November, 2016

LINDA SUZZANNE GRIFFIN, P.A.

LeGacy Planning... For Every Family... For Everyone

Volume 7, Issue 7

Dear Friends of the Firm,

Linda Griffin & Teddi Bear,
Kit Van Pelt & Hank

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

As always, 2016 has been a busy year. Linda is a member of the executive council of the Florida Bar Real Property and Trust Law Section ("RPPTL") and serves as a Vice-Chair of the RPPTL, Florida Bar Wills, Trusts & Estate Certification Seminar Committee. She also continues to volunteer at Clearwater Marine Aquarium ("CMA"), is a CMA board member and Chairman of the CMA Planned Giving Committee.

This has also been a busy year for Kit as she celebrates her third year with our firm. Kit was selected as one of 50 young lawyers to participate in the Florida Bar Wm. Reese Smith, Jr. Leadership Academy. She also serves as Treasurer on the Board of Directors of the Pinellas County Estate Planning Council; is Chair of the Probate Section of the Clearwater Bar Association; was selected to be a Trustee for the Clearwater Bar Foundation, and, is a member the SPCA of Tampa Bay Planned Advisory Committee. As you can see she is very active in the Clearwater Bar Association and also the Young Lawyers Division.

As you know, we concentrate our practice in the areas of estate planning, wills, revocable and irrevocable trusts, estate tax planning, charitable trusts, probate, and trust administration. Even though we 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 OUR FIRM IF YOU NEED A REFERRAL.

Kim Hooker joined us in January as a Paralegal and in June became a Florida Registered Paralegal. Prior to joining us she spent 6 years as a Legal Assistant. Kim is happily married to her high school sweetheart and they have a 8 year old son. She has lived in Pinellas County since she was an infant. Her hobbies include painting, beading, and relaxing at home with her family.

Heather, our office administrator and client relations coordinator, continues to serve our clients in her excellent manner.

Teddi Bear, Linda's chocolate labradoodle, comes to the office every day. For those of you who are allergic to dogs, Teddi is hypo-allergenic. Come by and greet Teddi, and, of course, if you are not fond of dogs, she will be happy to stay with our staff during your visit. You can also follow Teddi Bear on her Instagram page @TeddiBearLSG .

We hope you find this newsletter helpful. If you have any questions, please contact Heather for an appointment. Currently, Linda sees clients on Monday, Wednesday and Thursday and Kit sees clients Monday through Thursday. The office is open Monday through Thursday 8:30am to 5:00pm and is closed every Friday. However, if, for any reason, you require an evening, a Friday or a weekend appointment, then please let us know. For your convenience our firm accepts Visa, MasterCard and Discover. You can always view our website www.lawyergriffin.com for current and new information, subscribe to the blog at www.helpwithestateplanning.com, or follow us on social media on Facebook, Pinterest, Twitter, Instagram and yelp.

We hope you have a wonderful holiday season!

Sincerely,

Do Not Forget Your Minimum Required Distribution!

Many of you may be receiving a minimum required distribution (MRD) from a retirement plan or you may have inherited an IRA from which you must take a MRD. Do not forget to take the MRD prior to year end.

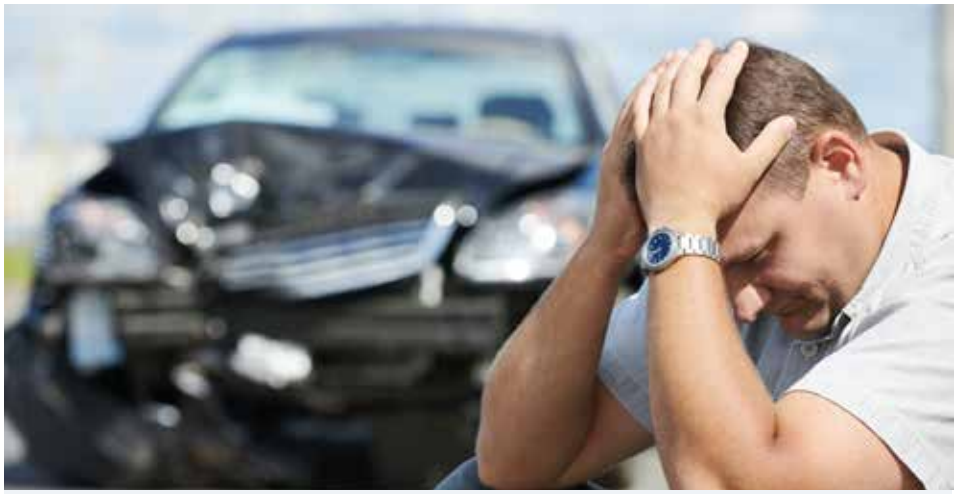
Most people are very aware of the MRD requirements from their own IRA. However, if you inherit an IRA from a decedent, you may not be aware of such a requirement especially if the decedent's date of death is close to year-end. The MRD for the decedent for the year of his or her death should be paid to him or her during that year, and, if not, then the MRD must be paid to the beneficiary prior to year-end.

For example, Ira dies in 2015 and he should have received a $5,000 MRD in 2015. Ira never took the MRD in 2015. Sue is the beneficiary. Sue MUST receive Ira's MRD prior to year-end. If Sue fails to take the required MRD, then she is subject to a 50% penalty tax!

Now let's assume that Sue turns 47 in 2016, and the inherited IRA was worth $400,000 at the end of 2015. Sue must receive from the inherited IRA, 1/37 of the IRA or $10,810 (based on the IRS tables) by the end of 2016. If Sue does not receive the MRD, she could be liable for a $5,405 penalty!!!

Good news, however. Sue may qualify for relief by requesting a penalty waiver under Section 4974 of the Internal Revenue Code. If Sue takes a late MRD, then she must file a Form 5329. She can attach a statement requesting a waiver of the penalty because of a reasonable error and she can assert that reasonable steps are being taken to remedy the shortfall.

