

# Linda Suzanne Griffin, P.A.



## Dear Friends of the Firm:

This is our firm's annual newsletter updating your knowledge on various legal issues. I want to thank you for your referrals and continuing business.

As always, 2012 has been a busy year. I currently serve as Co-Chair of the Florida Bar Real Property Probate and Trust Law ("RPPTL") IRA, Insurance & Employee Benefits Committee, Chair of the Ruth Eckerd Foundation Charitable Planned Giving Committee, Chair of the Florida Bar 6A Grievance Committee, Vice-Chair of the Florida Bar Tax Certification Committee, and a member of the Executive Council for the Florida Bar RPPTL Section. I also continue to volunteer at the Clearwater Marine Aquarium, the home of Winter, the star of Dolphin Tale, released September 23, 2011. I also published my first book! "The Survivor's Navigator: A practical guide for dealing with the death of a loved one in Florida." My book is available for purchase either in my office or Amazon.com.

As you know, I concentrate my practice in the areas of estate planning, wills, revocable and irrevocable trusts, estate tax planning, charitable trusts, probate, and trust administration. Even though I generally do not practice in other areas of law, such as probate and trust litigation, personal



injury (such as slip and fall, nursing home negligence, wrongful death and medical malpractice), corporations, family law, bankruptcy, elder law, collections, criminal law or real estate, PLEASE CONTACT ME IF YOU NEED A REFERRAL.

Nicholas Grimaudo has now been with the firm as an associate for almost 2 years! Christine, Nancy and Simi continue to serve our clients in their excellent manner. Barbara Saydeh has joined us as a receptionist, and she is an excellent addition.

On a sad note, Honeybear, my yellow lab, passed away on December 16, 2011. If you go to our website, you can see a great tribute to her. The good news is that my long-haired dachshund, Yogie Bear, comes to the office and she **loves** your visits. Come by and greet her, and, of course, if you are allergic or are not fond of dogs, she will be happy to stay with

Christine during your visit.

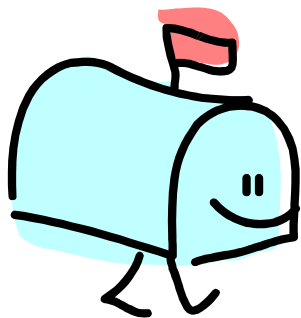
I hope you find this newsletter helpful. If you have any questions, then please contact Nancy or Barbara for an appointment. Currently, I see clients on Monday, Tuesday and Thursday and Nicholas sees clients Monday through Thursday. The office is open Monday through Thursday 8:30am to 5:00pm and is closed on Fridays. However, if, for any reason, you require a Friday, evening, or weekend appointment, then please let us know. For your convenience my firm accepts VISA and MasterCard. Please also take a look at our website [www.lawyergriffin.com](http://www.lawyergriffin.com)

I hope you have a wonderful Holiday Season!

Sincerely,



Linda Suzanne Griffin



Take a look at our website...  
[www.lawyergriffin.com](http://www.lawyergriffin.com)

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## Get Ready For Increase in Taxes in 2013!

As most of you know, the U.S. Supreme Court upheld the 2010 Health Care Act on June 28, 2012. You may not understand how this decision will affect your tax burden in 2013. The 3.8% surtax (the "Surtax") on net investment income (interest, dividends, capital gains, non-qualified annuity distributions, rental income, and royalty income) will

begin to hit most high-income clients and trusts and estates beginning in the year 2013.

The Surtax is imposed on clients with modified adjusted gross income (MAGI) over \$200,000 for individuals, or modified adjusted gross income (MAGI) over \$250,000 for married couples filing jointly (\$125,000 for married couples filing individually). The Surtax will

be assessed at 3.8% on the lesser of: (1) the net investment income or (2) the amount of MAGI over the applicable thresholds expressed above.

The estate and gift tax exclusion are also scheduled to decrease from \$5.120 million in 2012 to \$1 million in 2013. The estate and gift tax rate will also increase from 35% in 2012 to 55% in 2013.

**ADVICE:** You can minimize your exposure to the Surtax by: (1) Maximizing or increasing deductible contributions to IRAs, SEPs, 401(k)s, and other retirement accounts, (2) Converting a traditional IRA into a Roth IRA before year end, and (3) Gifting before year end to distribute assets contributing to the investment income (**To utilize the current estate tax exclusion make those gifts NOW and hire appraisers NOW; they will surely be swamped in December.**)

## Be Aware of Unknown Agreements With Your IRA!

As you may know under Florida law, IRA assets are protected from creditors and income taxes while the assets remain in the IRA. However, you need to be aware that transactions relating to your IRA may unintentionally create a taxable event. In the Department of Labor (DOL) Advisory Opinion Letter 2009-03A (October 27, 2009), the DOL stated that if a taxpayer grants a broker a security interest in a non-IRA account to cover IRA debts, such transaction was similar to personally guaranteeing a loan, creating a "prohibited transaction." If you enter into a prohibited transaction,

then an IRA could be disqualified creating huge adverse income taxes.

