GUTTER CHAVES JOSEPHER RUBIN FORMAN FLEISHER MILLER P.A.

TAX, BUSINESS, & ESTATE AND TRUST LITIGATION UPDATE

October 31, 2015
An Electronic Newsletter of Gutter Chaves Josepher Rubin Forman Fleisher Miller P.A.

CONTENTS

ABOUT OUR FIRM

We are a boutique law firm that seeks to protect and enhance the individual, family and business wealth of our clients in the following principal practice areas: Planning to Minimize Taxes (U.S. & International) - Probate & Trust Litigation - Estate Planning, Charitable, Marital & Succession Planning - Business Structuring & Transactions - Trusts & Estates Administration - Tax Controversies - Creditor Protection.

1. Another Advantage of Proceedings Supplementary

By Charles (Chuck) Rubin

Debtors oftentimes attempt to shield their assets from creditors by transferring them away to others. If this is done, a creditor can bring an action under Florida's Uniform Fraudulent Transfer Act (UFTA) to attempt to undue the transfer and execute on the transferred property as a fraudulent transfer.

Alternatively a holder of a Florida judgment can seek to reach transferred documents under "proceedings supplementary." Such action has the benefit of not requiring the commencement of a new and independent action. Another benefit of proceedings supplementary over an action under the UFTA is that the 4 year statute of limitations under the UFTA will not apply – instead the creditor can proceed at any time during the term of the judgment so long as the action giving rise to the judgment was filed within 4 years of a fraudulent transfer. *Biel Reo LLC*, 156 So3d 506 (1st DCA 2014).

A recent Florida case illustrates another advantage of proceedings supplementary. In the case, a judgment holder proceeded against a debtor to reach assets that the debtor had transferred to his spouse. The trial court ruled against the creditor, finding that the creditor had not proved the debtor made the transfer to "delay, hinder, or defraud creditors" (which is a requirement of the proceedings supplementary statute). The creditor had the burden of proof on this issue and did not meet it.

The trial court decision was overturned on appeal, because in proceedings supplementary if certain stated time period requirements are met, the burden of proof is on the debtor to show that the transfer at issue was not made to delay, hinder or defraud creditors. That is, the burden of proof was on the debtor, not the creditor. A useful reminder of another advantage of proceedings supplementary.

RREF SNV-FL SSL, LLC., Appellant, v. Shamrock Storage, LLC et al, 1st District. Case No. 1D14-4257, 40 Fla.L.Weekly D2407a

More About Our Firm

The firm and its attorneys have been recognized in numerous peer rating guides, such as U.S. News & World Report law firm rankings, Best Lawyers, Martindale-Hubbell, Chambers, Who's Who in American Law, Florida Trend's Legal Elite, Superlawyers, and South Florida Legal Guide Top

2. Substantial Compliance Doctrine Will Not Override Return Signing Requirement

By Charles (Chuck) Rubin

In a recent Tax Court case, a joint return was timely filed by a husband and wife. However, the return was filed without the wife signing the return. The IRS rejected the initially filed return and imposed late filing penalties. Note that the late taxes here came to over $5 million (over two tax years), so the penalties involved were very significant.

The taxpayers argued that the substantial compliance doctrine should have protected them from penalty. Under this doctrine, if a return purports to be a return, is sworn to as such…and evinces an honest and genuine endeavor to satisfy the law, it will constitute a return even though it may not have complied with all rules. The problem here was that without the wife's signature, one of the taxpayers was not signing under penalties of perjury. The Tax Court thus found that the requirement to sign under penalties of perjury was a separate requirement of the law (apart from other return preparation requirements) that was not complied with and was a requirement that must be met for taxpayers seeking to use the substantial compliance doctrine based on U.S. Supreme Court precedent.

The taxpayers noted some cases where a married spouse did not sign the return but the IRS did not challenge timely filing. The Tax Court rejected being bound by this precedent, providing that the IRS concession of an issue in a case does not bind them to deal as generously, leniently, or erroneously in another case.

The taxpayers also argued the tacit consent doctrine – i.e., that the wife tacitly consented to the joint return filing and that should be enough to have filed timely. The Tax Court noted that this doctrine does allow one spouse to sign a joint return for both spouses if it is shown that the nonsigning spouse tactily consented to the joint filing. Here, however, the husband did not sign for both of them – he only signed for himself. Also, in other tacit consent cases, the Service Center accepted the original return for processing and filing – here, the return was rejected.

