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# FARR LAW FIRM *Newsletter*

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## CHARITABLE REMAINDER TRUSTS

October, 2008

By: Guy S. Emerich



There are many techniques available to clients concerned about taking care of their family's financial needs and also reducing estate taxes after their passing. This newsletter will explore one such technique involving the use of Charitable Remainder Trusts (CRTs).

A CRT is a trust usually created during one's lifetime, although it can come into existence only upon one's demise. It is an irrevocable trust aimed at benefiting not only the maker of the trust (called the settlor), but also the settlor's family and ultimately a charity of the settlor's choice. CRTs come in two forms. One is known as a Charitable Remainder Unitrust (CRUT), while the other is a Charitable Remainder Annuity Trust (CRAT).

The CRUT pays a percentage of the value of what one contributes initially to the trust. In subsequent years it pays that same percentage but on the recalculated value of the trust principal. If for example, a client puts in \$500,000 and reserves a 7% interest, then in year one the client will receive \$35,000 of income. If in year two the trust principal is worth \$600,000 then the client will receive \$42,000 in that year. By the same token, if the trust principal is worth \$450,000 in year two then the client will receive 7% of that amount or \$31,500. A CRUT should be thought of therefore as similar to a variable annuity.

On the other hand, a CRAT pays the client the same fixed amount for the balance of the trust term. If under the same facts the client contributes \$500,000 and reserves 7% then the client will receive \$35,000 for the rest of the trust term regardless of the change each year in the value of the principal. Even if the principal turns out to be \$600,000 in year two the client will still receive \$35,000. It is therefore to be thought of as similar to a fixed annuity.

CRTs are frequently used for clients who have holdings of a large amount of a single stock which they have not wanted to sell as they did not want to incur the capital gains tax. If the stock is contributed to a CRT then neither the settlor nor the trust pays any capital gains tax as the sale was by the charitable trust and not the individual. If one further assumes that this stock was only paying a dividend of 1% per year, the settlor can now find himself with a much higher return on his investment.

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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 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: 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 per 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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**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 due to be eligible to receive benefits even if you meet the income and asset old law, the penalty period began running in the month the gift was made. **NEW:** The penalty period does not start until the applicant would have received 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 be aggregated and a single penalty period will be calculated.  
**Example of Beginning Date for Penalty Period**  
Mrs. Howell gave her son \$42,000 when she sold her \$42,000 gift resulted in a penalty period of 12 months. If Mrs. Howell had started in January 2005, Mrs. Howell would be eligible to receive benefits for the next 12 months. If Mrs. Howell had waited to disclose the \$42,000 gift until January 2006, the penalty would have expired in January 2006. However, the penalty would have expired in January 2005 if she were otherwise eligible to receive benefits if she were otherwise eligible.


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**FORMS OF PROPERTY OWNERSHIP**

By Dorothy L. Korszen



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

- 1. Joint Tenancy with Right of Survivorship**  
Joint tenancy, which allows property to be held between two or more individuals, is often used with parents and children, siblings, or sometimes business partners. Joint tenants equally share control and legal ownership of the property. Upon the death of the first joint tenant, the surviving tenants will receive equal portions of the deceased tenant's share of the property, and the deceased tenant has no interest to pass to his or her heirs. Therefore, joint tenancy limits control of the property after death. A joint tenancy may become a tenancy in common if one owner conveys his or her interest.
- 2. Tenancy by the Entirety**  
Tenancy by the entirety shares many of the characteristics of joint tenancy; however, only a husband and wife can hold property as tenants by the entirety, and ownership of property can be terminated only with the consent of both spouses. For married persons, this is the preferable way to hold title as this offers some protection from creditors' claims.
- 3. Tenancy in Common**  
In a tenancy in common, each owner controls an individual interest in the property. The amount of 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 shares any way they want. This is limited because most buyers do not want to buy a portion of a 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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