



The Law Office of Michael J. Howell, P.A.
1 Corpus Christi Place, #112
Hilton Head Island, SC 29928
(843) 785-7590
Howell51@aol.com
HiltonHeadEstatePlanning.com

Client Newsletter
November, 2009
By Michael J. Howell

This newsletter is intended for the exclusive use of our clients who live in South Carolina. You have received this newsletter because, according to our file, we did estate planning work for you in the past and your primary residence is in South Carolina. If this is not correct, or we have mailed this newsletter to the wrong person, or if you have hired another attorney to take care of your estate planning work, or if you have moved out of state, or if you would otherwise like to be removed from our client mailing list, please let us know so that we can take you off of our client mailing list and/or move you to the proper list.

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HiltonHeadEstatePlanning.com Website Reopened

Back many years ago, we were one of the first law firms in this area to have a website. Unfortunately, most of our clients either did not have computers or did not feel comfortable using email or the Internet, so we closed down the website but retained ownership of the domain name. However, today, almost all of our clients use computers and email on a regular basis and we have reopened the website. Our website is: ***HiltonHeadEstatePlanning.com.***

Currently, the website has an excellent section on estate planning, which explains, in some detail, most of the planning techniques that we use. We will also periodically update and add content to our website, just as we did the last time we used the website.

We plan on being able to allow clients to obtain new client and current client packages off of our website within the next couple of

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months. This will allow prospective and current clients to download the information they need to have prior to our meeting and will reduce our costs, and hopefully our fees, by reducing the time that it takes to provide necessary information.

We also plan to add a number of articles applicable primarily to local clients. Much of the information currently on the website applies to a national audience of both retirees and non-retirees. However, there are a number of issues that are somewhat unique to Hilton Head Island residents and some that are unique to Bluffton and Sun City Hilton Head residents.

We are also hoping to use the website, and services such as Twitter, to serve our clients and to help reduce the cost of producing client newsletters. Unfortunately, the cost of print media has continued to skyrocket, while the cost of Internet media has continued to become more and more cost effective.

At a later date, we may also have an open forum on our website where questions of general interest are posted and answered. Please keep in mind that if we do this, you should not post confidential or private information, as it will be open to review by all those who have access to the Internet.

Estate Planning is Changing

We are finding that we have three distinct communities. One is Hilton Head Island, another is Bluffton, and the third is Sun City Hilton Head. We are finding that within these separate communities, the estate planning and probate needs are somewhat different and we are striving to serve each of these communities. We hope to be able to accommodate all three communities through our website. We are also broadening our

services to include those who may not need a traditional "Hilton Head Estate Plan". For instance, we are working on a special set of estate planning documents for those whose needs are less complex.

The new plans will focus on offering some of the same tax saving opportunities, with less emphasis on disability and probate avoidance planning. There will also be less work on the part of the client; although, there may be more work postmortem by the family members.

We are also working more on what are referred to as Elder Law issues. Basically, Elder Law is estate planning for people who do not have substantial assets.

Ironically, "substantial assets" were traditionally defined by whether or not the client may have a taxable estate. Currently, taxable estates under \$3,500,000 are not subject to Federal Estate Tax. If Congress does not take further action, there is no Federal Estate Tax in 2010, but then the exemption decreases to \$1,000,000 beginning in 2011. So, depending upon what Congress does or doesn't do, the definition may apply to more or less people in the future.

We are also expanding our services because more and more clients seem less interested in what happens after their deaths, if there are no significant estate taxes to pay, and are more interested in preserving assets for their own use.

**Margaret R. Howell
is Practicing Law with
The Law Office of Michael J. Howell, P.A.**

Margaret R. Howell is now practicing with The Law Office of Michael J. Howell, P.A. She graduated from Florida Coastal School

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of Law in 2008 and passed both the Florida and South Carolina Bar Exams and is admitted to practice in both states.

She was born in Beaufort County, South Carolina in 1982. She is a graduate of Hilton Head Prep.

She attended Southern Methodist University in Dallas, Texas and is also a graduate of the University of South Carolina with a degree in Journalism, where she was on the President's List and the Dean's list.

She is also a former member of the Hilton Head Dance Theatre, where she studied classical ballet under Karena Brock-Carlyle, and John Carlyle.

