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A Report of Legal Trends

Yale F. Goldberg, Editor

Ryan & Goldberg Named Phoenix Best of Bar

Jim Ryan and Yale Goldberg were named 2005 Phoenix Best of Bar. Voted by their peers across the legal profession, they were selected with sixty other attorneys as the best and brightest of their profession from a field of fifteen hundred nominations. The award is sponsored annually by *The Business Journal of Phoenix*.



James W. Ryan
Certified Trust and Estate Law Specialist



Yale F. Goldberg
Certified Tax Law Specialist

New Attorney Joins Frazer Ryan Goldberg Arnold & Gittler LLP

Grant McKeehan joined Frazer Ryan Goldberg Arnold & Gittler LLP as an associate in April. His areas of practice include business entity formation, estate planning and taxation.

While attending ASU College of Law, Grant was a member of the law school's National Moot Court Team and served as a debate coach in the Hugh Downs School of Human Communication. He competed in intercollegiate policy debate as an undergraduate at The University of Kansas. Grant also holds a Masters Degree in Taxation from New York University.

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Identity Theft Prevention

by
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The risk of identity theft is now higher than ever as a result of our society's increased reliance on computers and electronic communication. Identity theft occurs when someone uses your personal information such as your name, Social Security number, or credit card number, without your permission, to commit fraudulent acts such as opening new accounts or incurring unauthorized charges on existing accounts.



Identity theft can be costly both in terms of the time required to report and recover losses and with respect to the potential negative effect on your personal credit rating. Therefore, the importance of safeguarding personal information cannot be overstated. In particular, be skeptical of requests for personal information via phone and email solicitations, a growing practice commonly known as "phishing."

Unfortunately, you may have already become a victim of identity theft without your knowledge. As a preventative measure, we strongly recommend you periodically review your credit report for accuracy. A recent amendment to the Fair Credit Reporting Act requires each of the major nationwide consumer reporting agencies to provide you with a free copy of your credit reports, at your request, every 12 months. To obtain your free report, visit www.annualcreditreport.com, call toll-free 877-322-8228, or complete the Annual Credit Report Request Form available at www.ftc.gov/credit and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

For more information, including how to correct mistakes in your credit report and measures to take if you discover you are a victim of identity theft, visit the Federal Trade Commission's Consumer Identity Theft website located at www.consumer.gov/idtheft.

Congress Adds Broad Federal Bankruptcy Protections For Educational Savings Accounts

by
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On April 20, 2005, President Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which had passed the House and Senate by substantial margins. While those provisions of the Act making it more difficult for Americans to seek individual bankruptcy protection have received significant media attention, a little-known provision of the Act provides new bankruptcy protection for funds contributed to educational IRAs and Section 529 plans.

Section 225 of the Act excludes funds contributed to educational IRAs and funds contributed toward Section 529 accounts from the bankruptcy estate, making it more difficult for creditors to reach such funds in Federal bankruptcy proceedings. The Federal exclusion applies to all funds contributed to educational IRAs or Section 529 accounts at least 720 days prior to the bankruptcy filing date, and excludes up to \$5,000 in contributions made at least one year prior to the bankruptcy filing date. This uniform Federal exclusion differs from state bankruptcy protections for educational IRAs and Section 529 accounts, which vary state by state. For example, although Arizona Revised Statute § 33-1126 exempts funds payable to participants and beneficiaries of various retirement and deferred compensation plans from creditor claims, Arizona law does not specifically exempt funds held in Coverdell Educational Accounts and Section 529 accounts from the reach of creditors.

While educational IRAs and Section 529 accounts have recently gained popularity due to the tax-free growth and eventual distribution of contributed funds to named children or grandchildren, the Act's protections provide greater assurance that regardless of whether or not a contributor seeks Federal bankruptcy protection, such funds will benefit future generations. For example, funds held in Section 529 accounts may be distributed toward tuition expenses, books, supplies, and the room and board of students enrolled at least half time at qualified higher educational institutions.



The Pitfalls Of Probate

by
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and

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What is Probate? By definition, it means, "the judicial determination of the validity of a will." In reality, it is a legal process that involves marshaling a decedent's assets, paying their debts and taxes and distributing the balance to the beneficiaries.

