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**FARR, FARR, EMERICH, HACKETT AND CARR, P.A.**

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Newsletter

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PERSONAL INJURY &  
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE  
INSURANCE

MARITAL & FAMILY

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## ESTATE PLANNING FOR UNMARRIED PARTNERS

By: Dorothy L. Korszen



Oftentimes partners elect to live together committed in a long-term relationship, but for various reasons do not marry. For these couples, estate planning is crucial if they wish to provide for their loved one after they pass away, and allow each other to handle their affairs while living. By executing basic estate planning documents, including a power of attorney, advanced medical directives, and a will, these partners will be in a better position to allow their partner to be involved in their decisions so they can help carry out their wishes.

Power of Attorney. Some type of legal authority is needed before someone will be allowed to handle another person's dealings, such as banking, filling out tax returns or applying for government programs, to name a few. A power of attorney is a document in which a "principal" gives his authority to an "agent" so that the agent may act on the principal's behalf. A properly executed power of attorney will allow a person to give authority to whomever he or she chooses to handle his or her affairs and to take all actions that person could take for the principal's benefit. A power of attorney can either take effect immediately after it is signed, or it may be prepared so that it becomes effective after the principal becomes incapacitated and is no longer able to manage his or her affairs.

Without a power of attorney, if a person becomes incapacitated or requires help managing his or her affairs, it may be necessary for their partner to file a guardianship proceeding in court and ask the court to appoint a guardian to handle the person's affairs. This is a more time consuming and costly process than executing a power of attorney. A power of attorney will generally remain effective even after the principal becomes incapacitated up until the principal has passed away.

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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 a negligently operated automobile carrier there to pay. You suffer the loss without reimbursement unless 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 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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**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 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: 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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**MAJOR MEDICAID LAW CHANGES!**

By Jennifer R. Howell

With the passage of the Deficit Reduction Act of 2005 on February 8, 2006, came 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 determine if they will impose any penalties. A penalty period is the period of time that you are not eligible to receive benefits even if you meet the income and asset requirements. The penalty period does not start until the applicant would have been eligible to receive 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 the penalty period. In addition, penalties were rounded down. NEW: All gifts made within the 5 year look-back period will be treated as one gift. In addition, penalty periods will not be rounded down.

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

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