ADVICE: *Be sure that the MRDs are properly calculated. Also, file a Form 5329 to be sure the IRS can not come back and assess the penalty because of an incorrect calculation. Fully disclose the amount you took, how you calculated the amount, and the 3 year statute of limitation should begin to run for such year.*



Your Car... Do You Know Who Is Liable?

For many of us the most dangerous item we own is our car. Consequently the most likely area where we will face a lawsuit is from driving the car. Most of us are fine with our own driving responsibility but what about the acts of others when they drive our car. You may be surprised!

Section 324.021(9)(b)(3) of the Florida Statutes provides that the owner of a car who loans the car to ANY permissive user SHALL be liable only up to $100,000 per person, $300,000 per incident for bodily injury and up to $50,000 for property damage. However, IF the permissive user is uninsured or has insurance with limits less than $500,000 combined property damage and bodily injury liability, the owner SHALL be liable up to an additional $500,000 in economic damages.

However, if you are negligent in entrusting the vehicle to someone, then you are responsible if that car has killed someone. The best example is if you loan the car and you know that the driver is intoxicated, has a habit of doing drugs, etc. Then the OWNER can be liable to the injured party.

What about your minor child? Did you know that ANY person who signs the application of a minor for a driver license is responsible for any negligence or willful misconduct of a minor? See Section 322.09(2) of the Florida Statutes.

What about liability of jointly owned automobiles? If you own a car as husband and wife as tenants by the entirities (TBE) and if the husband drives and kills someone then ALL TBE accounts could be subject to the claims of the deceased. Thus, in most situations we recommend that the car be titled in the name of the spouse that is driving the car and the accounts are in TBE.

ADVICE: *I advise my clients to purchase a personal umbrella policy to cover unforeseen liability. The cost of a personal umbrella policy is VERY reasonable considering the coverage. Also, be VERY careful to whom you loan your car. I usually recommend (other than in the situation of a high risk profession such as a surgeon) that each car should be in the name of the person that drives the car and only that person drives the car. Thoroughly discuss this with your insurance agent and determine which is the best way financially and for liability purposes.*

Beware... the IRS "Secret" Lien

Many attorneys rely exclusively on the Internal Revenue Code (the "Code") as the "bible" for tax law. However, other provisions in the United States Code apply to taxes; one of which is the "secret lien", secret only because there is no filing or notice other than Section 3713 of the United States Code.

In a recent case, United States v. Read, the United States sued Randy Read, not only as trustee, but INDIVIDUALLY because Randy made trust payments for home renovations, children's education, real estate investments and children's summer camps prior to paying an outstanding tax liability.

In 1999, Randy created a trust for his children with stock options worth approximately $700,000. In 2000, Randy asked for an extension of time to file the tax return and the trust owed approximately $120,000 in taxes of which Randy, as trustee, did not pay. Randy was aware of the total tax bill in April, 2001.

The Internal Revenue Service (the "IRS") moved for summary judgment and, as Randy did not contest the summary judgment, entry of the judgment was in favor of the IRS and noted that Randy (1) had sole check signing authority over the trust, (2) as of April 15, 2001, knew about the tax liability, and (3) transferred trust assets rendering the trust insolvent.

An insolvent person or a representative of an insolvent person, such as a trustee for a trust or a personal representative for an estate, is PERSONALLY liable to the extent of unpaid Government claims. Thus, Randy was liable if, as trustee, he distributed trust assets while the trust was insolvent and he knew or had "notice of facts that would lead a reasonably prudent person to inquire as to the existence of the debt owed to the United States".

ADVICE: If you are a trustee, personal representative and/or the attorney or CPA representing such person, then you MUST be sure that all tax issues are resolved PRIOR to disbursing monies. Obtain copies of the prior three (3) years of tax returns and transcripts from the Service. If a personal representative or trustee must come "out of pocket" for taxes, then they may look to their advisor to make them whole.

A Beneficiary Has an Interest in a Trust... Are Those Assets Included in a Divorce Equitable Settlement?

Many parents create trusts which benefit their children and grandchildren. Often, the trustee's decision as to what to distribute to a child or grandchild is fully discretionary. Alternatively, the trustee can be directed to distribute for health, education, maintenance and support. To what extent may these trust assets be used in calculating the equitable division of assets in a beneficiary's divorce proceeding?

The lower court decision, in Pfannenstiehl v. Pfannenstiehl, determined that discretionary distributions to a beneficiary, Mr. Pfannenstiehl, COULD be considered in calculating the equitable division of assets in Mr. Pfannenstiehl's divorce. Fortunately (for Mr. Pfannenstiehl), the Massachusetts Supreme Court overruled the lower court decision.

In Pfannenstiehl, the trust terms provided that the trustees could pay to the grantor's children (of which Mr. Pfannenstiehl was one), grandchildren and more remote descendants, "such amounts of income and principal as the Trustee, in its sole discretion, may deem advisable from time to time, whether in equal or unequal shares, to provide for the comfortable support, health, maintenance, welfare and education of each or all members of such class."

The Massachusetts Supreme Court reversed the lower court decision and determined that, because Mr. Pfannenstiehl was one of eleven living beneficiaries, his right to distributions from the trust was too speculative. The trust terms permitted unequal distributions among a class that included numerous beneficiaries. Further, Mr. Pfannenstiehl's right to receive any distribution was subject to the trustee first exercising his discretion. Thus, Mr. Pfannenstiehl's interest could not be taken into account in calculating the equitable division of assets.

ADVICE: *When drafting discretionary trusts for beneficiaries, avoid having standards and make sure the trustee's power is fully discretionary. It appears that the more discretion granted to the trustee and the more beneficiaries, the more likely a court will find that such a speculative amount is NOT included in an equitable distribution calculation.*

Can You Save Real Estate Taxes on More Than One Homestead?

