

BOCA RATON - FT. LAUDERDALE - MIAMI - ORLANDO - TALLAHASSEE - TAMPA - WEST PALM BEACH

GIFT PLANNING BEFORE THE YEAR 2000

As you head into the next millennium, in addition to making sure that all areas of your life are "Y2K" compliant, you should review your estate plan to make sure that you have taken full advantage of the vehicles that are available to reduce your gift and estate taxes. An important part of an estate plan includes a lifetime gift program, which may include gifts to family members, charities and others. Lifetime gifts are an effective way to reduce the value of your estate for estate tax purposes and to reduce your income for income tax purposes in some cases. Often you can make gifts with no, or minimal, gift taxes. In addition, gifts that you make for qualified charitable purposes produce a current income tax deduction. The following are examples of some

Continued on page 4, see Gift Planning

Florida Enacts Legislation Concerning Estate Planning Issues

The Florida Legislature has enacted several pieces of legislation of significance for our estate planning clients and friends. The first deals with the "elective share" rights of a surviving spouse and the second with living wills.

One of the frequently asked questions of estate planning attorneys is whether there is any

requirement to make minimal provisions for a spouse or children in a will. The answer, with respect to children, is "no", but there is such a requirement with respect to a spouse, unless a prenuptial or postnuptial agreement waives the requirement. This concept is known as the "elective share". Under the law as it exists today, a surviving spouse may decide to receive 30% of his or her deceased spouse's *probate* estate, if the surviving spouse is not

left that much in the will. A probate estate, of course, is limited to assets that the deceased spouse owned in his or her individual name. It does not include assets such as assets which were put into a living trust or which were jointly owned with children or the proceeds of life insurance payable to some third party. Thus, there were many situations where the elective share

Continued on page 2, see Legislation

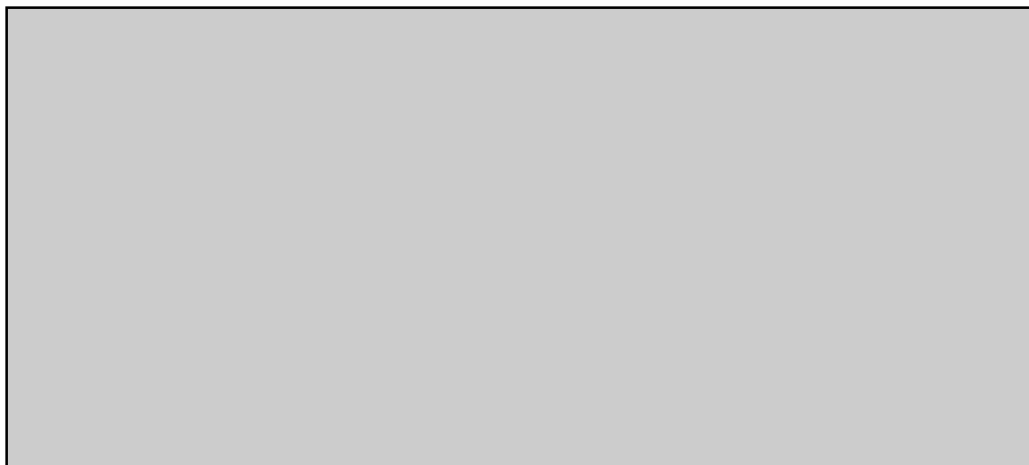
ESTATE TAX ALERT

On September, 23, 1999 President Clinton vetoed the "Financial Freedom Act of 1999" recently passed by Congress which included provisions gradually eliminating the Federal Estate, Gift and Generation-skipping transfer taxes by the year 2009 and reintroducing the carryover basis for property received from a decedent after the year 2008. Compromise by the President and Congress is uncertain.

Rose Parish-Ramon

Michael Dribin

***Spousal Rights
Broadened Under
Elective Share***



THE ESTATE
PLANNER

A Publication of

**Broad and Cassel
Attorneys at Law**

100 North Tampa Street
Suite 3500
Tampa, FL 33602
813-225-3020

EDITOR

Debra K. Smietanski

The Estate Planner offers timely and practical information, and should not be considered as legal advice as to any specific matter or transaction. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

If you wish to receive additional information regarding any of the subjects contained herein, please contact one of our attorneys. Readers are free to reproduce articles in this newsletter, however, we ask that credit be given to Broad and Cassel and a copy sent to the Editor.

© 1999 Broad and Cassel
All Rights Reserved

simply did not provide any relief to a surviving spouse.