In a recent DOL Advisory Opinion Letter 2011-09A (October 20, 2011), the DOL stated that an IRA owner's personal guaranty to cover losses incurred in an IRA account agreement due to trading futures was a prohibited transaction because the personal guaranty was not an exception allowed for either operating expenses or expenses incidental to the ordinary operation of the plan. Any owner of an IRA with these types of prohibited transactions would be deemed to have their IRA immediately distributed and taxed.

In an unusual twist of events in response to these two DOL Advisory Opinions, the Internal Revenue Service (the "IRS") provides relief and good news! Announcement 2011-81 clarifies the treatment of IRAs with personal guaranty agreements. Even though a prohibited transaction would occur at the time the IRA agreement was signed, the IRS will only treat the transaction as a prohibited transaction if non-IRA monies were actually used to satisfy outstanding debts of the IRA or IRA monies were used to satisfy debts of non-IRA assets.

**ADVICE:** Although the IRS can now adjust how it will treat prohibited transactions, only the DOL can grant exclusions to being classified as a prohibited transaction. Thus, if you have entered into a personal guaranty IRA agreement, make sure you do not allow IRA monies to be used to pay the debts of non-IRA assets or vice-versa to avoid a prohibited transaction.

## Bad News If You Believe Gifts Of Real Estate Will Not Be Discovered By The IRS

Many of you make gifts of real estate via deeds to your children, grandchildren, friends, etc. without consultation with an attorney. Many of you may not realize that you may have made a gift for which a gift tax return (Form 709) is due. The IRS is having success in "hunting" these transactions down.

A district court in California recently granted the IRS permission to issue a John Doe summons to the California Board of Equalization (BOE) to determine unreported transfers of real property between non spouse relatives. The Code allows the IRS to issue a John Doe summons if the summons (1) relates to an investigation

of a particular person or ascertainable group or class of persons, (2) there is a reasonable basis that such person or group may fail or have failed to comply with an internal revenue provision, and (3) the information sought and the identity of such persons is not readily available from other resources.

The IRS asked the BOE to turn over requested data regarding transfer of real estate and initially the BOE refused to disclose such information absent a summons because California law prohibits the disclosure of personal information without prior written consent or otherwise required to do by law. As a result, the IRS petitioned the dis-

trict court to permit the IRS to issue a John Doe summons to the BOE requiring the disclosure of such information. The IRS submitted a petition that met the requirements; (1) the IRS was seeking the identity of a specific class of California residents, (2) statistics presented showed that between 50 percent and 90 percent of such class of California residents were not likely to file a Form 709, and (3) evidence showed that the information sought and the identity of such persons was not readily available from the 58 counties in California because most of these counties do not record interfamily property transfers.



**ADVICE:** Obviously this is a California case but you never know when the IRS could apply it to Florida! If you make a gift of real estate during the calendar year that exceeds the \$13,000 annual gift exclusion (\$14,000 in 2013), then consult with your CPA and file a Form 709 for such transfer. An adequately disclosed gift on a Form 709 will start the 3 year period of assessment on such gift.

*If you make a gift of real estate during the calendar year that exceeds the \$13,000 annual gift exclusion (\$14,000 in 2013), then consult with your CPA and file a Form 709 for such transfer.*

## Portability of Estate Tax Exclusion Updates

Many of you already know that under the 2010 Tax Act, surviving spouses can take advantage of their deceased spouse's unused federal estate tax exclusion amount or "DSUEA." NOTE: WHILE PORTABILITY IS EXPECTED TO EXPIRE ON DECEMBER 31, 2012, THIS IS A PROVISION THAT WILL LIKELY BE EXTENDED.

On June 15, 2012, the Treasury issued new temporary regulations (the "Regulations") to clarify

issues related to making the portability election, fear of "recapture" that could occur and how to calculate the DSUEA.