Recently, Margaret worked with the Young Lawyers Division of the South Carolina Bar on their *Wills for First Responders Program*. The program provides Wills and certain other basic estate planning documents to firefighters, EMTs, police officers, and deputy sheriffs, at no charge.

Margaret is also a member of the Hilton Head Island Bar Association and the American Bar Association.

Margaret will concentrate her practice in estate planning and probate matters with an emphasis in Elder Law.

We Are Now Licensed to Practice Law in Florida.

Over the years, we have had a number of clients who have had contacts with Florida either for themselves, their parents, their children, or other relatives. We have also had a number of clients move to and from Florida.

Florida has somewhat unique rules with respect to homestead property, its affect on the marital deduction, family allowances after death, how probates are administered, how trusts are administered, their intestacy laws, who can serve as personal representative, the court that is used, as well as a number of other significant differences. Due to these differences, care needs to be taken in your planning if you own or may inherit property in Florida.

To help accommodate the needs of our clients, Margaret and I took the Florida Bar Exam and are now licensed to practice law in Florida. There is no current intention of opening a location in Florida and our office remains on Hilton Head Island.

If you have any estate planning or probate needs in Florida, whether it is a will, trust, durable general power of attorney, probate, or guardianship issues, please let us know. We may be able to help, and if not, we may be able to find an attorney for you who can help.

Estate Planning in a Down Economy and Making Outright Gifts

With few exceptions, the assets of our clients have declined significantly in recent years. While there is nothing we can do about a down economy and assets that have decreased in value, there is a potential silver lining for those serious about estate planning and saving estate taxes.

However, there are a few questions that have to be answered. First, do you believe that the value of your assets have more or less bottomed out?

Second, do you believe that the value of your assets will increase significantly between now and the time of your death or the

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survivor of you and your spouse, if you are married?

Third, do you believe that by the time of your death or the death of your spouse, if you are married, that you will have to pay an estate tax?

If the answer to all three questions is yes, then there is some fairly simple planning that may help. First, however, keep in mind that although your estate tax exemption is currently \$3,500,000 and may be unlimited next year, if Congress does nothing further, then in 2011, the exemption will only be \$1,000,000.

Now, also keep in mind that Congress knew this back in 2001 when it passed the Economic Growth and Tax Relief Reconciliation Act called EGTRRA. It limited the lifetime gift tax exemption to \$1,000,000 in case we go back to the \$1,000,000 estate tax exemption in 2011. This lifetime gift tax exemption is in addition to the \$13,000 annual exclusion gift giving limits.

The current economic conditions give you the opportunity to make lifetime gifts to your intended beneficiaries of assets that are now down in value and which you believe will increase substantially in value by the time of your death or upon the death of the survivor of you and your spouse, if you are married.

This also means that the \$13,000 per donee annual exclusion gift may move much more out of your estate than \$13,000 would have a few years back and if you use your \$1,000,000 exemption, you can possibly save even more by removing assets from your taxable estate.

However, you should not engage in this type of planning without further consultation

because in addition to gift and estate tax issues, there can also be some income tax issues, most dealing with income tax basis and later capital gains. Naturally, this planning also assumes that you are financially able to give away your assets.

There are also a number of techniques and strategies that will allow you to keep the cash flow from assets, yet remove the assets from your taxable estate. If you wish to discuss any of these strategies, please call or email our office to set up a time to meet. You may also read the articles on the website for further information.

One of the articles is “Grantor Retained Annuity Trust (GRAT) & Retained Unitrust (GRUT)”. The link to our articles is <http://hiltonheadestateplanning.com/estateplanning.html>. *If you prefer*, you can also go to hiltonheadestateplanning.com and click on the box that says “Estate Planning.” In either case, once you get to the list under the title *Estate Planning Learning Center*, scroll down to the articles section and you will see the article listed.

Have You Funded Your Trust?

If you have a trust and it is not fully funded at your date of death or upon your disability, your assets and your loved ones can be subject to needless probate procedures and the resulting costs and increased time involved. In some cases, there can also be needless estate taxation, and in other cases, there may be overly restrictive trusts that are no longer needed for your loved ones. *With proper planning*, these issues can be avoided and the job can be made much easier.

For clients who have Revocable Trusts, we also offer a *trust funding review service*. As part of this service, we review your titles, deeds, bank statements, brokerage account

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statements, and other evidence of ownership, with you, to determine if your trust is fully funded. If you are married, we will also determine if you have the proper balance.