The homestead tax exemption creates a favorable real estate tax break and more importantly the "save our home cap" advantage for Florida residents. Assume Doris purchased her homestead in 1980 at a value of $50,000, at which time the real estate tax bill, with the homestead tax exemption, was $200. The value of a Florida homestead, on which real estate taxes are calculated, can only increase annually by the lesser of 3% or the adjustment in the Consumer Price Index. This "save our home cap" was enacted to help homeowners stay in their home when high inflation would increase the value of the homestead and the increased real estate taxes would make the homestead not affordable for the home owner.

Assume Doris dies in 2016 and the value of her homestead is now $1 million. At Doris' death the "save our home cap" comes off and her heirs now have to pay real estate taxes based on a value of $1 million instead of $50,000 plus the annual 3% increase. Exceptions are provided when there is a surviving spouse and certain transfers during lifetime to family members.

What happens when husband and wife are one family unit but live in 2 separate homesteads?

In Endsley v. Broward County, husband and wife owned real estate in Indiana and Florida. In 1986, they transferred the Indiana property to husband, and he claimed an Indiana residency based homestead tax exemption and the Florida property to wife, and she claimed a Florida residency based homestead tax exemption in Broward County, Florida.

The property appraiser in Broward County removed the homestead tax exemption (and accordingly the "save our home cap" advantage) for the Florida homestead from the period 1996-2005. In 2007, the wife was granted the homestead tax exemption again because husband cancelled the Indiana homestead tax exemption. However, the value of the Florida homestead was set to the fair market value in 2007, rather than the lower "save our home cap" value.

Under Section 196.031(5) of the Florida Statutes, a person claiming a tax exemption in another state where permanent residency is required as a basis for obtaining such exemption, is NOT entitled to homestead exemption as provided under Florida law. Further, Article VII, Section 6(b) of the Florida Constitution provides that not more than one exemption shall be allowed by any individual or family unit. Thus, a "harmonious family unit", even if living apart; cannot claim more than one homestead tax exemption. Brklacic v. Parrish. It was undisputed that husband and wife were one family unit, unlike separate family units as discussed in Wells v. Haldeos, where 2 separate homestead tax exemptions were allowed.

ADVICE: *If you are claiming a homestead tax exemption in another state, then do not assume that Florida will not find out if you are also claiming the homestead tax exemption in Florida. If the homestead is denied in Florida, then you will be facing back taxes, penalties and interest. Apply the statute correctly. If you are currently claiming 2 homestead tax exemptions, then consult with an attorney before you discuss any matter with the county property appraiser.*

IRS Offers Relief From Missed Rollovers...

Except for certain distributions from a Roth plan, all retirement plan distributions are generally taxable. However, the Code provides that, if certain distributions from a retirement plan, such as an IRA, are "rolled over" to another or the same IRA within 60 days of the distribution, no income tax is imposed. For example, Bob is age 49 and he needs a $10,000 distribution for a down payment for a car. He takes the distribution from his IRA. If he deposits $10,000 into his IRA within 60 days of the distribution, then he will not be subject to income tax on the distribution.

Revenue Procedure 2003-16 provides that the Service could review all relevant circumstances such as death, disability, hospitalization, incarceration, postal error or restrictions imposed by a foreign country and waive the 60 day requirement. The taxpayer had to request such relief through a private letter ruling ("PLR"). Until recently, the IRS fee for a PLR ranged from $500 up to $3,000 and recently these reduced IRS fees for rollover PLRs were eliminated.

The IRS recently published Revenue Procedure 2016-47 which permits a taxpayer to "self certify" to the plan administrator the reason for the improper or delay of the 60 day rollover. The specific reasons are as follows:

- Error committed by the financial institution.
- Distribution made by a lost or misplaced check.
- Distribution deposited into an account that the taxpayer thought was a retirement account.
- Taxpayer's principal residence was severely damaged.
- Member of taxpayer's family died.
- Taxpayer or member of family was seriously ill.
- Taxpayer was incarcerated.
- Restrictions imposed by a foreign country.
- Postal error.
- Distribution made by tax levy.
- Party making the distribution delayed providing required information to the receiving plan or IRA to complete the rollover despite taxpayer's reasonable efforts to obtain the information.

ADVICE: *If you have missed the 60 day rollover for any reason, then be sure to review this new revenue procedure. You want to save the cost of a PLR. However. be aware that certain reasons are NOT listed, such as a taxpayer's death. If the reason is not listed, then a taxpayer will have to request a PLR.*

Be Careful With Investments In Your IRA!

For many individuals, most of their wealth is in their IRA and can provide a source for investments such as real estate. However, the IRA owner has to beware of Section 408(e)(2) and Section 4975 of the Code, in which the IRS provides prohibitions against self dealing and other prohibited transactions between the IRA owner and the IRA. If there is a prohibited transaction between a disqualified person and the IRA, then the penalties can be steep, can cause the IRA to lose its tax deferral status and can cause income to be reported immediately. Further, in many states and in bankruptcy, the IRA is an exempt asset, protected from creditors. However, if the IRA engages in prohibited transactions, then the IRA will also lose this favorable exempt status.

In the recent case of Kellerman v. Rice, an IRA was determined to NOT be an exempt IRA in a bankruptcy proceeding because of the IRA owner's dealings with the IRA. The Kellerman facts are as follows:

1. Barry Kellerman created a self directed IRA.
2. Kellerman and his wife each owned 50% of Panther Mountain.
3. The IRA and Panther entered into a partnership agreement in 2007.
4. The partnership agreement provided that the IRA would contribute real property and cash to the partnership.
5. Kellerman instructed the trustee of the IRA to purchase the real estate and liquidate assets to contribute to the partnership.
6. The warranty deed for the real estate conveyed the real estate to the IRA and Panther Mountain, each owning 50%.
7. The IRA paid various business expenses to develop the property.
8. Kellerman filed for bankruptcy and stated that the IRA was an exempt asset and protected from creditors under applicable federal bankruptcy law.
9. The bankruptcy trustee objected to the exemption of the IRA because the IRA lost its exempt status because Kellerman engaged in prohibited transactions with a disqualified person.