The Regulations confirm that the portability election must be made on a complete and properly prepared estate tax return (Form 706), which must be made within nine months of the deceased spouse's death plus any available extension. The portability election will be automatic when an estate files a Form 706. The

Regulations provide a special rule for small estates that are filing solely for portability, in which the executor is only required to report an estimated value of property qualifying for the marital or charitable deduction. This rule is subject to certain restrictions that require special consideration and executor must attach a separate document to the Form 706 estimating the estate's total value to the nearest \$250,000.

*(continued page 4)*

## Portability of Estate Tax Exclusion Updates

(continued from page 3)

*If you want to use portability for your deceased spouse's unused exemption, you **must** file a Form 706!*

The appointed executor of the deceased spouse's estate, or if no executor is appointed, any person in actual or constructive possession of the decedent's assets may file the Form 706. The Regulations provide that the executor must include a computation of the DSUEA on the Form 706, but previously filed Form 706's will not need to be supplemented or amended to estimate such

DSUEA. The DSUEA is available to the surviving spouse immediately upon the death of the predeceased spouse, thus there is no need to wait to use the DSUEA to gift.

The Regulations are favorable towards the issue of "recapture" upon the death of the surviving spouse. A surviving spouse is allowed the DSUEA of the last deceased spouse, thus a

subsequent marriage could be an issue. The Regulations provide that any gifts made during the surviving spouse's life will use the DSUEA of the last deceased spouse at the time of the gift and will not require a "recapture" upon the surviving spouse's subsequent death if such spouse remarries and is still married to the new spouse at his or her death.

**ADVICE:** The Regulations are extensive and provide significant guidance on portability and the DSUEA and should be carefully reviewed. The Regulations were silent on the availability of relief under Treas. Reg. Section 301.9100-3, so make sure you file an estate tax return on time to reserve portability. Remember that, unless Congress acts, portability expires at the end of this year!!!

## To Whom Is The Trustee Of A Revocable Trust Liable While The Grantor Is Living?



In California, a Grantor established a revocable trust and named his son sole trustee of the trust. The Grantor invested \$4 million in his son's company and transferred the stock to his revocable trust. The stock was worthless at the Grantor's date of death and four of the Grantor's children sued the son, as trustee, for breach of trust. The probate court agreed with

the Grantor's children and surcharged the trustee with \$5 million for breach of trust!

The California Court of Appeals reversed the decision in *Giraldin v. Giraldin*, 2011 Cal. App. LEXIS 1222 (September 26, 2011), based on the following: (1) trustee owed a duty solely to the Grantor during his lifetime, (2) remaindermen have no en-

forceable property right until the trust becomes irrevocable at death, (3) the death of the Grantor did not give retroactive property rights, (4) the children could not enforce duties owed to the Grantor because the Grantor authorized the transaction, and (5) Grantor retained his rights to the trust since he was legally competent and he did not make the trust irrevocable.

**ADVICE:** Florida Statute 736.0603(1) provides that the duties of the trustee are owed exclusively to the Settlor while the trust is revocable. Nevertheless, as trusts are often drafted to become irrevocable once the Settlor becomes incompetent, you need to hire an attorney and carefully review the Florida Statutes to be certain to whom the duty is owed.

## Be Aware Of These Florida Legislative Changes in 2012

Each year the Florida Legislature passes laws which affect estate planning issues. The following are a few of the more important ones:

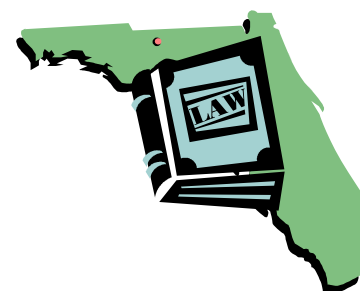
(1) Many divorced individuals die without changing the beneficiary designation of life insurance and IRAs from their former spouse to a new beneficiary. Unfortunately, prior to July 1, 2012, such a designation would be valid. A new statute, Fla. Stat § 732.703, now governs the effect of divorce, dissolution or invalidity of marriage on disposition of certain assets at death. A designation made by the decedent is void if at the time of death: (a) the marriage is dissolved or de-

clared invalid by court order and (b) the designation was made **prior** to such dissolution or court order. The asset will then pass as if the former spouse predeceased decedent. This statute **excludes** certain assets, most notably ERISA governed plans.

(2) Fla. Stat § 731.201(33) is changed to clarify the definition of "protected homestead" in order that it is consistent with the 2010 amendment to F.S. 732.401(5) and specifically

**excludes** property owned in joint tenancy with right of survivorship from the definition.

(3) Fla. Stat § 732.1081 prevents a parent(s) whose parental rights have been terminated pursuant to chapter 39 prior to the death of the child from inheriting from that child. The natural or adoptive parent is treated as if such parent predeceased the child for the purposes of intestate succession.