The Florida Legislature has enacted new elective share legislation which is designed to give greater assurance to a surviving spouse that he or she will receive a minimal share upon the death of their spouse. This legislation, which only becomes effective for persons dying after October 1, 2001, provides that the 30% calculation is to be applied against not only the probate estate, but assets such as living trusts assets and jointly owned assets with third parties. The statute provides for a complex series of calculations to be made to determine the gross amount against which the 30% is to be multiplied. Once the 30% is then determined, the amount that the surviving spouse is entitled to is satisfied from the probate estate or from living trust assets.

Congratulations

of the Broad and Cassel Miami office who was elected Second Vice President of the Estate Planning Council of Miami.

Under the old elective share statute, if a husband and wife enter into either a prenuptial or postnuptial agreement that waives the right on the part of the surviving spouse to

was one of the speakers at the Real Property, Probate and Trust Law Section of the Florida Bar's Annual Legislative and Case Law Update in Palm Beach in June.

He will be speaking at a Section Seminar in February, 2000, on the new elective share statute.

receive the elective share, this is effective. Under the new statute, prenuptial or postnuptial agreements executed prior to October 1, 2001 which waive the elective share will also

waive the elective share under the new statute.

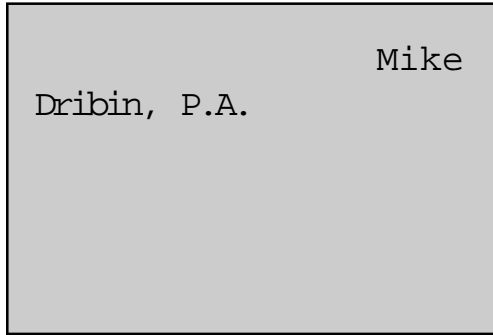
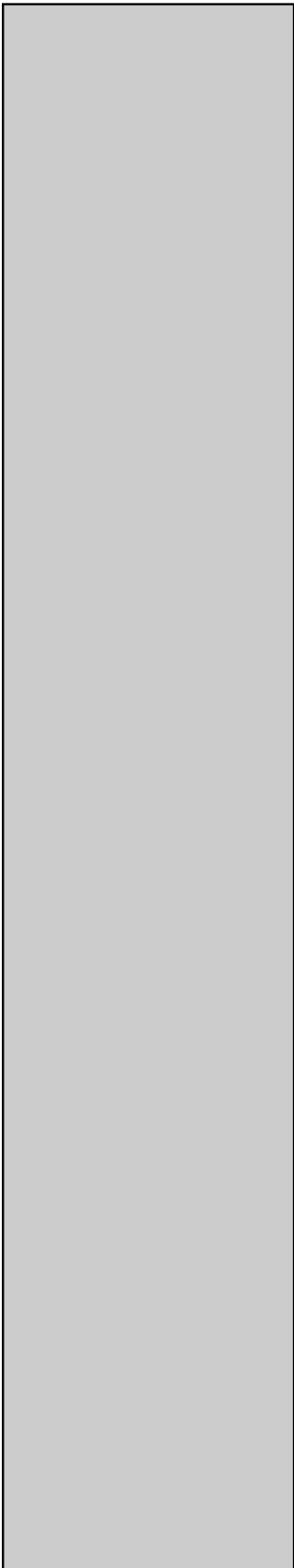
The Florida Legislature has also enacted important new legislation dealing with the scope of coverage of living wills and other "advance care directives." Generally, the changes expand the scope of living wills.

The changes go into effect on October 1, 1999.

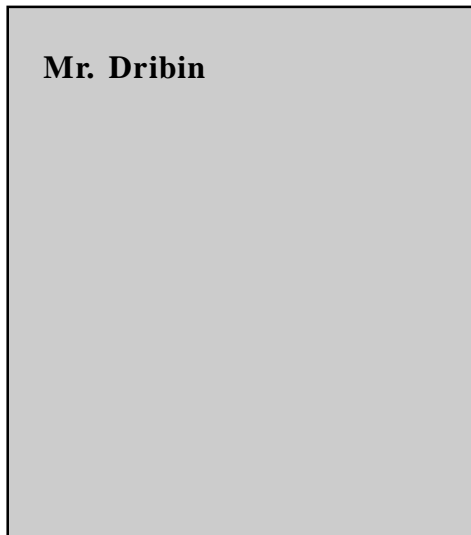
Under present law, when a patient lacks the capacity to make an informed decision about his or her health care, and is suffering from a terminal illness, a living will can operate to either direct that life-prolonging procedures be continued or not continued, as the patient may express in the document. The changes enacted by the

*Continued on page 5, see
Legislation*

ADVERTISEMENT



***Expanded
Coverage of
Living Wills***



The Benefits of Intangible Tax Trusts

There is currently an opportunity for Florida residents to avoid Florida's intangible tax. The strategy discussed below makes sense for almost anyone who is subject to a significant intangible tax.