The bankruptcy court determined that the IRA engaged in prohibited transactions because Panther Mountain used the IRA as a lending source for the purchase of the property in violation of Section 4975(c)(1)(B) of the Code and Kellerman transferred or used the IRA's assets for the benefit of disqualified persons and, as a fiduciary, dealt with the IRA's assets for his own interest in violation of subsections 4975 (c)(1)(D)(E) of the Code.

The district court agreed and denied the exempt status of the IRA in the bankruptcy proceeding.

ADVICE: *Anytime you invest in an IRA get competent advice. This is a disastrous area if you are engaging in prohibited transactions. You may create a large tax and penalty liability and a loss of creditor protection.*

You May be Surprised When You Receive Your IRA 1099-R!

Generally each individual who receives IRA distributions will receive a Form 1099-R which indicates the amount of distribution, indicating by codes what amount is taxable and non-taxable and other information. The IRS now requires custodians to add a new code on the Form 1099-R.

Custodians also have to provide a Form 5498 which is filed annually for every IRA and provides the prior year's ending account value and whether a distribution is required. The Form 1099-R is only filed if a distribution was made from the IRA.

The new code "K" indicates whether a distribution is of traditional IRA assets not having a readily available fair market value. This information provides the IRS with taxpayers who have self directed IRAs which are owning assets such as limited liability companies, promissory notes, stock, etc., that are hard to value. In the past the IRS had no way of knowing which IRAs held such amounts. This permits the IRS to audit those returns and determine whether the IRA distributions are properly calculated on those hard to value assets.

ADVICE: *If you are receiving minimum required distributions from self directed IRAs with hard to value assets, then be sure that you are working with a qualified company and obtain those values to make sure that your distributions are properly calculated. IF the values are incorrectly calculated there could be severe penalties for the miscalculation- 50% penalty if a minimum required distribution is not made properly.*

A Recipe for Disaster... Improper Planning for Stepchildren

It is no secret that, when parents get remarried, one of the biggest issues, either financially or emotionally, is dealing with stepchildren and step-parenting. The issues become even more apparent when the biological father or mother dies. A recent case shows what happens when there is little planning or thought for the issues that arise upon such a death.

In Dowdy v. Dowdy, Dennis, who had 3 children prior to the marriage, and Betty, who had 2 children prior to the marriage, were married. In 2006, they created a family trust which owned 2 parcels of real estate. Dennis and Betty were the settlors, trustees and beneficiaries of the trust while they were living. The trust named certain children of both as successor trustees and the trust provided that distributions were to be made to all children at both of their deaths.

In 2008 Dennis died. In 2011 Betty amended the trust and removed her stepchildren as beneficiaries and as trustees. Betty sold the real estate and Michael, one of Dennis' children who was named as a successor trustee, argued that the seller should make the check payable to Betty AND Michael, as co-trustees. The title company only made the check payable to Betty, as trustee.

Michael then filed a petition in the lower court asking for an injunction to preserve the

proceeds of the real estate and argued that the amendment was invalid as it was signed after Dennis' death and that the trust was irrevocable after Dennis's death. The lower court granted the injunction.

The appellate court reversed the lower court and determined that Michael was not entitled to an injunction and that he could not prevail. The court reviewed the trust document and determined that IF Betty was the sole trustee and sole life beneficiary, then she could sell the real estate.

Michael, however, argued saying that he was a co-trustee with Betty under the terms of the trust.

The trust language provided… "[i]n the event of the death of each of the Initial Trustees…the Settlors nominate and appoint… Michael…. and ….."(emphasis added). Michael argued that he would step in after the death of Dennis because the language meant that he would step in at the death of EITHER initial trustee. The court determined that the successor trustees would be trustees ONLY at the death of BOTH of the initial trustees.

Further, other language in the trust document provided that, after the death of "each of the Settlors" (emphasis added), then the successor trustees were to distribute the assets to all the children. If this language was interpreted to mean that on the death of the first Settlor, then all assets would be distributed, such an interpretation would negate other trust language which provided that the trust assets could be used for the benefit, support, and maintenance of the initial primary beneficiaries, Dennis and Betty, or the survivor (emphasis added).

Thus, whether or not the amendment was valid, Betty always had the right to sell the real estate and use the proceeds.

ADVICE: *You can see the perils when a married couple (with stepchldren) are trustees and beneficiaries of a trust. ANY time you have stepchildren involved, then you must carefully consider what happens when the biological parent dies. I strongly recommend providing for those stepchildren in a separate manner so as not to involve the step-parent if, at all possible. You could use life insurance or other assets to provide for the biological children.*

Is Your Claim Filed Against the Estate Timely?

If you miss the time period for filing a claim against an estate, then you can be barred forever from filing the claim. Section 733.2121 of the Florida Statutes requires the personal representative to "promptly" publish a notice to creditors ("NTC") once a week for 2 consecutive weeks and must actually send the NTC to "reasonably ascertainable creditors". A claimant must file a claim within the later of 3 months after the publication of the NTC or 30 days after service of the NTC. What happens when the NTC is published by a proposed personal representative PRIOR to actually being appointed as a personal representative?

In the recent case, Richard v. Richard, Karen and Joel were appointed as co-personal representatives for the Estate of Edward A. Richard on June 14, 2012. ONE day prior to being appointed by the court on June 13, 2012, they published (and Karen and Joel signed) the NTC. Ultimately, Karen filed an untimely claim against the estate. The issue was whether the NTC was proper since the NTC was published by personal representatives PRIOR to their appointment.

Section 733.601 of the Florida Statutes provides that, once a personal representative is appointed, then acts prior to their appointment are approved. Karen argued that, publishing the NTC was not an "act" as defined in the statute and therefore the publication was not proper.