There was an odd fact here that the IRS returned the unsigned return to the taxpayers. The taxpayers claimed that no notice came with the return, so they did not know why it was returned. However, there are facts that show that the husband knew at some point soon after receiving the return back from the IRS that his wife did not sign the return, but he never had her sign and resubmit the original return – instead they later signed and submitted another copy after they received a deficiency notice. This knowledge of the failure and failure to correct it when they received the return back from the IRS may have had a role in the court's decision against the taxpayers.

Reifler, TC Memo 2015-199

3. Updated Summary Chart of Federal Employment Taxes

By Charles (Chuck) Rubin

You can access it here.

4. The Benefit of Establishing an Offshore Asset Protection Trust While the Coast is Clear

By Charles (Chuck) Rubin

Offshore asset protection trusts avoid or diminish a number of creditor exposures that apply to such trusts organized in the U.S. High net worth individuals and persons involved in high liability exposure businesses and professions should consider establishing a "nest egg" offshore trust to provide a protected fund that is exempt from creditor claims but which can still be expended for the benefit of the grantor/settlor and his or her family.

Offshore trusts, in the right jurisdiction, have a benefit of a short statute of limitations for creditors to bring an action to reach the trust assets on a fraudulent conveyance theory (the usual mechanism under which trust assets are reached). However, if the trust is established before there is a creditor on the horizon, there are even more advantages in certain jurisdictions.

First, by establishing the trust while the grantor is solvent, this will usually insulate the trust from a fraudulent conveyance trust completely in the favored jurisdictions. That is, if a later creditor claim arises, since the trust was funded while the grantor was solvent and the funding did not render the grantor insolvent, the later creditor is out of luck.

Second, even if there is an existing creditor at the time the trust is established, and if that existing creditor perhaps can get into the trust on a fraudulent conveyance theory, in the proper jurisdiction creditors that arise after the funding of the trust cannot piggy-back on the claim of the first creditor to reach trust assets. Again, these later-acquired creditors are out of luck. In many U.S. jurisdictions, this protection is not available.

Human nature being what it is, calls to our office for creditor protection planning usually arise AFTER a potential claim arises. This is problematic both for domestic and offshore planning, and we usually decline to participate in post-claim planning..

The ideal planning should occur before there is a claim. This is helpful for both domestic and offshore planning, but debtor-friendly asset protection trust provisions in some foreign jurisdictions provide even greater benefits for such early planning than if the trust is established in the U.S.

5. LOAN TRANSACTION COSTS IRA ITS BANKRUPTCY EXEMPTION

By Charles (Chuck) Rubin

A recent case illustrates a common problem with IRAs when their participants declare bankruptcy.

Generally, IRAs are exempt assets in bankruptcy proceedings, and are thus beyond the reach of the bankrupt individual's creditors. This exemption in the Bankruptcy Code is tied to the tax-exempt status of the IRA. 11 USC §522(d)(12) provides an exemption to "[r]etirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section ... 408 ... of the Internal Revenue Code of 1986."

Code §497(c)(1) prohibits loan transactions between an IRA and a disqualified person. If an IRA engages in a prohibited transaction with the beneficiary or creator of the account, the IRA will lose its exempt status pursuant to Code §408(e)(2).

While the IRS has an interest in policing the prohibited transaction rules, in my experience I have seen these issues come up more in bankruptcy proceedings than in tax audits and controversies. This is because the bankruptcy trustee is always on the lookout to void the exempt status of IRA accounts. If the trustee can convince the bankruptcy court that a prohibited transaction occurred in regard to the IRA like a loan transaction, they then argue that the IRA is no longer exempt under Code §408(e)(2) and thus there is no bankruptcy exemption. I have seen this in regard to straight loan transactions, and even in circumstances when the participant receives a distribution from an IRA and rolls it back into the same IRA within the tax-free 60 day rollover period – the trustee argues that this is in fact a loan, even though such a rollover transaction back to the same IRA is expressly authorized in the Code.