For most people the word Probate conjures up thoughts of either a time-consuming and complex court proceeding, or a process in which everyone takes but the beneficiaries. Are those thoughts justified? It all depends upon the complexity of the estate and how the deceased handled their affairs prior to death.

In Arizona, there are three types of Probate, formal, informal and supervised. These types of proceedings give an estate the flexibility to be administered with little or no court intervention, or subjected to an administration that needs court authority for most actions, and timely notices to all interested parties. While each of these types of proceedings have their own advantages, they do come with a price.

The primary advantages of a Probate includes the legal confirmation of a will, and the court's supervision to ensure that estate assets are distributed in accordance with the wishes of the deceased. While these advantages are attractive if a conflict is likely to arise among family members or creditors, your estate and beneficiaries will be subjected to what has been dubbed "the pitfalls of Probate."

The most prominent pitfall is cost. A typical Probate proceeding includes executor fees, accounting fees, appraisal fees, court fees and yes, legal fees. Time is another pitfall. Even without a will contest or a multi-state Probate (where real property owned by the deceased is located in more than one state), the judicial process has its own set of timelines. Lack of privacy is another downside, as each Probate proceeding is of public record. This aspect alone is a major benefit to many for having a Living Trust.

A Living Trust is one method that may enable your estate to pass to your heirs without a Probate. However, leaving certain assets outside of your Trust, or acquiring new assets and failing to properly title them in Trust, could land a portion of your estate before the court.

In Arizona, a Probate can be triggered when Fifty Thousand Dollars (\$50,000) or more of combined asset value is held either outside of a Trust, or does not transfer by operation of state law. Property held in Joint Tenancy is considered as a transfer by operation of Arizona law, however, there are other legal and tax consequences for holding property in this manner.

Avoiding the pitfalls of Probate can be achieved with proper planning, and could keep your estate from becoming one of the 25,000 pending Probate cases that Maricopa County oversees each year.



Schiavo Tragedy Preventable With Living Will

by
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Regardless of your stance in the heartbreaking case of Terry Schiavo, a Living Will would have unquestionably legitimized the outcome. A Living Will, also referred to as an Advance Directive, Health Care Directive, or a Physician's Directive, is a legal document that is used to make known a person's wishes regarding life prolonging medical treatments in the event they are unable to speak for themselves. A Living Will should not be confused with a Living Trust, which is a mechanism for holding and distributing a person's assets.

Generally, a Living Will describes certain life prolonging treatments. In the document you indicate which treatments you do or do not want applied to you in the event you either suffer from a terminal illness or are in a persistent vegetative state. A Living Will does not become effective unless you are incapacitated and usually requires a certification by two doctors that you are either suffering from a terminal illness or persistently unconscious. This means that if you suffer a heart attack, for example, but otherwise do not have any terminal illness and are not persistently unconscious, a Living Will does not have any effect. You would still be resuscitated, even if you had a Living Will indicating that you don't want life prolonging procedures. A Living Will is only used when your ultimate recovery is hopeless.

You should discuss with your doctor what type of end of life medical treatments you want. He or she can help you by answering any questions you have about certain treatments. Once you've decided, make your wishes known to your doctor and your family.

In addition, you should take one step further by posting your Living Will on Arizona's Advance Directive Registry.

Located on the Arizona Secretary of State's website at www.azsos.gov, the Advance Directive Registry is a place where your Living Will and Health Care Power of Attorney (advanced directives) can be stored and accessed by you, your family and doctor when needed. However, to gain access to your advanced directives online, an individual will need the password you obtain at the time of registration. No one can look at your advance directive without your password.

The Arizona Advance Directive Registry is a free service provided by Hospice of the Valley. To register, simply obtain and complete the registration agreement and return it, along with a legible copy of your advanced directives to the Arizona Secretary of State's Office. A printed record of the registration will be returned to you by mail for you to review for accuracy. Check the appropriate box marking either "no corrections required" or "the information is not correct." Sign the form and return it to the Secretary of State's Office. The Secretary of State's Office will not activate your registration until a verification form marked "no corrections required" is received. Upon activating your registration you will be given a wallet card to access the registry and review your advance directive. This wallet card should contain your registry number and password. It is recommended that you keep it handy and share your password with your named medical power of attorney and doctor.



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