The Florida intangible tax is generally imposed at the rate of .15% on the intangible personal property (including such items as stocks, bonds and certain money market accounts) of Florida residents as of January 1 of each year. There are certain exemptions from the tax, such as interests in U.S. treasury bills and Florida bonds.

The Florida Statutes and Florida Administrative Code now provide that intangible assets held in certain trusts will be exempt from the tax. The provisions in these trusts can be very liberal – the grantor can be the only beneficiary and can be guaranteed that all trust property be distributed back to him or her after January 1. We believe that through the careful drafting of the trust instrument the goals of the trust

may be accomplished, and the intangible tax eliminated, with minimal administrative complications.

It would be helpful, as an illustration, to describe a typical intangible tax trust. The trust would be created prior to January (sufficiently in advance of January 1 to arrange a transfer of assets by January 1). The trustee of the trust would be a non-Florida resident individual (such as a relative) or corporate trust company.

The grantor would receive the income and principal of the trust in the discretion of the trustee. At some point after January 1, the trustee could distribute the trust assets back to the grantor. Prior to the next January 1, the grantor could then recontribute those assets to the trust, to avoid the intangible tax for the next year.

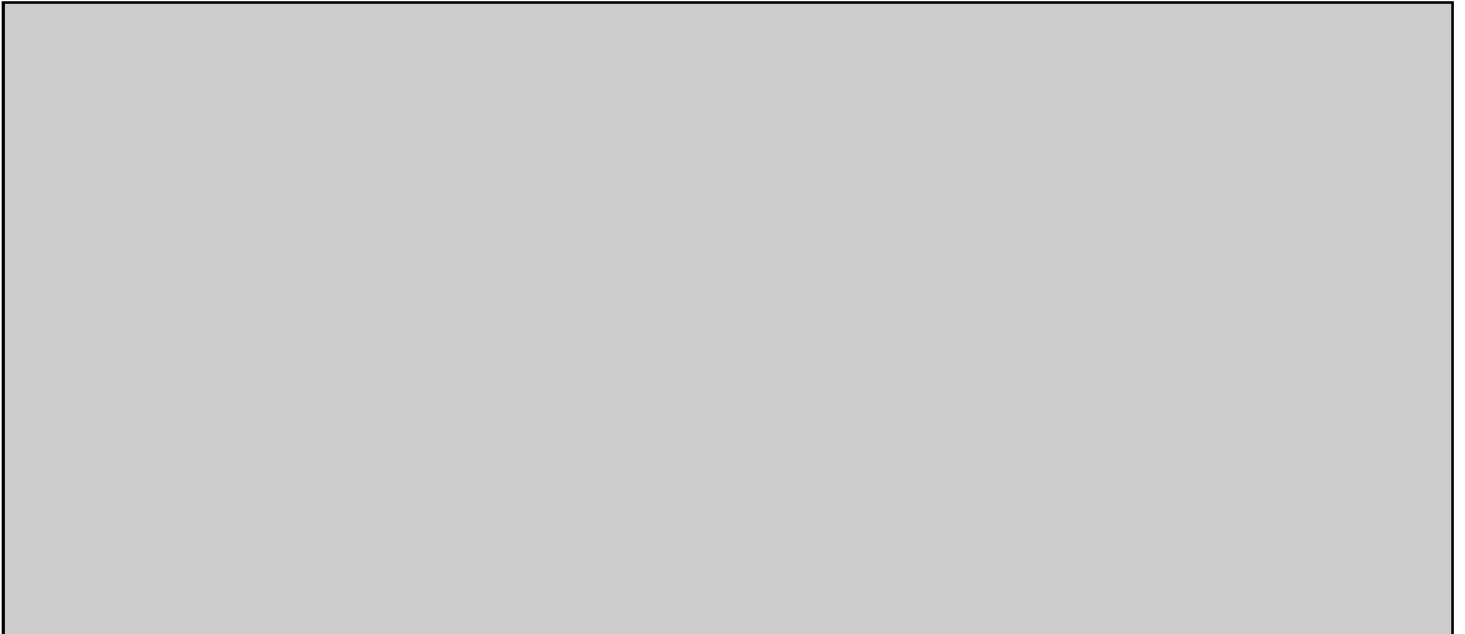
If you have in excess of \$2 million of intangible assets the intangible tax trust probably makes sense. Please call a Broad and Cassel estate planning attorney if you have any questions or would like to further discuss the intangible tax trust. *BC*

Intangible assets held in certain trusts are exempt from intangible tax.