In the case at issue, the IRA was an investor in a partnership. As what typically happens in these cases, the parties fight it out in bankruptcy court as to whether a transaction was a "loan." In the instant case, the partnership itself went through bankruptcy, in addition to the IRA participant. In the filings of the partnership, it submitted schedules showing the IRA as an unsecured creditor – the bankruptcy court relied on those schedules to find that the IRA had made a loan to the partnership and thus the IRA lost its exempt status.

Kellerman v. Rice,116 AFTR 2d 2015-6133 (DC AR)

6. Florida Supreme Court Holds for Extended Claims Period for Known or Ascertainable Creditor Claims [Florida]

By Charles (Chuck) Rubin

In 2013 we wrote about the Golden case which ruled that a known or reasonably ascertainable creditor who did not receive a Notice to Creditors in a probate proceeding could file a claim against the estate up to 2 years after death. That the estate published notice generally would not invoke the 3 months claims period - such a notice only applies to creditors who are not known or reasonably ascertainable. This case was contrary to two other appellate circuits, who had applied the 3 month limitations period. You can read my write-up here.

The Florida Supreme Court has now sided with the Golden court, such that the extended claims period of 2 years was determined to be the correct statutory interpretation.

Jones v. Golden, Florida Supreme Court, Case No. SC13-2536 (October 1, 2015)

7. Florida Court Provides a Lesson in Nuncupative and Notarial Wills

By Charles (Chuck) Rubin

Many lawyers have not heard the terms "nuncupative wills" and "notarial wills" since they took their bar exams (and some perhaps not even then). A recent Florida case provides us with a real world application of these terms.

In the case, a testator executed a will in New York before 3 witnesses and signed it at the end. The will expressly was limited to the U.S. property of the testator. Later, as an Argentinian resident, testator entered into a will in Argentina. This will had different beneficiaries than the New York will, and it also revoked all prior wills. A dispute arose whether the New York will could be probated in Florida, or whether the Argentina will could be (which would act to revoke the New York will).

The Argentina will was not signed by the testator, and the witnesses also did not sign. Here is the procedure that was followed:

> The Testator orally pronounced her testamentary wishes to a notary who transcribed them. The Argentine will sets forth that the Testator made her attestations before the notary in the presence of three witnesses who were identified by name, address, and national identity card number. The Argentine will explains that the notary typed up the testamentary wishes and presented the typed document to the Testator, who declined to read it. The document

> was then read back to the Testator, who orally approved it in the presence of the witnesses. The notary signed and stamped the will, but the Testator and the witnesses did not sign it.

Florida law requires the testator to sign a will at the end and also requires two signing attesting witnesses. Fla.Stats. Sec. 732.502(1). So at first blush, the Argentina will cannot be probated in Florida. Fla.Stats. Sec. 732.502(1).

Florida does relax its execution requirements for wills signed by a nonresident of Florida. Fla.Stats. Sec. 732.502(2) provides in part "[a]ny will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the will was executed." Since the will was admitted to probate in Argentina, it purportedly was valid in Argentina and thus this statute would allow its probate so long as it was not a holographic or nuncupative will.

So was the will "nuncupative?" Florida's Probate Code does not provide a definition, and there is little Florida case law on the issue. Black's Law Dictionary defines a nuncupative will as a "will made by the verbal declaration of the testator, and usually dependent merely on oral testament for proof." The classic example is a testator who makes a declaration on his deathbed. Since the will at issue was orally dictated and not signed, it sure looks like a "nuncupative will."

The proponents of the Argentina will attempted to get around the Florida restrictions by characterizing it as a "notarial will." Fla.Stats. Sec 733.205 provides "[w]hen a copy of a notarial will in the possession of a notary entitled to its custody in a foreign state or country, the laws of which state or country require that the will remain in the custody of the notary, duly authenticated by the notary, whose official position, signature, and seal of office are further authenticated by an American consul, vice consul, or other American consular officer within whose jurisdiction the notary is a resident, or whose official position, signature, and seal of office have been authenticated according to the requirements of the Hague Convention of 1961, is presented to the court, it may be admitted to probate if the original could have been admitted to probate in this state."