The appellate court disagreed but remanded the case to determine whether she was a "reasonably ascertainable creditor" and if so, should she have had a NTC actually sent to her (even though she was the one that actually signed the NTC)?

ADVICE: *The moral of this case … Once you know the NTC is published or you receive a NTC, if you have a claim, FILE the claim in a timely manner. Trying to fix the matter can result in excessive attorney fees and costs.*

Florida Enters the Digital Age with New Legislation!

All of us have digital assets and electronic communications. Our Facebook pages, the Google emails, the bitcoins, the domain names… all are new assets since the estate planning profession has been in existence. Much confusion exists as to what a fiduciary can and can not do in dealing with such information. Recently Facebook and Google have provided for alternate contacts should someone die or become incapacitated. Many estate planners have also included language in their documents, hoping that such language will work if the fiduciary has to deal with the Facebooks and Googles of the world. Fortunately, Florida has now come up with a statute specifically addressing digital assets and electronic communications.

On March 10, 2016, Governor Scott signed the Florida Fiduciary Access to Digital Assets (the "Act") which now creates new Section 740 of the Florida Statutes. The Act generally gives the internet user, who has passed away or becomes incapacitated, the ability to manage and dispose of their digital assets. The new law was effective on July 1, 2016.

While the Act is too comprehensive to cover in this article, the highlights are as follows. The Act

(1) Defines digital assets, electronic communications, online tools, custodian, user and terms of service agreements;

(2) Provides rules to request disclosure of digital assets and electronic communications;

(3) Provides guidelines of disclosures to personal representatives, to an agent or attorney-in-fact, guardians and trustees;

(4) Discusses fiduciary duties and authority;

(5) Applies to ALL estate planning documents whether executed before or after July 1, 2016; and

(6) Provides for custodian compliance and time frames for the custodian to respond to a request from a fiduciary.

ADVICE: *Carefully review this Act and update your powers of attorney, Last Wills and Testaments and Revocable Trusts to include language as to whether the Act applies to these assets or whether you want other directions given to the provider to control.*

Acting as a Personal Representative? Make Sure Creditors Receive Notice!

If you act as a personal representative ("PR") of an estate, you must make sure that creditors of an estate receive notice of the decedent's death, either by actual notice or publication. If the notice is served on those creditors, then the creditor has the later of 3 months after publication or 30 days after service of notice to file a claim.

What if the creditor is reasonably ascertainable and the creditor never receives notice? Prior to a recent Florida Supreme Court case, a court had to grant an extension of time for such a creditor to file the claim under Section 733.702(3) of the Florida Statutes.

In Jones v. Golden, the Florida Supreme Court determined that a reasonably ascertainable creditor who had not received actual notice, did NOT have to receive an extension of time and could file a claim within the 2 year time limitation. The Florida Supreme Court decided a conflict with the lower court decisions in Golden v. Jones, (which provided that a court did NOT have to grant an extension of time for a reasonably ascertainable creditor to file a claim) and Morgenthau v. Andzel and Lubee v. Adams (both of which provided that a court DID have to grant an extension of time for a reasonably ascertainable creditor to file a claim).

The Court determined that a reasonably ascertainable creditor who was NOT served with a notice to creditors would have 2 years from the date of death to file a claim. The Court referred to Tulsa Professional Collection Services, Inc. v. Pope, the United States Supreme Court decision, which required that reasonably ascertainable creditors receive notice under the Due Process Clause of the Constitution. "A personal representative is therefore constitutionally obligated to provide actual notice to known or reasonably ascertainable creditors and if the personal representative fails to provide that notice, the creditors' claims cannot be barred except under section 733.710."

ADVICE: *Make a diligent search of the decedent's mail, checkbook, files, etc to be sure you have determined all "reasonably ascertainable creditors" and be sure they all receive the notice to creditors so the time period lapses. Make sure you are sure that all creditors and their claims are resolved BEFORE you distribute assets to the beneficiaries. Be careful out there!*

A New Will and Revoking Your Old Trust... The Devil is in the Details!

Many individuals have created revocable trusts that no longer meet their needs or they do not want a trust. What happens if an old revocable trust is not properly revoked or, having been revoked, still has assets titled in the trust name? In Bernal v. Marin, the court answered that question and reviewed, in a case of first impression, Section 736.0602 of the Florida Statutes.

Zintgraff created a revocable trust in 2004 and transferred her homestead and a Wells Fargo brokerage account into the name of the trust. Her cousin, Marin, was the successor trustee.

In 2008, Zintgraff went to another lawyer and asked her to draft a will and revoke her old trust. The new attorney drafted a new will which included language that the Zintgraff revoked "all other wills, trust and codicils previously made by me." After Zintgraff's death, Marin argued that the trust was not revoked and that the homestead and the Wells Fargo account were assets of the trust and the trust governed the disposition.

The trial court agreed, finding that Section 736.0602(3) had some alternatives for revoking the trust (a) by the terms of the trust (In this case there were no provisions for revocation) or (b) if the trust did not provide a method, (1) a later will or codicil which expressly refers to the trust or specifically devises the property that would have otherwise passed according to the trust terms or (2) any other method manifesting clear and convincing evidence of the settlor's intent. The court determined that while (a) and (b)(1) did not apply, (b)(2) ONLY applied if (b)(1) already applied. As there was no specific reference to the trust instrument, (b)(2) did not apply and the trust was not revoked.

On appeal, the appellate court determined that the lower court read the statute too narrowly and determined that (b)(2) applied and the settlor's intention should be the polestar by which courts must be guided in determining whether a revocation of a revocable trust has occurred.