Broad and Cassel offers complete and extensive service in the areas of estate planning, trusts and probate litigation. We utilize today's most innovative legal strategies and techniques so that our clients' goals may be accomplished in the most cost-effective manner. For more information about the legal services available from our Estate Planning and Trusts Practice Group, contact an attorney located in an office near you.

ADVERTISEMENT

Carl S. Rosen



vehicles that may comprise a gift program:

1. Annual exclusion gifts;
2. Grantor Retained Annuity Trust;
3. Qualified Personal Residence Trust; and
4. Charitable gifts.

Each year, you can make gifts to any number of persons up to an amount not to exceed \$10,000, as indexed for inflation, without paying any gift taxes. For example, if Mom and Dad have two children who are each married and who each have two children, Mom and Dad each can give \$10,000 (\$20,000 together) annually to each of the two children, their spouses and the four grandchildren for a total of eight individuals and a sum of \$160,000 – all free of gift tax. Gifts can be cash, real property, tangible property, such as artwork, or intangible property, such as stocks and bonds. In addition to increasing the wealth of their family members, Mom and Dad will reduce the value of their estates for estate tax purposes by

\$160,000 each year.

Annual gifts can be made outright to the person, or the gifts can be

held in trust for the person. Trusts are desirable vehicles particularly when the beneficiary is a minor, or when the beneficiary is not financially responsible. You can also make gifts to minors utilizing the Florida Uniform Transfers to Minor Act.

To qualify for the annual exclusion from gift taxes for this year, the gift must be completed by December 31, 1999. The annual

will be speaking at a seminar sponsored by Prudential Securities on the Benefits of Charitable Remainder Trusts on October 20, 1999, from 7pm to 8pm, at the Compton Park Center, at Tampa Palms, Tampa, Florida.

presented her “Estate Planning Opportunities Seminar” at our Tampa office on August 19, 1999.

exclusion from gift tax also can be utilized with the other vehicles described herein.

Pursuant to a GRAT arrangement, you, as the grantor, would transfer assets into an irrevocable trust and retain a current income interest under the trust for a specified time limit. The annuity must be in the form of a fixed payment made at least annually. The grantor

simultaneously transfers a remainder interest in the trust property to a beneficiary, such as a child. The value of the remainder interest will be considered a gift and subject to gift taxes, unless a portion of your applicable exclusion amount is applied against the gift. If the income interest expires during your lifetime, the remainder interest then vests in the remaindermen without further gift tax consequences. However, if you die before the end of the term of the trust, the assets of the trust will be included in your gross estate for estate tax purposes. This vehicle may be useful in reducing estate taxes and ultimately income taxes.

Under the QPRT arrangement, you can use an irrevocable trust to transfer a home to one or more family members while retaining an interest in the home for a term of years. The home can be

Continued on next page, see Gift Planning

ADVERTISEMENT

Gift Planning
Continued from front page

Debra Smietanski

***Annual Exclusion
Gifts***

Ms. Smietanski

***Grantor Retained
Annuity Trust
("GRAT")***

***Qualified Personal
Residence Trust
("QPRT")***

a primary residence and/or one vacation home. The value of the remainder interest would be subject to gift taxes; however, to the extent it is available, you can apply your applicable exclusion amount against the gift taxes. However, transferring the home into a QPRT results in the loss of the step-up in basis that your beneficiaries would receive if the property were held until your death.

An income tax deductible lead trust, and the second type of trust is known as a charitable remainder trust.

With respect to the charitable lead trust, a charity of your choice would receive payments from the trust for a specified number of years, and at the end of the trust term, the assets would be distributed to your beneficiaries. With respect to a charitable remainder trust, you or your beneficiaries would receive income from the trust for a speci-

fied number of years, and at the end of the trust term, the assets would be distributed to one or more charities of your choice.

