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VOLUME I, 2014

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IRS Grants Timing Relief For The Estate Tax Portability Election

Anthony D. Bartirome, Esq.

Beginning in 2011, the exemption from federal estate tax applicable to the estates of most decedents has been $5,000,000 (or even slightly higher). If the assets comprising a decedent's gross estate during that time were less than $5,000,000, the new federal "portability" laws allowed for transference of the unused estate tax exemption to the surviving spouse, thereby augmenting the spouse's available exemption potentially applicable to lifetime gifts and wealth transfers upon the spouse's later death (prior to 2011, the unused estate tax exemption of a decedent was lost). To preserve the portability of the exemption for the surviving spouse as aforesaid, a complete federal estate tax return (Form 706) for the decedent's estate was required to be filed in a timely manner (i.e. usually nine months from the date of death or, if extended, not later than fifteen months from the date of death).

Many surviving spouses since 2011 may have unintentionally forfeited the portability opportunity simply because they may not have been aware of the estate tax return filing requirement. Accordingly, the IRS is now offering temporary relief for those decedents' estates that filed no estate tax return and, but for the portability election, were not technically required to do so. Until December 31, 2014, any qualified executor or estate administrator wishing to preserve the portable (unused) estate tax exemption for later application to gift/estate transfers by the surviving spouse may do so by filing a complete and properly prepared Form 706 with the following statement appearing at the top of the return: "Filed Pursuant to Rev. Proc. 2014-18 to Elect Portability Under Section 2010(c)(5)(A)".

If you are a surviving spouse of a U.S. citizen or resident decedent who passed away on or after January 1, 2011 (but before 2014), or if you know someone whose spouse died during that timeframe, this relief now provided by the IRS could have tremendous tax advantages to the surviving spouse's estate. For example, since the current marginal estate tax rate is 40%, the preservation of a full unused exemption of a decedent could translate to as much as a $2,000,000 tax savings to the estate of the surviving spouse when he or she later passes away.

If you would like to obtain more information regarding this potential tax opportunity, please don't hesitate to contact any of our estate planning and wealth preservation attorneys. ■

Mark P. Barnebey
Land Use, Local Government, Real Estate

Jonathan H. Bernhardt
Real Estate

Robert G. Blalock
Banking, Business, Estate Planning, Real Estate

Ann K. Breitinger
Business, Health Care

Anthony D. Bartirome
Estate Planning, Estate & Trust Administration, Tax

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Marisa J. Powers
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Melanie Luten
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Establishing Florida As Your Domicile

Jenifer S. Schembri, Esq.

Establishing domicile is a two-step process, including creating yourself as a Florida resident and abandoning the designation of "domicile" in your former state. While most people focus on the "establishing" domicile in Florida, in a majority of cases the concern should focus on abandoning your existing domicile, which is controlled by the laws of the State you are leaving. Mostly States do not want to release a resident's domicile if they have a state income or estate tax. Those are the states that make the most noise.

As it relates to "establishing" Florida domicile, there is not a clear cut test but a list of factors that and steps that can be taken to establish domicile, including:

- Buying or renting a home in Florida, in order to establish a presence here in Florida
- Filing a Declaration of Residency with the clerk of court of your Florida county
- Register to vote in Florida, and actually vote in Florida
- Use your Florida address on all pertinent documents, i.e., income tax returns, legal documents, bank statements, etc
- File for Florida's homestead exemption on your real property
- Obtain a Florida driver's license and surrender your old driver's license
- Register your vehicles in Florida
- Update your wills, trusts and other ancillary documents to reflect you are a Florida resident and to be governed by Florida law
- Open bank accounts in Florida, and use them
- Close your current safety deposit boxes and open new ones in Florida
- Change any memberships, churches, clubs, etc. to Florida
- Update your insurance policies on any items to your Florida address

As you are exiting your current State, consult with your tax advisor on the steps necessary to abandon your existing domicile to ensure that if you need to keep records they are kept appropriately to withstand a challenge.

Jenifer Schembri is a principal in our Business & Corporate, Estate Planning, and Tax Law Groups. ■

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Manatee County Land Development Code Update

Mark P. Barnebey, Esq.

Manatee County is continuing to receive comments regarding the update of its Land Development Code. While many of the changes are related to clean up, some are substantive in nature, such as shortening the periods that various site plans remain in effect. Blalock Walters is assisting property owners and developers in reviewing and commenting on the LDC changes to ensure a fair consideration of their existing and future needs.