So was the will a "notarial will?" Again, Florida's Probate Code does not define the term. The appellate court quoted a treatise that indicates a notarial will general involved four stages of creation:

> First, the testator makes an oral declaration of the will to the notary and two witnesses. Second, the notary (or an assistant) reduces the will to written form. Third, after being read aloud by the notary, the will is signed by testator, notary, and witnesses, with the notary adding information about the execution, including, usually, its date and place and the names of witnesses. Finally, the will is retained by the notary and, in some countries, registered in a central register.

The third element was missing here – the testator and witnesses did not sign the will. But even if the will was a notarial will, there is the last requirement of Fla.Stats. Sec. 733.205 that still must be met – that the original will could have been admitted to probate in Florida. So if the will was nuncupative, then the fact that it was a notarial will would not help its admission.

The appellate court noted that it is possible to have a notarial will that is not nuncupative (i.e. it was signed by the testator). In that case, Florida would admit it. But unsigned notarial wills are nuncupative and thus cannot be admitted – thus the appellate court denied the admission of the will.

The appellate court closes its opinion with a call to the Florida legislature to make their job easier by enacting some statutory definitions for these these terms.

Malliero v. Mori, Mori & Corallo, 3rd DCA (September 30, 2015)

8. No Charitable Set Aside Deduction for Estate Due to Litigation

By Charles (Chuck) Rubin

Under Code Section 642(c)(2) an estate may claim a current charitable contribution deduction for income tax purposes, notwithstanding that the income earned will not be paid or used for a charitable purpose until sometime in the future. That is, the estate need not actually pay income over to the charity in the year it is earned to obtain a charitable deduction – it is enough if the funds are set aside for later payment to the charity.

In a recent Tax Court case, the remainderman of the estate was a church. However, at the time the income tax return for the year at issue was filed (albeit filed late), there was ongoing litigation regarding who was entitled to what from the estate. Income earned during the year that appeared to be otherwise due to the church was now at risk of being diverted to pay other claimant beneficiaries and litigation costs.

Under Regulations, no charitable set-aside deduction deduction will be available if there is a risk that the set aside income may not find its way to charity. They require the estate to prove that the possibility that the amount set aside for the charitable beneficiaries would go to noncharitable beneficiaries be so remote as to be negligible. Treas. Regs. Sec. 1.642(c)- 2(d). In the case at issue, the IRS sought to disallow the deduction due to the risk that the set aside income could be diverted to noncharitable beneficiaries and expenses.

The Tax Court sided with the IRS and disallowed the deduction. The estate argued that due to the advanced state of settlement negotiations, there was little risk that the income would not go to two churches (at some point, another church was added as a beneficiary) at the time the return was filed. The court noted that at the time of the return filing, even if the pending settlement was finalized, the shares of the churches were still uncertain since the issues of legal fees and coexecutors' commissions remained unsettled. Also, until that issue was resolved, the will was not validated. Based on these facts, the risk of loss of funds was not "so remote as to be negligible."

This is the second case in 2015 with similar facts and a similar result. The first case was Estate of Eileen S. Belmont, et al.v. Commissioner, 144 T.C. No. 6, which I wrote about here. Estates and trusts seeking a set-aside deduction that are engaged in litigation should consider themselves warned that the IRS will scrutinize such deductions and contest them when appropriate, and that the Tax Court is apt to side with the IRS on these issues.

Estate of John D. DiMarco, TC Memo 2015-184

9. Florida Supreme Court Gives Expansive Protection to Husband's Separate Property under a Prenuptial Agreement

By Charles (Chuck) Rubin

A divorcing wife asserted that because a 20 year old prenuptial agreement made no specific reference to enhancement in value of nonmarital property attributable to marital labor or funds, the enhancement in value to the husband's assets during the marriage is subject to equitable distribution. Similarly, the agreement did not specifically provide that the husband's earnings will be his separate property, so the wife sought a finding that these were not protected under the prenuptial agreement.

The agreement did provide that the property "owned or hereby acquired by each of them respectively" would be free of claims of the other spouse. It also provided that "each party agrees that neither will ever claim any interest in the other's property," and if one party "purchases, [a]cquires, or otherwise obtains, property in [his/her] own name, then [that party] shall be the sole owner of same."