* * *

The estate planning vehicles described herein are only a sampling of the tax-saving tools available to you. As the year draws to a close, now is the time to review your estate plan to ensure that you have utilized all of the estate planning vehicles available to you to reduce your estate, gift and income taxes. **BC**

Broad and Cassel
w e l c o m e s
Kathleen Hudson
to our Estate Plan-
ning practice in Ft.
Lauderdale. Ms.
Hudson received
her BA from
Michigan State
University in 1994
and her JD from
the University of
Miami School of
Law in 1998.

Legislature would continue to permit a patient to make such a direction when the patient is terminal, but would also permit the direction when the patient has an "end-stage condition" or is in a "persistent vegetative state". An "end-stage condition" is defined as a condition that is caused by injury, disease, or illness which has resulted in severe or permanent deterioration, indicated by incapacity and complete physical dependency, and for which, to a reasonable

degree of medical certainty, treatment of the irreversible condition would be medically ineffective. A "persistent vegetative state" means a permanent and irreversible condition of unconsciousness in which there is the absence of voluntary action or cognitive behavior of any kind and an inability to communicate or interact purposely with the environment. The definition of "life-prolonging procedure" has been expanded to include not only medical procedures, treatments or intervention, but artifi-

cially provided sustenance or hydration, which sustains, restores or supplants a spontaneous vital function.

The statute also expands, generally, the authority of a duly designated health care surrogate to make decisions in these areas on behalf of the patient, when the patient is not capable of making such decisions.

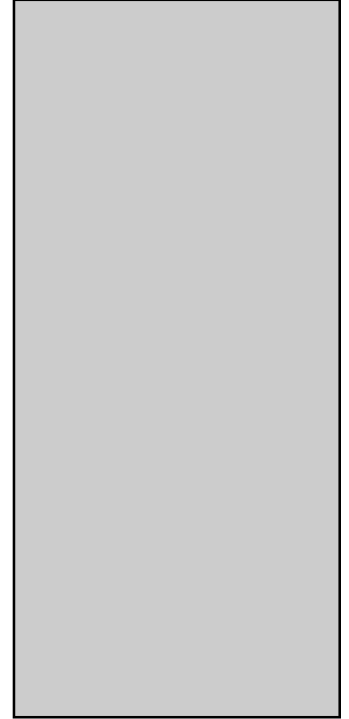
These changes suggest that persons with living wills should give some thought as to

whether they wish to change their living wills first to include end-stage conditions and persistent vegetative states in the scope of the living will and second to authorize the withholding of sustenance or hydration. Changes in health care surrogate designations should also be considered. For more information and guidance on this subject, please consult your Broad and Cassel estate planning professional. **BC**

ADVERTISEMENT

Gift Planning
Continued from previous page

Charitable Gifts



Legislation
Continued from page 2

100 North Tampa Street
Suite 3500
Tampa, Florida 33602

Attorneys at Law
Estates Planning and Trust Department

Corporate Centre at Boca Raton
7777 Glades Road
Suite 300
FL 33434
Phone: (561) 483-7000
Fax: (561) 483-7321

Miami Center
201 South Biscayne Blvd.
Suite 3000
FL 33131
Phone: (305) 373-9400
Fax: (305) 373-9443

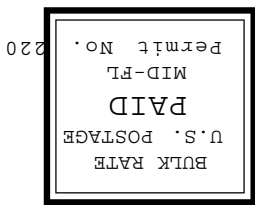
AmSouth Building
100 North Tampa Street
Suite 3500
FL 33602
Phone: (813) 225-3020
Fax: (813) 225-3039

Reflections Center
400 Australian Avenue S.
Suite 500
FL 33401
Phone: (561) 832-3300
Fax: (561) 655-1109

Broward Financial Centre
500 E. Broward Blvd.
Suite 1130
FL 33394
Phone: (954) 764-7060
Fax: (954) 761-8135

NationsBank Tower
390 North Orange Avenue
Suite 1100
FL 32801
Phone: (407) 839-4200
Fax: (407) 425-8377

ADVERTISEMENT



Broad and Cassel
The Estate Planner

The Estate Planner

Broad and Cassel

Kenneth Edelman, P.A.
Carl S. Rosen

Boca Raton,

Michael A. Dribin, P.A.
Rose Parish-Ramon

Miami

Debra K. Smietanski, P.A.

Tampa

Patricia Lebow, P.A.

West Palm Beach

Kathleen Hudson

Ft. Lauderdale

Anthony W. Palma, P.A.
Scott G. Miller
Nathan Townsend

Orlando