If you would like more information or need assistance in this area, contact Mark Barnebey at **mbarnebey@blalockwalters.com** ■

Will Robinson Elected Chair Of Meals On Wheels PLUS Board

Congratulations to Will Robinson who has been elected Chair of the Board of Directors for Meals on Wheels PLUS of Manatee, where he has been a Board member since 2008 and has served as Vice Chair of the Board as well as Committee Chairs for the Legal and Program Evaluation Committees.

"Meals on Wheels PLUS of Manatee is an organization near and dear to my heart. I am extremely honored to be elected as board chair and look forward to working with the Board of Directors, the CEO, and the amazing staff to continue the great work that this fine organization provides to our community." - Will Robinson ■

MESSAGE FROM THE PARTNERS

It Is Our Privilege To Serve You

Our firm continues to grow. Blalock Walters has offices now conveniently located in Bradenton, Sarasota and St. Petersburg to better serve our growing clientele with the changing demands for high quality legal services in our globally connected world.

We are grateful for you, our clients, and for our collective success. We continually strive for excellence to better serve you. When you engage us, our team collaborates to provide the best possible outcome, based on the depth of experience, skill, and training of our attorneys.

Our goal is to continually find ways to improve ourselves, our firm, and our commitment to finding creative ways to help you achieve your goals through quality legal service. We adapt to the needs of the times, embrace new technology, and offer exceptional value in our firm's diverse strengths, approaches, people and practice areas.

"We make a difference" is a value we sincerely strive to live by. We choose to volunteer and provide leadership within our business and community organizations, to better understand local challenges, to establish strong relationships, and to find ways to improve our collective home. We know you have choices in who you turn to in times of need, and we are glad you choose us. It is truly our privilege to serve you as your trusted advisors and attorneys. ■

Mary Fabre LeVine, Esq.

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Defer Tax Payments On The Sale Of Your Investment Property Through One Of The Tax Code's Best Kept Secrets: The 1031 Exchange

Jonathan H. Bernhardt, Esq.

The US Tax Code gives investors a great opportunity to reallocate funds from one investment property to another without suffering the daunting tax consequences. Section 1031 allows an investor to essentially trade properties, real estate and personal, of "like kind" without having to pay any taxes, specifically income and/or capital gains, until a later date. This allows the investor to transfer all of the value of their current investment, including appreciation in value, into an equally priced or more expensive property without sacrificing any potential gains from the usual taxes that would apply.

There are key time limits that the investor must comply with for designating a replacement property and also for closing on the property. For example, once an investor initiates the 1031 exchange by transferring their original property, the investor has 45 days to identify potential replacement properties. The investor must close on the replacement property within 180 days of the transfer of the original property or by the due date of the investor's federal tax return for the year in which the original property was transferred, whichever is earlier. These two time limits run concurrently.

Section 1031 also requires the investor to complete the transaction through a qualified intermediary. Typically, after the investor sells the original property, the intermediary holds the proceeds, thereby shielding the investor from the tax consequences that would occur had the investor obtained actual or constructive possession of such proceeds. The intermediary then instructs the Seller to deed the replacement property directly to the investor, and then releases the funds to the Seller. Transactions need not necessarily be done in this order.

There is no limit on how many times an investor can defer these taxes through the 1031 exchange, as long as each transaction falls within section 1031. The tax is not due until any such sale does not fall within section 1031. If the investor exchanges properties through the 1031 exchange over time, the investor will only have to pay the long term capital gains tax rate upon the occurrence of the non-1031 transaction based on the gain from that particular sale alone.

With the housing market picking up speed, this is a good time to begin looking for real property to purchase through the 1031 exchange. Let our attorneys help you navigate through the key requirements and intricacies of the 1031 exchange so that you may accomplish your goals in purchasing real estate. ■

Mike Magidson Elected To Turning Points Board of Directors

Congratulations to our health care and business attorney Michael D. Magidson, Esq. who has been elected to the Board of Directors of Turning Points.

Founded in 1990, Turning Points provides, coordinates and facilitates services, help and hope to the homeless and those at risk of becoming homeless in Manatee County, Florida. It provides Basic Needs Assistance, Rent & Utility Assistance, and a Medical and Dental Clinic. ■

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When Are Spouses' Jointly Held Assets Exempt From Execution By Creditors?