*Review your Beneficiary Designation in light of the new Florida Statute.*

**ADVICE:** If you want a divorced spouse to be a beneficiary, then be sure to update your beneficiary designation. Otherwise, the new statute will apply to void that beneficiary designation. Note that this statute does **not** apply to ERISA plans.

## Planning for Terminal Clients

If you have a terminally ill family member or friend that you feel certain will pass before the end of 2012, then you can advise such person with the following recommendations:

(1) Make gifts to a marital trust that qualifies for the estate tax exclusion to take advantage of the \$5.12 million estate tax exclusion in 2012. The surviving spouse will be the beneficiary of this trust and have access to the income and principal during their lifetime and the assets will be exempt from future transfer and estate taxes. However, the basis of the gifted as-

sets will be transferred to the trust and not stepped up upon death because the trust is not includable in the surviving spouse's estate.

(2) Make charitable gifts during their lifetime as opposed to making a charitable bequest upon death in order to gain the income tax advantages.

(3) Make gifts to create an exclusion trust that quali-

fies for the estate tax exclusion and take advantage of the \$5.12 million estate tax exclusion in 2012. As stated above, the trust assets will be exempt from future transfer and estate taxes. With the uncertainty of the estate tax regime in 2013, it is better to plan with a trust than give the gifts outright to beneficiaries.



**ADVICE:** Although there are planning opportunities for terminally ill people likely to die in 2012, remember that not all planning techniques work for every person. You need to take into account the tax savings opportunities along with the overall testamentary desires of the person.

## What Are “ILITs” and “SLATs” And How Can They Help You?

With the scheduled decrease of the estate tax exclusion from \$5.12 million to \$1 million on January 1, 2013, many of you may have taxable estates. Without a tax strategy and the right trust arrangement, your heirs could see estate taxes devour up to half of their inheritance and your spouse could find it difficult to access cash funds.

An Irrevocable Life Insurance Trust (“ILIT”) is a vehicle most often used to provide for the potential payment of any estate taxes. An ILIT is funded with life insurance on the grantor’s life and upon the grantor’s death, such insurance proceeds (which

are income-tax free) can be used to provide lifetime benefits to the surviving spouse, children and grandchildren. If properly structured, the insurance proceeds are not taxed in the estate of the grantor or the estate of the grantor’s spouse. Further, when both spouses die, the insurance proceeds can then be used to help pay the federal estate taxes due.

Another highly effective way to protect your assets from potentially crippling estate taxes while providing an income source for your spouse is through a Spousal Lifetime Access Trust (“SLAT”). The SLAT is a special type of irrevocable

trust that allows you to make a gift during your lifetime, using your current gift tax exclusion, to an irrevocable trust for the benefit of your spouse and children and the assets will not be includable in your or your spouse’s gross estate. During the grantor’s lifetime, the trustee may make distributions to the grantor’s spouse for health, education, maintenance, and support. In addition, the grantor’s spouse may be given the right to withdraw the greater of \$5,000 or 5 percent of the trust principal annually. Trust Income and principal may also be “sprinkled” down to children and grandchildren.

**ADVICE:** As we have advised in prior newsletters, current law for 2013 provides for a huge reduction in the exclusion amount (\$5.120 million to \$1 million). Thus, many of you who would not owe estate taxes in 2012 may find yourself subject to estate taxes in 2013. While time is running out, there may be some strategies you can use.

## President Obama’s 2013 Budget Proposes An End To The Favorable Grantor Trust

In President Obama’s 2013 budget, he proposes to include a change to the estate and gift taxation of an Intentionally Defective Grantor Trust (“IDGT”) created by a decedent. An IDGT is created to remove the property from a grantor’s estate for estate tax purposes through a gift, but the property is still treated as the grantor’s asset for income tax purposes. Thus, the property

will grow in value free from estate taxes and income tax, the latter of which is paid by the grantor.

IDGT status is acquired by giving the grantor certain rights. Common rights are the right to substitute assets of the trust or borrow from the trust without adequate security. If the grantor dies with such rights in an IDGT, these

rights do not trigger the inclusion of the trust in the grantor’s estate. Further, a sale to an IDGT is ignored for income tax purposes and thus no gain is realized on the sale to the IDGT. A common estate planning tool is a sale to an IDGT of a business interest that will grow rapidly over the grantor’s life.

