

GARRET T. BARNES, ESQ.
ADRON H. WALKER, ESQ.
JEFFREY S. GOETHE, ESQ.
ROBERT A. HOONHOUT, ESQ.
MATTHEW B. TAYLOR, ESQ.
JENNIFER M. LAROCO, ESQ.



MAIN OFFICE:
3119 MANATEE AVENUE WEST
BRADENTON, FL 34205
TELEPHONE: 941-741-8224
FACSIMILE: 941-708-3225
EMAIL@BARNESWALKER.COM

BARNES WALKER, CHARTERED
ATTORNEYS AT LAW

“A REAL ESTATE, WILLS/TRUSTS, CIVIL LITIGATION, AND BUSINESS LAW GROUP”

Visit us at www.barneswalker.com

ESTATE PLANNING IN AN UNCERTAIN ECONOMY

There is no question that economic times are tough today. But, now more than ever, it is important to remember that a good estate plan is a vital part of preparing for your and your family’s future, whatever it may bring. Here are our answers to some frequently asked estate planning questions:

Do I need a will?

We believe everyone should have a will. At a minimum, everyone who owns property, might own property in the future, may have legal rights to property at the time of their death, or has minor children should have at least a simple will.

In addition to trusts (see below), proper estate planning includes other ways to transfer property at death, such as joint ownership of property, gifting, and designation of beneficiaries (e.g., on IRAs, 401(k)s, and life insurance policies). Consider these options in addition to, but not in place of, a will, and review primary and contingent beneficiary designations regularly.

I’ve heard about living trusts. What are they, and what do they do?

A living trust (also called a revocable trust) is one where the “grantor” (the person who sets up the trust) also serves as trustee until the grantor passes away, becomes incompetent, or resigns in favor of a successor.

A living trust has two main functions. First, the grantor continues to control and manage his or her assets just as the grantor did before creating the trust. Second, on the grantor’s death, the trust distributes the property like a will, but without the need for probate.

How do I know if a living trust is right for me?

The best way is to talk to a lawyer about your estate planning goals and the details of your situation. If the following benefits appeal to you, then a living trust may be appropriate:

IN THIS ISSUE:
Estate Planning in an Uncertain Economy..... 1
Planning Ahead: Reverse Mortgages..... 2
Fundamentals of Florida Asset Protection..... 3

* **No probate for trust assets.** When done properly, a trust can help a grantor avoid probate. This is one of the main incentives for many people who create trusts.

* **More privacy.** Most documents in a trust administration remain private.

* **Plan for future incapacity.** Banks, title companies, and other institutions that may be reluctant to accept powers

of attorney are often more willing to act when dealing with the trustee or successor trustee of a trust.

* **Estate tax and beneficiary protection.** Trusts are slightly better suited for estate tax planning. They also offer more options for people whose beneficiaries are young, have a disability, or may need help managing their finances.

* **Harder to challenge.** Dissatisfied beneficiaries under a will can object to the will as part of the probate proceedings. Trust beneficiaries must file a separate lawsuit to challenge the trust.

Over Please →

Are there any disadvantages to setting up a living trust?

Trusts are not for everyone. Anyone thinking about creating a trust should keep certain downsides in mind:

* **Funding the trust.** Simply setting up a trust or listing assets in an attached schedule is not enough. The trust must be properly “funded”—that is, the grantor must actually transfer all the desired assets into the trust. This entails preparing deeds, re-titling bank and brokerage accounts, and transferring stock certificates. Any property that is missed or not properly transferred into the trust will remain in the grantor’s name and will have to be probated. For this reason, anyone who has a trust should also have a will to take care of any property that does not make it into the trust.

* **Time and expense.** Wills are usually shorter, simpler to understand, and less expensive to prepare than living trusts. (Beware of “do-it-yourself” trusts, which may not account for how the trust laws apply to the specifics of your situation.) Once the trust is created, the grantor must continue to run his or her life out of the trust. Also, grantors who later decide to revoke their trusts must transfer all of their assets back out of the trust.