A D V I C E : *In revoking an old trust, READ THE TRUST and revoke the trust in accordance with the trust document. In lieu of reading the trust (because the client perhaps can not find the trust), specifically refer to the trust name in the Last Will and Testament. Also, make sure that assets titled in the name of the old trust are transferred from the trust.*

IRS Allows Reformation of a Trust to Correct Scrivener's Errors

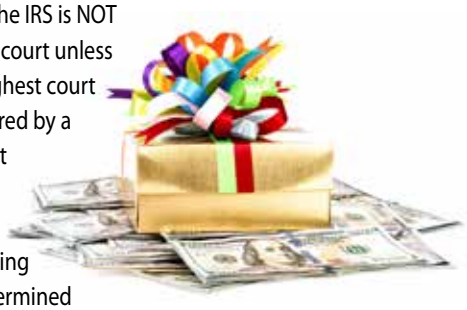
Sometimes the drafter of a document makes a mistake that can lead to costly estate or gift taxes. In a PLR 201544005, the IRS allowed a state court reformation of a trust to fix certain drafting errors which could have resulted in adverse estate tax consequences.

In PLR 201544005, the Grantors created a trust for the benefit of their minor children. The trust provided that distributions from the trust were to be made for the benefit of their children primarily for their education, health, and personal development until the age of 25. After the eldest child reached age 25 the trust was subdivided into 2 sub-trusts. Language in the trust provided that the trust was irrevocable but in another article the language provided that the Grantors had the power to amend the trust.

The Grantors realized that such language, together with other trustee distributions standards for their children, did NOT reflect their intent to make an irrevocable completed gift. If the gift was a completed gift and the trust was irrevocable, then the gift would NOT be included in their estate for estate tax purposes. If the Grantors had NOT made a completed gift, then the gifts WOULD be included in their estate for estate tax purposes. The Grantors' intent was not reflected in the trust.

The Grantors then filed pleadings in state court to reform the trust to delete the unfavorable provisions and were successful in state court. The Grantors then applied to the IRS for this PLR and asked whether the reformation would be honored and the gifts would be treated as a completed gift to the trust and that the assets would not be included in wife's estate for estate tax purposes.

The IRS discussed Commissioner v. Estate of Bosch in which the United States Supreme Court stated that the IRS is NOT bound by any decision in the state court unless the decision is rendered by the highest court in the state. If the decision is rendered by a state lower court, then the IRS must apply what it finds to be state law after giving regard to the state trial court's determination. After reviewing relevant state case law, the IRS determined that the reformation by the state court was consistent with state law as applied by the highest court of the State. The IRS also determined that the assets would not be included in the wife's estate for estate tax purposes.



A D V I C E : *This reformation can be a way to "fix" errors in a trust. The IRS, however, is not always amenable to reformation. The taxpayers won because, with extrinsic evidence admitted as allowed under state law, it was clear as to their intent. Further, the drafting attorney filed an affidavit admitting to scrivener's errors. Also remember that PLRs are ONLY binding on the taxpayer requesting the PLR. You can not rely on another taxpayer's PLR for your own case, although the PLR will give you an idea as to the IRS opinion on a specific matter.*

Someone Dies ... Do Not Forget Deadlines for the Subchapter-S Election!

Many entities are used for estate planning and for business operations. Often a corporation elects to be taxed a Subchapter S ("Sub-S") corporation because of favorable taxation as a "pass through" entity instead of a "regular" corporation. Being taxed as a "regular" corporation can result in double taxation. The Sub-S election requirements are strict and only certain individuals and trusts can be shareholders of a Sub-S corporation. When a shareholder of a Sub-S corporation dies, you have to be sure the deadlines for the Sub-S election are met or the shareholder can face disastrous income tax consequences. A recent private letter ruling ("PLR") ruled favorably for a taxpayer.

In PLR 201604009, the decedent taxpayer ("TP") owned shares of a Sub-S corporation through his revocable trust (likely the shares were titled "TP, as trustee of the TP Revocable Trust"). When TP died, his revocable (now irrevocable) trust (Trust 1) held the shares. Upon TP's death, under Section 1361(c)(2)(A)(iii) of the Code, a revocable trust can be the owner of Sub-S shares for only 2 years after the death of the TP. No election was ever made within such 2 year period.

After that time, the trustee of Trust 1 distributed the shares (now not qualified Sub-S shares) to another trust, Trust 2 (for which a Sub-S election was never made), which then distributed the shares outright to the beneficiary who then transferred the shares to the beneficiary's own revocable trust.

As the election to be taxed as a Sub-S corporation was not made within the appropriate time periods for either Trust 1 or Trust 2, the shareholder-beneficiary asked for relief.

Section 1362(f)of the Code provides that, if the IRS determines that the Sub-S election was terminated because the termination was (1) inadvertent; (2) no later than a reasonable time after discovery the corporation actually qualifies as a small business corporation, and (3) the corporation and each shareholder agree to make any adjustments, then the corporation would be treated as a Sub-S corporation during such period.

Fortunately for this taxpayer and his or her advisor, the Service agreed and determined that the termination was inadvertent and if the proper documentation was provided to the IRS within 120 days of the date of the PLR, the Sub-S election would not be terminated for any period.

ADVICE: *While it is not clear as to who caused the error, it is important that, upon a taxpayer's death, the personal representative, the trustee, the beneficiary and the advisor clearly mark on their calendar the 2 year time frame. PLRs are only binding on the taxpayer requesting them and it is now very expensive to obtain a PLR. Nevertheless, this PLR is favorable and indicates that the Service will rule favorably in these circumstances.*

End of Year Thoughts

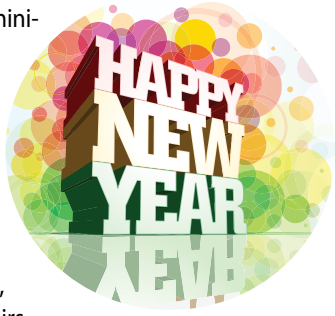
At year-end we often think about what is important to us, family and friends. I want to thank each and every one of you for either being a client, personal friend, professional friend or family. Some year end thoughts.