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*GIFT! GIFT! GIFT!*

*Estate and Gift Tax Exclusion goes from \$5.120 million in 2012 to \$1 million in 2013!!*

## President Obama's 2013 Budget Proposes An End To The Favorable Grantor Trust

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President Obama's Proposal provides that if a grantor has the above rights in a typical IDGT, then; (1) all assets would be included in the grantor's gross estate at the grantor's death; (2) any distributions from the IDGT to the grantor's beneficiaries during the grantor's life would be subject to gift tax; and (3) if the IDGT status is terminated during the grantor's life, then all assets would be subject to gift tax. The proposal will effectively eliminate the IDGT. There is good news: (1) the proposal is not law and will not be up for vote to become law in the near future, and (2) the law should not be retroactive.

*Consider the use of an IDGT before it disappears!!!*

**ADVICE:** This proposal suggests there is a possibility that the IDGT will not be available in the future. Thus, you should call our office to schedule an appointment to discuss the use of an IDGT to take advantage of the positive income and estate tax treatment while the possibility is available. Any laws limiting IDGT will not be retroactive, so what do you have to lose?

## Items to Consider Prior to 2012 Year End

In 2012 you can make up to \$ 5.120 million in gifts tax free and gift tax rates are now only 35%. Take advantage and make those gifts!.

Review your durable power of attorney. Consider making a new one in light of the 2011 Florida Statute.

Real estate values are low. Consider combining taxable gifts with a transfer to a GRAT or QPRT.

Consider revising estate planning documents as the estate tax applicable

exclusion amount will be reduced from \$5.120 million in 2012 to only \$1 million in 2013. Thus, what was once nontaxable may become taxable

Prior to funding Irrevocable Life Insurance Trusts ("ILITs"), be sure you have no generation skipping transfer tax issues. It may be better to loan the money.

Consider Roth conversion. Income tax rates will probably never be lower.

Consider charitable gifts to offset income after making a Roth conver-

sion.

Make your annual gifts (\$13,000) prior to year end.

Discuss with your CPA, techniques to avoid the Surtax (additional 3.8% in taxes).

Capital Gains rate will go up in 2013. Discuss with your financial advisor or CPA sales in 2012.

Income tax rates will go up in 2013. Discuss with your CPA accelerating ordinary incoming in 2012.



## A Few Last Thoughts.....

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### MISSION STATEMENT

*To honor God by being of maximum service to our fellow man by providing legal services with wisdom, integrity, professionalism and excellence.*

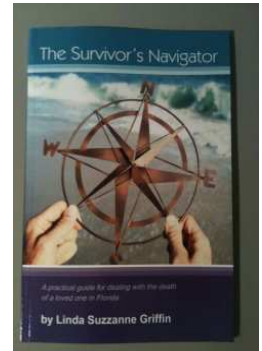
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**Do you know where your Estate Planning Documents are?** Every Spring and Fall when you are turning your clocks forward or backward, it is a good idea to pull out your estate planning documents. Ask yourself the following: Where are my originals and copies (at home, in a safe deposit box, in safekeeping at my attorney's office, etc.)? Does someone in my family know where my originals and copies are if something happens to me? Have I had any life changes (births, deaths, divorces, etc.) that could

now affect my current documents? Do my documents need to be updated? Depending how you answer those questions, please feel free to call our office to assist you in any way.

**You don't have to wait for our once-a-year Newsletter!** Now you can get helpful information every month by subscribing to our new Blog. Visit: [helpwithestateplanning.com](http://helpwithestateplanning.com) and sign up using your email address. Each month our blog is updated with a new article on a wide variety of topics. You can also read some of our pasts posts on the home page.

Linda has published her book!! *The Survivor's Navigator: A practical guide for dealing with the death of a loved one in Florida* is now available for purchase in our office or on [Amazon.com](http://Amazon.com).



**ADVICE:** If Linda Suzanne Griffin, P.A. is holding your original documents in our safekeeping, please be sure to keep our office updated with your current address. If you plan to permanently move out of the state of Florida, please contact our office for information on how you can take your original documents with you.

### Holiday Office Schedule:

- November 21<sup>st</sup>:**  
Closed at 12:00 Noon
- November 22<sup>nd</sup>:**  
Closed for Thanksgiving
- December 24<sup>th</sup> – 27<sup>th</sup>:**  
Closed for Christmas
- January 1<sup>st</sup>:**  
Closed for New Year's Day

*Have a  
Blessed and Healthy  
Holiday Season!!*



**THIS NEWSLETTER IS PUBLISHED FOR INFORMATIONAL PURPOSES ONLY AND NO LEGAL ADVICE IS INTENDED. EACH CASE IS DIFFERENT.**