Both the District Court of Appeals and the Supreme Court found that the above general waiver language was broad enough to protect enhancement in value of property and the husband's separate earnings as separate property of the husband, thus denying the wife an interest in those assets upon divorce. While the ruling is fact specific based on the specific language of the agreement, it does call into question other lower court decisions that found earnings and appreciation to be marital property subject to division when they were not specifically described as separate property in the agreement.

Of course, these issues can be entirely avoided by providing specific waivers as to these items in the prenuptial agreement.

As an aside, the fairness of a marital agreement can be an issue in the enforceability of that agreement in Florida. In Casto v. Casto, 508 So.2d 330 (Fla. 1987), the Florida Supreme Court found that unfairness or unreasonableness can negate enforceability, although full and complete financial disclosures will still allow for enforceability even if the agreement is unfair or unreasonable. Casto continues to apply to postnuptial agreements in Florida. Prenuptial agreements are now governed by Fla.Stats. Section 61.079 – that statute similarly voids prenuptial agreements if unconscionable, with a savings if there is full and complete financial disclosure (measured at the time of the agreement and not at divorce) even though there were disproportionate wealth between the spouses, due to the $1.9 million the spouse would obtain under the agreement.

Hahamovitch v. Hahamvitch, Florida Supreme Court Case No. Sc14-277 (September 10, 2015)

10. Taxpayers Must Correctly Write-Off Balances for Partial Bad Debt Deduction

By Charles (Chuck) Rubin

Code Section 166(a)(2) allows for a deduction for partially worthless debts for business debts. One of the requirements to be able to deduct is that the amount deducted "was charged off" on the books during the tax year.

In a recent Legal Advice issued by Field Service Attorneys, the taxpayer put a contra-asset account on its balance sheet to reflect a partial loss. The issue was whether that was sufficient to be a charge off on the books for this purpose.

The government attorneys noted the case of International Proprietaries, Inc. v. Comm., 18 TC 133 (1952) that the creation of a reserve account, without an actual reduction in the accounts receivable account, was not enough to constitute a charge off – even though it did reduce net income. In the current analysis, the attorneys equated the creation of a contra-asset account as nothing more than a reserve.

The taxpayer sought to rely on Brandtjen & Kluge, Inc., 34 T.C. 416 (1960). In that case, the taxpayer increased its account entitled "Reserve for Doubtful Notes and Accounts" and debited bad debts, reducing its income. So far, pretty similar facts to our taxpayer. However, there, the taxpayer also made an adjusting journal entry in a new ledger account entitled "Reserve for Loss" with an explanation being "To charge bad debts with loss fro Canadian operation." The court found that such account and explanation indicated a "sustained loss and not an anticipated future loss" and allowed the deduction.

The Legal Advice concludes that the current facts were closer to International Proprietaries than to Brandtjen, and thus disallowed the current loss.

Thus, what the IRS and courts are trying to determine is whether the book entry shows a provision for losses anticipated in the future, or whether it shows a current loss and write-off. To avoid the issue entirely, taxpayers would be best served by actually reducing the balance of the receivable account to obtain partial worthlessness loss treatment.

As an aside, a taxpayer can defer the charge-off and deduction to a later year when partial worthlessness is greater, or wait to deduct the entire debt amount in the year of total worthlessness. For the taxpayer at issue here, the loss of the deduction for partial worthless should not result in a total loss – it should be able to deduct it in a later year (not beyond the year of total worthlessness) by doing the correct charge off on its books.

Legal Advice Issued by Field Attorneys 20153501F

11. Florida Case Law Update - Trust, Estate & Guardianship Litigation

By Jenna Rubin, unless otherwise noted

The following is a comprehensive summary of recent Florida cases and other developments in this area.

Soriano v. Estate of Manes, --- So.3d --- (Fla. 3d DCA 2015), 2015 WL 5965203)

This decision centered around whether a potential civil claimant arising out of a pending criminal prosecution was a "reasonably ascertainable creditor" entitled to personal service of the notice to creditors. The Court ultimately held that the claimant was not a reasonably ascertainable creditor, because the personal representative has no actual knowledge of the claimant's civil claim, nor would a more diligent search have revealed the existence of the claim.

