consider when deciding how to hold title, such as, transfer at death, homestead issues and estate planning. Your attorney can advise you on the best way to hold title to real property, based on your situation.

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PROTECT YOUR FAMILY: THE "FULL COVERAGE" INSURANCE MYTH

By Darol H.M. Carr



Uninsured/Underinsured automobile insurance coverage (UM/UIM) is the most important protection you can buy for your family. It is a true tragedy when we are related to represent an injured party only to find they do not have "full coverage." There is usually little we can do to collect from an uninsured or underinsured motorist as most automobile owners have insufficient attachable assets to cover a serious bodily injury.

Florida law only requires that an automobile owner carry property damage and personal injury protection coverage. There is no Florida law that requires an automobile owner to carry insurance coverage for bodily injury, medical bills or loss of income they negligently inflict on you. Therefore, when a negligently operated automobile causes you bodily injury, significant medical bills or loss of income there may be no insurance carrier there to pay. You suffer the loss without reimbursement unless you have protected yourself with UM/UIM coverage.

How to purchase: When you purchase automobile insurance, your agent is required by Florida Law to offer you UM/UIM coverage to the limit of the amount of bodily injury coverage you purchase should you injure someone with your automobile. Do not waive that right.

How much to purchase: Your insurance agent should fully discuss with you how much bodily injury coverage you need. However, we strongly recommend that you never purchase less than \$100,000 of bodily injury coverage. This will allow you to purchase UM/UIM coverage up to \$100,000 per automobile covered. Do not buy a lesser amount. If your financial circumstances warrant, you should buy higher limits of bodily injury and UM/UIM coverage.

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PERSONAL INJURY & WRONGFUL DEATH

MAJOR MEDICAID LAW CHANGES!

By Jennifer R. Howell



With the passage of the Deficit Reduction Act of 2005 on February 8, 2006, case major changes in our Medicaid laws. Medicaid's Institutionalized Care Program is a governmental program that helps pay for an individual's nursing home stay.

The Look-Back Period
Under the old law, Medicaid was allowed to question your financial circumstances for a period of 3 years prior to the date of your application for benefits. If the transfers involving a trust, then the look-back period was 5 years.
NEW: All applicants are subject to a 5 year look-back period.

Beginning Date for Penalty Period
Medicaid looks at uncompensated transfers or gifts, that were made during the look-back period to determine if they will impose any penalties. A penalty period is the period of time during which you are not eligible to receive benefits even if you meet the income and asset requirements. The penalty period begins running in the month the gift was made. **NEW:** The penalty period does not start until the applicant would have been eligible for Medicaid benefits had they not made the transfer. (See example below.)

Calculating the Penalty Period
Under prior law, Medicaid would treat each gift separately and calculate a penalty period for each gift. **NEW:** All gifts made within the 5 year look-back period will now be treated as one gift. In addition, penalty periods will not be calculated for gifts made within the 5 year look-back period.

Example of Beginning Date for Penalty Period
Mrs. Howell gave her son \$42,000 when she sold her home in January 2005. Mrs. Howell would be eligible to receive benefits for the next 12 months. If Mrs. Howell had not made the gift, she would have to disclose the \$42,000 gift to the Medicaid agency. However, the penalty would have expired before she would have been eligible to receive benefits if she were otherwise eligible.

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