Mary Fabre LeVine, Esq.

People often mistakenly believe their assets 'jointly held' with their spouse are exempt from execution by a creditor. Oftentimes they make such assumptions until confronted by a creditor's action against them – at which time it may be too late to change the way their assets are titled. In fact, only certain types of 'jointly held' accounts are exempt.

Accounts which are held as 'joint tenants with the rights of survivorship' by a husband and wife may be susceptible to a creditor's execution based on a judgment only against one spouse for that spouse's one-half of the account. This is because the law views such accounts as belonging to one-half each to each spouse, so each person has only his or her separate share.

In contrast, a joint account held as 'tenants by the entireties,' a form of ownership available only to married couples is exempt from execution, except by a creditor holding a judgment against both spouses, jointly. The distinctive feature of the account titled as 'tenants by the entireties,' is that the property is held an indivisible unit, where each spouse owns the whole. Not all banks or brokerages offer 'tenancy by the entireties' accounts. You may wish to review your options to have your accounts titled in this manner.

Changes made in the titling and means of ownership of assets when litigation is impending may be set aside by a creditor as fraudulent transfers. A conversion by a debtor of an asset that results in the proceeds of the asset becoming exempt by law from the claims of the creditor may be a fraudulent asset conversion – if the debtor made the conversion with the intent to hinder, delay, or defraud the creditor. A transfer may be fraudulent where the creditor's claim arose before the transfer was made, and the debtor made the transfer without receiving a reasonably equivalent value in exchange, and the debtor faced debts beyond his ability to pay as they became due.

Statutes invalidating fraudulent conveyances are generally applicable only to a property which may be subjected to the payment of debts. Therefore, as a general rule, exempt property such as an annuity is not susceptible to fraudulent transfer. However, an exemption from attachment, garnishment or legal process provided by law is ineffective if it results from a fraudulent transfer or conveyance. Creditors have four years from the fraudulent asset conversion to bring their claim to set aside such transfers.

Mary LeVine is a principal in our litigation department specializing in commercial and probate litigation, and appeals. She may be contacted at **mlevine@blalockwalters.com** ■

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Is a 529 Education Plan the Best Way For A Grandparent To Assist With A Grandchild's College Education Expenses?

Dana Carlson Gentry, Esq.

College Education 529 plans have become popular tools to assist with the payment of college, and they are appropriate vehicles in the right situations. However, grandparents need to assess whether such plans are the right way for them to help their grandchildren with educational expenses. Some, but not all, of the factors that should be considered are as follows:

1. Before establishing a 529 plan for a grandchild, the grandparent should discuss the plan with the child's parents and determine whether they have already contributed to a state prepaid college fund plan. A 529 plan may only be used for certain educational expenses, such as tuition, books, computers and electronic media related to the student's education, and in some cases certain types of housing on the institutional campus. If the parents are contributing significant amounts to a prepaid plan, they may have already covered most of those expenses.

2. Although IRS regulations allow withdrawal of 529 plan funds for various types of educational expenses, to prevent abuse by individuals attempting to use these plans as their own personal IRAs, some of the companies that manage these plans have taken a restrictive view on how they will treat these distributions for tax purposes in order to show their compliance with the IRS regulations. Some of these companies will only issue a 1099 (for interest and dividend purposes) in the name of the beneficiary (grandchild) if the withdrawal or distribution is made directly to the college or university. From a practical perspective, most students obtain their computers and their books from other sources, including other students or online internet sources which may provide more economical choices for them. Even if your grandchild uses the college bookstore exclusively, the bookstore itself may not be affiliated with the university. Some students must pay the university directly also for its food plan which is not an allowable expenditure for 529 plans and some universities do not clearly allocate on their records between qualified 529 plan expenses and non-qualified expenses.

3. If your grandchild has received outside scholarships and prepaid funds that cover all of the tuition, then he or she needs the 529 plan funds for his or her other educational expenses, and the only practical way to pay those expenses is to direct those funds be sent to the student as allowed by the IRS regulations for those purposes. If a management company will only issue the 1099 as a qualified distribution to the student where the funds are paid directly to the university, this restrictive company policy presents a problem to the grandparent who properly distributes funds to the grandchild directly for the grandchild's books or other educational expenses. That grandparent may get a 1099 in his or her name and will then

Continued on next page | *529 Education Plan*

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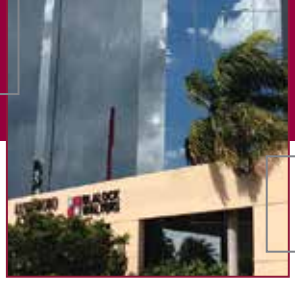


Continued **|** *529 Education Plan*

have to report to the IRS on their personal 1040 return the income or dividend portion of the distribution, or risk an IRS audit of the grandparent's income tax return for not reporting such income.

