

Asset Protection Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ MAY 1, 2013 EDITION

WHY USING A REVOCABLE LIVING TRUST TO AVOID PROBATE MIGHT NOT BE THE GREAT IDEA YOU THINK IT IS

Many Florida attorneys offer present seminars promoting the idea of avoiding probate by creating revocable living trusts.

This involves transferring all your assets to a separate legal entity (a trust) for the purpose of avoiding the supposed costs and delays of probate—filing the Last Will and Testament of in Broward County publishing notices all creditors, etc.

But such a trust very often will not save costs of probate for several reasons: One reason is that Florida statutes permit an attorney who helps to wind up the trust upon the death of the person who created the trust is entitled to charge a fee equal to 3/4 of the fee cost suggested for probate.

Another problem is that more than 70% of revocable trusts are either not funded by transferring assets into the trust or sometimes assets leave the trust after the trust is created.

For example, the bank officer asks customer: "Do you want the new C.D. in your name and that of your wife as tenants by the entirety?" Saying yes to this question, a common response causes the C.D. to leave the trust and causes a loss of some of the benefits of creating such a trust.

An important reason to file for probate even when all assets are in a trust is that such probate can shorten the time during which creditors and file a claims against assets of the decedent: If you open summary administration, creditor claims can be barred in 90 days.

If you do not file for probate, the trust assets are be liable for creditors' claims for up to two years. Probate is not required, but it is highly recommended because probate will reduce the time period for unknown creditor

from two years down to 90 days.

In my experience, families don't want the assets held up in the trust for two years. The Trustee can avoid the risk of liability for distributing the assets if a claim is filed later.

I recommend opening an empty summary administration with no estate assets just for the purpose of publishing for creditors. I don't think there is any other way. Otherwise the Trustee could be liable for up to two years if an unknown creditor comes out of the woodwork and requires probate.

How to reduce income tax on social security income from as much as 85% to as little as zero! Keep more of your social security benefit when you utilize annuities for savings.

Annuities can reduce the taxes you pay on social security benefits. This is made possible by the repositioning of bonds, CDs, and mutual funds, into tax-deferred annuities.

Depending on your retirement income, you may be paying tax on up to 85% of your social security benefit.

1. If you are single, here is what you pay:

- If you make \$0 - \$25,000 no tax is imposed on your Social Security benefit.
- If you make \$25,001 - \$34,000 up to 50% of your Social Security benefits are taxed.
- If you make \$34,001 - and up, 85% of your Social Security benefits are taxed.

2. If you are married and file jointly, here is what you pay:

- If you make \$0 - \$32,000 no tax is imposed on your Social Security benefit.
- If you make \$32,001 - \$44,000 up to 50% of your Social Security benefits are taxed.
- If you make \$44,001 - and up, 85% of your Social Security benefits are taxed.

The provisional income formula put into place by congress in 1983 dictates how much of your social security benefits are subject to taxes. It also dictates which income vehicle, is included in the provisional income formula and which is excluded.

The net effect of the provisional income formula makes deferred growth from annuities advantageous with regard to taxation of your social security benefits; it keeps you in a lower provisional income bracket.

Tax deferred growth, within an annuity, does not count toward provisional income. Therefore can reduce the taxes you pay on social security benefits. Investments in municipal bonds and CDs increase your provisional income and, hence, your taxes.

By repositioning those CDs or bonds into a tax-deferred annuity, you can reduce or eliminate your tax.

News You Can Use

2013 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,130.00
Personal Needs Allowance:	\$35.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$104.90
Community Spouse Resource Allowance:	\$115,920.00
Minimum Monthly Maintenance Income Allowance:	\$1,891.25
Maximum Monthly Maintenance Income Allowance:	\$2,898.00
Monthly Personal Needs Allowance:	\$35.00