Prior to year end:

1. Make sure you want to make gifts that qualify for the $14,000 annual exclusion to make them prior to year end. These gifts make great holiday presents! These gifts do NOT have to be reported and do NOT cut into your lifetime exclusion amount of $5,450,000 million (in 2016).

2. Review your documents and make sure that they are in line with what you still want. Many of us vacation over the holidays or have family visit us. In your down time look over what you have. Is it still what you want? If you want to discuss certain items with your family this is the time to do it when everyone is in town. CAVEAT.. be very careful what and to whom you discuss. You don't want the holidays be ruined by hurt feelings.

3. Discuss with your CPA year end tax planning techniques that may help you pay less taxes such as deferring income or accelerating expenses.



4. Be sure you have received all your minimum required distributions from your retirement plans and if you have inherited a retirement plan be sure that you (or the deceased) properly received the minimum required distribution.

5. If you have a taxable estate, plan earlier rather than later on making gifts of appreciating property to either a trust, an entity, etc. A transfer can save your heirs estate taxes.

6. If you have highly appreciated assets which will result in capital gains, then be sure to discuss with your advisor how to structure those assets without incurring capital gains and what you can do to avoid such a gain.

7. If you have received monies from an IRA and plan to roll over within 60 days be sure that you have marked your calendar to roll over such amounts within the 60 days.

8. Don't forget the charitable rollover if you are age 70 1/2 or over. If you roll over the funds from your IRA to your favorite charity, then up to $100,000 these distributions will be tax free!

Most of all, have a great holiday season and remember that GENEROSITY IS A KEY TO HAPPINESS … REACH OUT AND HELP SOMEONE TODAY! See you in 2017!!!

Recipe courtesy of Ree Drummond on FoodNetwork.com

Chocolate Chocolate White Chocolate Chip Cookies

2 1/2 sticks butter, softened
2 cups sugar
2 eggs
2 1/2 teaspoons vanilla
2 cups all-purpose flour
3/4 cup cocoa
1 teaspoon baking soda
1/4 teaspoon salt
2 cups white chocolate chips, or more to taste
1 1/2 cups semisweet chocolate chips

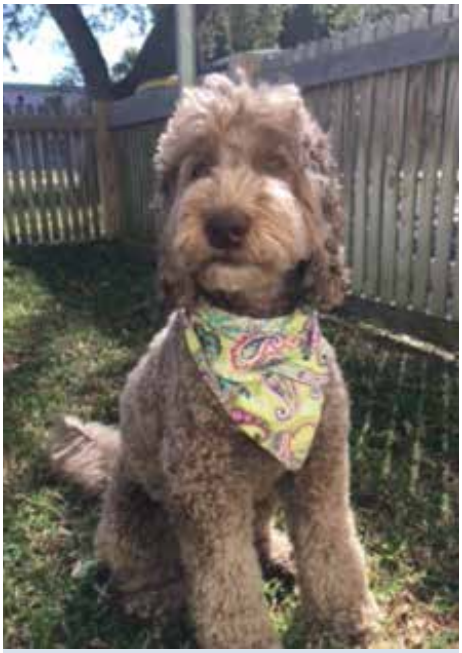
Preheat the oven to 350 degrees F.

Using a mixer, cream the butter and sugar until fluffy, scraping the sides once. Add the eggs, one at a time, mixing after each addition. Mix in the vanilla.

Sift together the flour, cocoa, baking soda and salt, and then add in batches to the mixer, mixing until just combined after each addition. Gently blend in the white chocolate and chocolate chips.

Using a cookie scoop, add 1 tablespoon portions to a baking sheet. Bake until the cookies are done but still soft and chewy, about 8 minutes.

Let cool on a baking rack. Yummy!

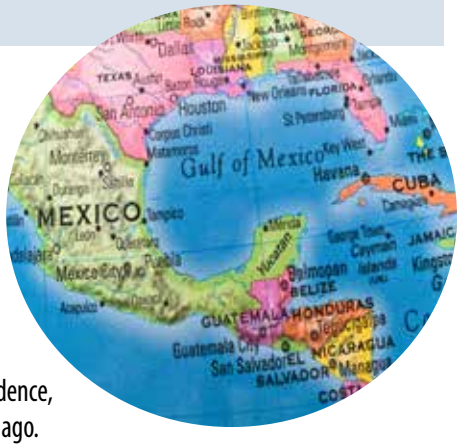


Teddi says ...

Live life like a dog ...
Run, jump & play
Simply because you can.

Fun Facts:

Gulf of Mexico



- Covers 600,000 square miles.
- 9th largest body of water in the world.
- 40% of the Gulf of Mexico is shallow intertidal areas.
- About 20% are areas over 9,000 feet deep.
- The Gulf of Mexico is thought to have formed by subsidence, a slow sinking of the seafloor, about 300 million years ago.
- Waters on the continental shelf and slope, between 600-9,000 feet deep, comprise of 60% of the Gulf.
- Gulf of Mexico supports a large variety of marine life ranging from whales, dolphins, manatees, tarpon, snapper, shellfish, corals, worms, sea turtles, and alligators.