4. A grandparent may choose any state's 529 plan, even if a student or the grandparent does not reside in that state. The student can choose to go to a college in another state unrelated to the state where the 529 plan was established. But, every grandparent should obtain a copy of the prospectus for a 529 plan and read it carefully to determine if that plan is the most appropriate way for the grandparent to assist in the grandchild's education. Since the current annual exclusion gift limit is $14,000.00 per person, it may be more appropriate for the entire family if the grandparent chooses to make the annual exclusion gift directly to the grandchild rather than fund a 529 plan, particularly if all the grandchild's qualified expenses are paid by a parent's prepaid state plan fund or scholarship monies. In that case, the grandparent's annual exclusion gift can be used for other essentials of a college education including off campus housing rent and food, without affecting the grandparent's estate plan or personal income tax return.

If you would like further information on 529 plans or other ways of gifting for educational purposes, please call any one of our estate planning attorneys at **941.748.0100** and we will be happy to assist you. ■

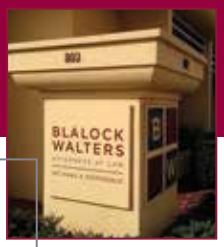
Address Change?

To update your contact information or to add a co-worker or friend to this newsletter mailing list, please contact Mary Monzingo at 941.748.0100 or email us at contact-us@blalockwalters.com ■

MAKING A DIFFERENCE

Blalock Walters Walks to Benefit Humane Society

Nice job! Blalock Walters team *SuperPuppies* led by staff member Pam Roberts and attorney Melanie Luten at Paws in Motion walk-a-thon benefitting the Humane Society of Manatee County. Thank you for making a difference in the lives of our four-legged friends and family, and in our community. ■



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Three Earn AV Preeminent Peer Review Ratings By Martindale-Hubbell

Matthew R. Plummer, Esq.

William C. Robinson, Jr., Esq.

Jenifer S. Schembri, Esq.

Congratulations to principals Matt Plummer and Will Robinson in the firm's Real Estate Law group, and Jenifer Schembri in the Estate Planning, Tax and Business groups, for receiving the "AV Preeminent" Peer Review Rating by *Martindale-Hubbell*. The Martindale-Hubbell ratings are an objective indicator of a lawyer's ethical standards and professional ability based on evaluations by other members of the bar and the judiciary. An AV rating is a significant accomplishment and a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence. The total of Blalock Walters' attorneys now rated as AV is 19, over 80% of the firm. ■

Victory for Ground Level Remodels in Flood-Prone Areas

Scott E. Rudacille, Esq.

The communities on Anna Maria Island have been trying to maintain their historic character by encouraging the remodeling of existing ground-level homes. Meanwhile, the Federal Emergency Management Agency (FEMA) seeks to limit exposure to flood claims by pressuring these communities to take more and more restrictive positions on ground-level renovations, to force property owners to tear down and rebuild elevated structures. Blalock Walters recently represented a client before the Florida Building Commission, and was successful in obtaining a Declaratory Statement which clarifies that under the Florida Building Code, substantial structural alterations can be made to ground-level structures without necessarily triggering the requirement to elevate the home. ■

Amanda Smith, On Behalf Of Manatee Young Lawyers Division, Has Grant Approved For Project Light

Amanda Smith, in our litigation group, authored and submitted a grant benefitting "Project Light" on behalf of the Manatee Young Lawyers Division (Manatee YLD) for presentation to the Florida Young Lawyers Affiliate Outreach Conference in Tampa, Florida. The Florida Young Lawyers voted to fund the project in full. The money will be used in a service project benefitting Project Light, a Bradenton literacy center for migrant workers.