* **Post-death costs are not eliminated.** If the grantor has a taxable estate (one that is larger than the estate tax exemption amount then in place), there will still be work to do after death. Avoiding probate will only marginally reduce the cost of administering a taxable estate. Florida law also provides for trustee’s and attorney’s fees for administering a trust after the grantor’s death. These fees are generally about 3/4 of what the fees would be to probate the same assets. (Typically, this means that the trustee and attorney will receive a fee of around 2.25% of the assets’ total value.) Court involvement is not eliminated entirely. Florida law requires the trustee to file a notice of trust with the appropriate court, with information about the grantor and the trustee.

* **Not all assets belong in a trust.** Assets like Florida homestead property and IRAs have unique benefits that could be jeopardized when they are placed in trusts. An attorney familiar with Florida law and federal tax law should be consulted before any assets are placed into a trust. For example, if a primary residence is placed in a trust, the surviving spouse may not be eligible for Medicaid or for a continued veteran’s disability tax exemption.

Continued on pg. 3 →



PLANNING AHEAD: REVERSE MORTGAGES



What is a reverse mortgage and how does it work? In a reverse mortgage, homeowners’ home equity is used to pay off any existing

mortgages and to provide access to cash, either through a lump-sum payment, regular monthly payments, or an equity line. The loan does not have to be repaid until the homeowner dies, sells the house, or stops using it as the homeowner’s primary residence.

Who qualifies for a reverse mortgage? Homeowners have to meet age and equity requirements and must be looking to use their primary residence for the mortgage. For example, reverse mortgages insured by the Federal Housing Administration (FHA) require homeowners to be 62 or older and to be mortgaging a single-family home or condominium (unfortunately, many types of manufactured homes are not eligible).

What are the costs associated with reverse mortgages? As with any loan, the costs vary by lender, so homeowners should be sure to shop around and compare loan terms and fees. Be very wary of “hard sell” approaches, and seek lenders with experience, a good reputation, and a willingness to answer questions about their loan products.

What happens when the homeowner dies or wants to sell the home? The mortgage loan must be repaid. If real estate values have dropped, a homeowner looking to sell may have trouble getting a high enough price to pay off the mortgage. There may also be little equity left to pass on to the homeowner’s heirs, who may have sell the home or refinance it in their own names to pay off the mortgage. For these reasons, reverse mortgages may not be right for homeowners who value the idea of leaving their home to children or grandchildren.



SAVE A TREE

If you would like to receive future mailings electronically, please email choff@barneswalker.com, and we will add you to our email database.



What is the difference between a Designation of Health Care Surrogate and Living Will? How do I know if I need either or both of these documents?

A living will—which is not a will at all—allows you to express a desire to die naturally if you are suffering from an incurable condition, in a vegetative state, or irreversibly incapacitated. In other words, it lets you tell doctors when to “pull the plug.” Deciding whether to make a living will is entirely a personal choice. But, if you agree with the declarations in a living will, then this document can save your loved ones the financial and emotional costs of maintaining you on life support, while giving them the comfort of knowing and carrying out your wishes.

A designation of health care surrogate, on the other hand, allows you to appoint someone—like a spouse, close relative, or other loved one—to make medical decisions for you whenever you cannot make them yourself. If a person does not designate a surrogate, Florida law will determine who is authorized to make these decisions.

What is a durable power of attorney, and who should have one?

A power of attorney can be drafted either to include very broad powers or to be limited to specific actions. It authorizes the named attorney-in-fact (who does not need to be an actual attorney) to take those actions described in the document. A power of attorney is considered “durable” if it remains effective after the maker becomes incompetent. A power of attorney can also grant “springing powers,” which will authorize the attorney-in-fact to act only when the person making the power of attorney becomes incapacitated. Having a durable power of attorney (whether the powers are springing or not) can help avoid guardianship proceedings, which can be financially and emotionally costly. Bear in mind, however, that an attorney-in-fact, unlike a court-appointed guardian, will be exercising significant powers without court oversight, so it is crucial to appoint someone that you trust.



Continued on pg. 4 →

FUNDAMENTALS OF FLORIDA ASSET PROTECTION

Florida has been called a “debtor’s haven,” because it protects debtors to a greater degree than many states. In today’s economy, debtors and creditors alike need to know which assets are subject to debt-collection efforts. Below is a brief summary of some of the most important aspects of asset protection in Florida.*

Homestead. The Florida Constitution protects a debtor’s “homestead” from forced sale to pay creditors. Homestead consists of either: (1) up to 160 contiguous acres outside of a municipality; or (2) up to 1/2 acre inside a municipality. The property must be the primary residence of the debtor or the debtor’s family. A debtor can only claim one homestead. Homestead is not protected from property taxes, voluntary liens (like mortgages), or construction liens. During probate, homestead is protected from creditors if it passes to people related to the debtor by blood or marriage.