We also assist you in putting together a book or file to keep the information up to date. This will make it easier for you and your family to find relevant information in the event of an emergency.

If you want to review the funding of your trust, please call or email our office to set up a time to meet. There is also a section on our website, which addresses this subject, as well as many others that may be of interest, and which you may find beneficial.

Have You Updated Your Estate Planning?

It is highly recommended that you have your documents and planning reviewed no less often than every 2-3 years. It is important not to go beyond 3-5 years for a review or update of your estate planning documents or your estate plan. If you go beyond 5-7 years, then you are running a significant risk that your planning is out of date and will not accomplish your objectives. The longer you wait, the more likely it is that your documents and planning will be out of date at the time they are needed the most.

If you want to review your wills, trusts, durable general powers of attorney, health care powers of attorney or your estate planning in general, please call or email our office to set up a time to meet.

How to Schedule a Meeting

If you would like to review and possibly update your estate plan, please call or email our office to schedule a mutually convenient time to meet. We will send you an estate planning package and confirm the date and

time of your appointment. Our current fee schedule will also be enclosed in the package.

As those of you who are familiar with our newsletters know, we often place discounts and other special offers in our newsletters to encourage people to read them. For anyone who makes an appointment to review their estate planning or trust funding and meets with us prior to December 15, 2009, we offer a discount of \$250 off the total legal fees for our services. You must mention this newsletter special in order to receive the discount.

If you have already been to see us about funding your trust or estate planning since January 1, 2009, then the same discount will apply until December 15, 2010. In order to take advantage of the extension, you need to mail or email us prior to December 15, 2009 and we will issue you a rain check. Later, when you come back in, just remind us of the rain check.

Are You Interested in a Client Seminar?

In the past, we have held seminars for clients and sometimes for clients and the public. If you are interested in a seminar, we may be able to have a seminar on one or more of the following subjects:

How to Fund Your Trusts, including real estate, bank accounts, stocks, bonds and other securities in a brokerage account, tangible personal property (including household and personal effects and automobiles), life insurance policies, and why to be careful with IRAs, annuities, and other pension type assets, and problems of owning property jointly and in other non-probate forms.

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Basic Estate Planning Techniques,

including how wills, revocable trusts, disclaimer trusts, QTIP trusts, marital deduction trusts, credit shelter trusts, irrevocable trusts, durable general powers of attorney, health care powers of attorney, bills of sale, certificates of trust, tangible personal property memorandums, and HIPAA releases are used. We will also review the use of trusts to reduce estate taxes and also how gifts can be used to reduce estate taxes. There will also be some discussion of income taxes as they relate to estate planning.

How To Probate an Estate and How to Avoid Probating an Estate.

We will review the steps in the process of probating an estate and/or settling a trust. In addition to responsibilities of the Personal Representatives and the steps necessary under our Probate Code, we will also review the responsibilities of a Trustee under our new Trust Code, as well as state and federal income, estate, and gift tax responsibilities of both. We will do this by reviewing our short checklist, which is used to determine if a full probate and/or an estate tax return are required, or if simplified methods can be used. We will then review our 20+ page checklist of duties and responsibilities. We will also go over the probable and reasonably possible costs of administering estates and trusts after someone dies.

Advanced Estate Planning Techniques,

including the use of Irrevocable Trusts, Qualified Personal Residence Trusts, Grantor Retained Annuity Trusts, Grantor Retained Unitrusts, Charitable Remainder Trusts, Charitable Lead Trusts, LLCs, Family Limited Partnerships, Fractional Interest Discounts and other valuation discounts. There will also be some discussion of Generation Skipping Transfer taxes.

Please email us to let us know which seminar(s), if any, you are interested in. If there is more than one, please place them in order of priority with the highest priority listed first. In addition, if there are other topics that you would like to have addressed in a seminar and you do not see them listed above, please feel free to let us know, and we will do our best to accommodate your requests. We will try to schedule one or more seminars between now and the end of January, if there appears to be enough interest.

Are You Interested In Receiving Client Newsletters by Email?

If you are interested in receiving client newsletters, notices of client newsletters posted on the Internet, and similar information, by email, please let us have your email address. Simply send us an email to HowellLawFirm@gmail.com and tell us you are interested. We will remove you from any such list, if at any time you no longer want to receive the information.

HowellLawFirm@gmail.com is not our regular email address and we only receive emails at this address that are not time sensitive.

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