Manatee YLD is planning to present $1,500.00 for Project Light to purchase new textbooks for use in teaching English to migrant workers. They will also be distributing food, clothing, and diapers at Project Light's sister charity, Stillpoint House of Prayer, a Bradenton food pantry. Additionally, Gulfcoast Legal Services has agreed to partner with Manatee YLD's "Lawyers for Literacy" project by providing pro bono immigration services to the migrant workers helped at Project Light and Stillpoint.

Thank you to Amanda for making a difference in our community. ■

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Pharmacy 'Bill Of Rights' Proposed In Florida

Michael D. Magidson, Esq.

A bill has been introduced in the Florida Legislature that would give pharmacies greater rights with respect to audits. Many pharmacies have complained that audits by or on behalf of pharmacy benefit managers (PBMs) are used simply to generate revenue and unfairly penalize pharmacies for minor issues, some of which are not the fault of the pharmacy.

The proposed legislation, Senate Bill 702 and House Bill 745, would allow pharmacies to be reimbursed for minor clerical or typographical errors discovered in the course of an audit and would allow them to use hospital or physician records to support their records in response to an audit. Moreover, pharmacies would be entitled to sue auditors for certain abusive practices. Among other things, the legislation would require auditors to provide at least seven days' advance notice before an onsite audit and limit the audit period to two years from the date a claim was submitted to or ruled on by the entity conducting the audit.

The legislation also sets forth specific time frames for pharmacies to receive the preliminary audit report and the final audit report and the right to have penalties based on actual overpayments. Importantly, however, audits related to Medicaid claims or in which fraudulent activity is suspected are exempt from the legislation.

Blalock Walters' health care services group will continue to monitor the progress of this legislation. Please contact one of our health care attorneys for more information. ■

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Jonathan Bernhardt Joins Blalock Walters Real Estate Group

We are pleased to welcome a new associate attorney in our Real Estate Law services group. Jonathan H. Bernhardt will serve our clients as counsel in commercial and residential real estate transactions, as well as commercial leasing.

Jon's Juris Doctor is from Washington and Lee University School of Law. He holds a degree in Spanish and International Affairs from Florida State University. Previously he served as judicial intern to the Honorable Paul Glenn, United States Bankruptcy Court of the Middle District of Florida. Contact Jon at **jbernhardt@blalockwalters.com** ■

Will Robinson Named to Lakewood Ranch Medical Center's Board of Governors

Congratulations to William C. Robinson, Jr. in our Land Use, Local Government Law and Real Estate Law services groups who has been named to the Board of Governors of the Lakewood Ranch Medical Center which is comprised of hospital leadership, medical staff members and community representatives. The purpose of the Board of Governors is to oversee the safety and quality of services of Lakewood Ranch Medical Center, advise the CEO on hospital operations, and to represent Lakewood Ranch Medical Center in the community.

"It is an honor to join the Board of Governors at Lakewood Ranch Medical Center. I look forward to working with other members of the Board and the hospital staff to continue the progress in making the Lakewood Ranch Medical Center one of the premier hospitals in our region and in our state," - Will Robinson. ■

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BLALOCK WALTERS INDUSTRY FOCUS: Business Transitions

Blalock Walters Attorneys Business Transitions Group:

Michael D. Magidson
Melanie Luten
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Jenifer S. Schembri
Robert S. Stroud
Ann K. Breitinger
Clifford L. Walters
Jonathan D. Fleece

Business Transitions Group Helps Owners Implement 7-Step Exit Planning Strategy

Every business owner will leave his or her company at some point, voluntarily or otherwise. Planning for this event well in advance is critical to insuring your long-term goals are realized and your family and assets are protected. Blalock Walters' Business Transitions Group provides a Seven Step Exit Planning Process to help you identify your objectives and creates a written plan for implementation.

Please call us at **941.748.0100** or email **contact-us@blalockwalters.com** for a consultation on what could likely be the most significant financial event of your life. ■

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The information in this newsletter is not intended as legal advice, but rather as a service to our clients, friends and other Internet users. If you have questions about any of the information contained in the newsletter, please contact an attorney for a consult. Please keep in mind that contacting us by itself does not establish an attorney-client relationship. Therefore, you should not convey any confidential information to us until a formal attorney-client relationship has been established after our thorough conflict of interest procedures have been completed. We welcome your inquiries, but please keep the above information in mind, as well as the fact that electronic mail on the Internet is not secure in most instances. Accordingly, you should not send confidential or sensitive information in e-mail messages. Thank you for your interest in Blalock Walters.