Wages. Earnings by a “head of family” are protected from garnishment by creditors. Earnings by those who are not “head of family” can be partially protected by the Consumer Credit Protection Act.

Life Insurance Proceeds. The proceeds from a life insurance policy on the life of a Florida resident are exempt from creditors’ claims unless the beneficiary is the decedent, the decedent’s estate, or the decedent’s trust. In these cases, the rules for payment of creditors during the administration of the estate or trust apply.

Pensions; Retirement and Other Savings Plans. Federal pensions that are necessary for the support of the pensioner or the pensioner’s family; qualified retirement plans, including 401(k)s; funds deposited with the Florida Prepaid College Trust Fund or in prepaid tuition plans under Internal Revenue Code (IRC) Section 529; and health and medical savings accounts under IRC Sections 220 and 223 are all protected from creditor claims.

* It is important to note that the rules may be different for debtors in bankruptcy. And, as always, transfers of property that are made for the purpose of avoiding creditor claims constitute fraud. These transfers are illegal and can be set aside in court.

Where is the best place to keep my signed, original estate planning documents?

The best place is usually a safe deposit box, because it will protect the documents from theft, fire, accidental loss, and most other types of damage. But, if you decide to use a safe deposit box, you should consider naming someone else—a family member, the personal representative under your will, or a trustee under your trust—to be a joint holder on the box. This ensures that that person will be able to access the box—and all of your estate planning documents—if you are hospitalized or after your death.

You can also ask your attorney to hold your original documents. Your attorney should be willing to do this free of charge and should have a fire-proof safe or other secure storage place.

Another option is to keep your original estate planning documents at home, in a secure place. If you choose this option, though, remember that a safe, unless it is bolted to the foundation of your house, may not be the best place for important documents. If thieves enter your home and find a locked safe, they may take the whole safe, hoping to find cash and jewelry inside. As an alternative, more people than you might suppose keep important documents in an air-tight plastic bag at the bottom of their freezers. Freezers are well insulated and heavy and have a way of withstanding fires, hurricanes, and tornadoes. Also, they don't die or move away, and they are stolen far less frequently than in-home safes.

Whichever option you choose, be sure your loved ones will know where to find your documents if you are not there to tell them.

How often should I review my plan?

You should review your estate plan every few years. Changes in the law, in your life, and in the lives of your beneficiaries might require changes to your estate plan. These changes include significant life events like marriage, divorce, the birth of a child or grandchild, or the death of a loved one. And, especially in an economy like this one, remember that the value of assets—like real estate or investment accounts—can change. If you are leaving specific assets to specific beneficiaries, you should talk to an attorney about how these changes in value impact your plan.

If you have any questions regarding the issues contained in this newsletter, please call us at (941) 741-8224.



© 2009. Barnes Walker, Chartered.

BARNES WALKER, CHARTERED,

was established in 1995 in Bradenton, Florida. With six attorneys, we represent clients in the areas of real estate law; wills, trusts, and probate administration; civil litigation; and business and intellectual property law. Our attorneys have performed over 13,000 real estate closings on all types of properties, in addition to advising clients on short sales, landlord/tenant issues, and land use matters. We have over 48 years of combined experience providing estate planning services. We have handled hundreds of business sales and have 80 years of combined experience counseling clients on the formation and operation of business entities such as limited liability companies and corporations. Our litigation department provides representation on foreclosures, contract disputes, construction law, municipal law, appellate law, mediation and arbitration, and other commercial litigation, with over a quarter of a century of combined litigation experience. For more information on our attorneys, the contents of this newsletter, or any other legal issues, please call us at (941) 741-8224.

The information contained in this newsletter and in any examples is summary in nature and is given for educational purposes only. It is not intended as specific or detailed advice. You are receiving this mailing solely as a friend or past client of Barnes Walker. Always seek legal counsel regarding your own, unique situation.

If you would like to be removed from our mailing list, please contact us at (941) 741-8224.