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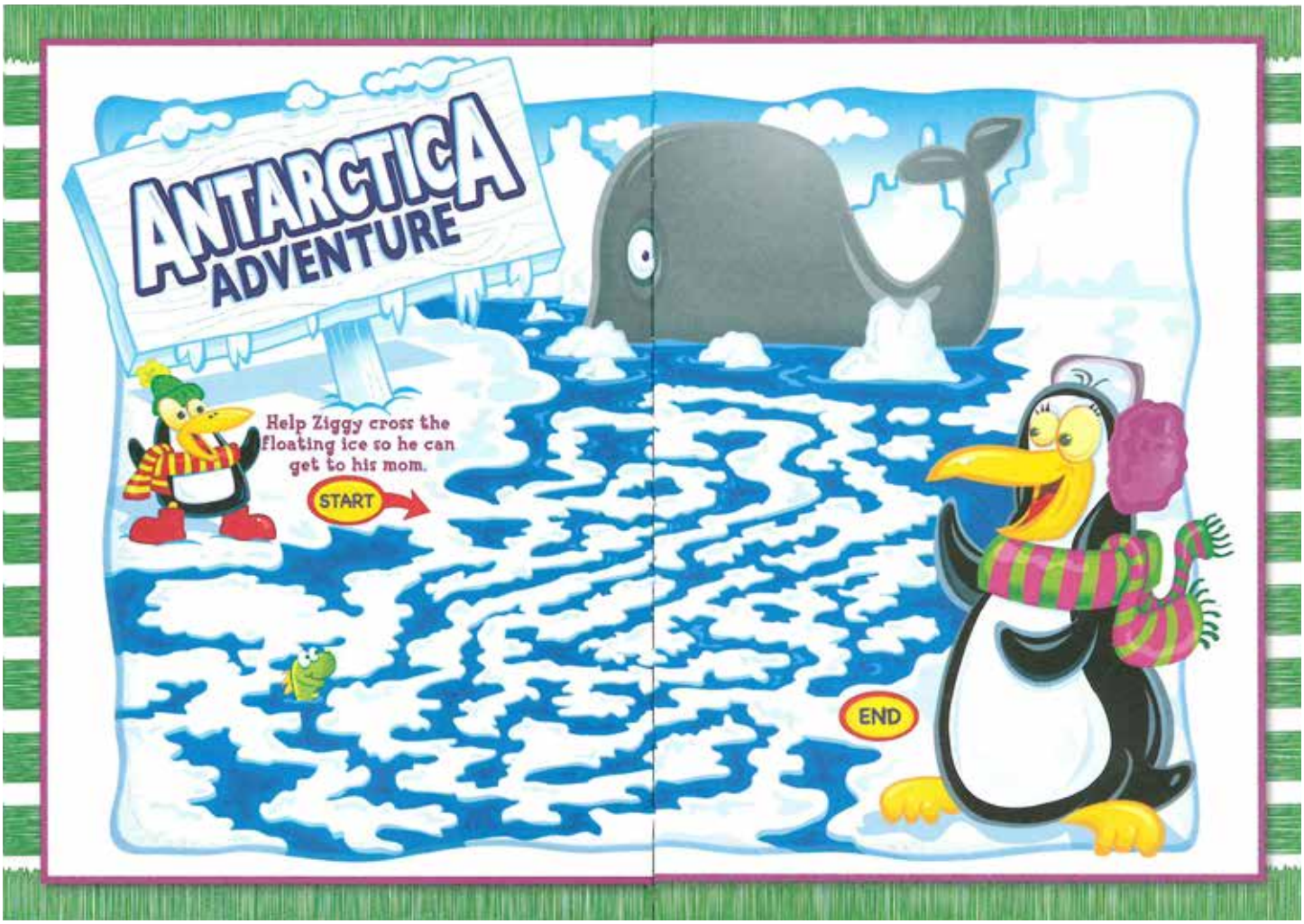

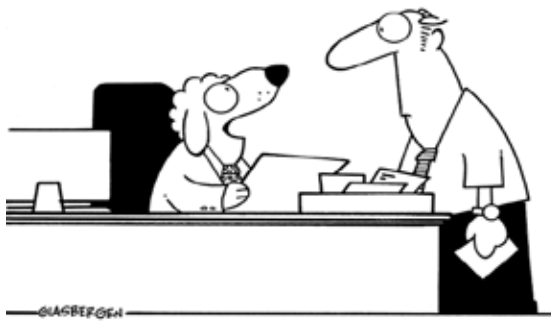

"I'm one of those new designer breeds ... an execudoodle."

Girls Day Out ...

This year we went on two bonding trips.

1) Big Cat Rescue in Tampa 2) Art from the Heart in Dunedin

LINDA SUZZANNE GRIFFIN, P.A.

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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.

Have a Blessed and Healthy Holiday Season!

HOLIDAY OFFICE SCHEDULE:

Nov. 23rd: Closed at 12:00 noon,
Nov. 24th: Closed for Thanksgiving,
Dec. 23rd through Jan. 2nd: Closed for Christmas through New Year's Holiday

A Few Last Thoughts . . .

You don't have to wait for our once-a-year newsletter!

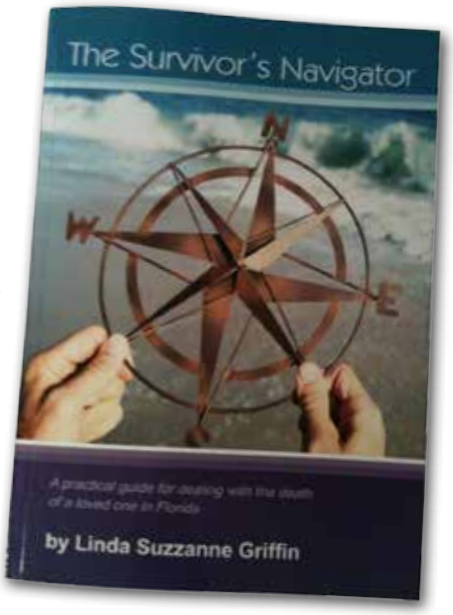
Now you can get helpful information by subscribing to our blog. Go to **helpwithestateplanning.com** and sign up using your email address. Periodically our blog is updated on a wide variety of topics. You can also read our past posts on the home page.

We want to hear from you!

Do you have a suggestion for an article? Email **heather@lawyergriffin.com** to let us know.

Linda's book is available!

The Survivor's Navigator: A practical guide for dealing with the death of a loved one in Florida is a now available for purchase in our office or on **Amazon.com.**



ADVICE: *If Linda Suzzanne 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.*