Four months after the notice to creditors was published, the claimant filed her statement of claim alleging that she had a claim against the estate based upon an imminent private tort action against the decedent stemming from a criminal charge. She argued that her statement of claim was timely filed because she was a reasonably ascertainable creditor, since she presented evidence showing that she was the victim of an alleged misdemeanor battery and that she had hired personal counsel who had contacted the decedent's criminal defense attorney and advised he was representing her.

The Court noted that pursuant to F.S. 733.2121, a personal representative is required to promptly (1) publish the notice to creditors and (2) make a diligent search to determine the creditors of the decedent and serve a copy of the notice on those creditors. However, F.S. 733.2121(3)(a) specifically provides that "impracticable and extended searches are not required." Thus, the Court held that since the claimant could not show that the personal representative had actual knowledge of the civil claim or that a more diligent search would have revealed her claim, since she failed to place anyone on notice of her claim, she was not a reasonably ascertainable creditor entitled to notice and her claim was barred by F.S. 733.702(1).

Delbrouck v. Eberling, --- So.3d --- (Fla. 4th DCA 2015), 2015 WL 5948724

In this case, one of the sons of the decedent claimed a constructive trust over certain properties titled in the name of the decedent. The personal representative moved to compel the son to surrender to her the properties and to cease his business activities on the properties. This decision dealt with whether the probate court was required to hear evidence before directing the son to turn over possession of the property to the personal representative.

The personal representative relied on F.S. 733.607(1), which states that "The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it." The Court found that this statute does not mean a personal representative's right to possession of property cannot be contested in a probate proceeding, and found that the term "conclusive evidence" in the statute implies that an evidentiary hearing may be necessary when the right to possession of a decedent's property is genuinely disputed.

Thus, the Court held that when property is titled in the name of a decedent, but other claims of colorable right to possess the same property exist, the question of who should temporarily possess the property is a factual question that should be resolved by an evidentiary hearing. The Court noted that the probate court has broad discretion to determine the responsibilities of the personal representative and the person claiming the right to possession with respect to maintaining and using the property, and that the probate court has the discretion to craft appropriate conditions, such as the right of the personal representative to inspect and photograph the property and its contents, the right of the personal representative to co-possess the property, the need to insure the property, etc. to deal with these situations.

Malleiro v. Mori, Mori and Corallo, --- So.3d --- (Fla. 3d DCA 2015)

This case serves as a lesson in rarely used words buried in the Florida Probate Code. The Court was asked to determine whether an unsigned notarial will executed in Argentina was a valid will under the Florida Probate Code. The Court ultimately held that because the Argentine will was unsigned, even though it was a notarial will, it was a noncupative will prohibited by the Florida Probate Code.

The testator executed a valid will in New York distributing her real and personal property located in the United States. Four months later, she executed a second will in Argentina. The Argentine will was not executed with the usual formalities of American wills. Instead, the testator orally pronounced her testamentary wishes to a notary who transcribed them in the presence of three witnesses. The testator orally approved the typewritten will in the presence of the witnesses, and the notary signed and stamped the will. The testator and the witnesses did not sign the will. The beneficiaries of the Argentine will were completely different than those of the New York will.

The Court considered whether the Argentine will could be admitted to probate under Florida law. F.S. 732.502(1) requires that a will be signed by the testator and the witnesses. But F.S. 732.502(2) relaxes the requirements for the wills of nonresidents, in that it recognizes as valid a foreign will of a nonresident if the nonresident's will is valid under the laws of the state or country where executed. However, even if executed by a nonresident, Florida law does not recognize two types of wills: holographic wills and noncupative wills. Unfortunately, the Probate Code fails to define "noncupative" wills. Black's Law Dictionary defines a noncupative will as a "will made by the verbal declaration of the testator, and usually dependent merely on oral testament for proof." The Court noted that the classic noncupative will is a deathbed declaration.

The Court then acknowledge that the Probate Code recognizes a nonresidents' "notarial will" in F.S. 733.205 by providing that a copy may be admitted to probate if the original is required to be retained in the foreign country and if the original could have been admitted to probate in this state. But again, the Probate Code fails to define "notarial" wills. Generally, the Court noted, a notarial will is a will whose creation is supervised by a civil law notary who then permanently stores the will. The generally accepted definition of a notarial will does seem to include the signature of the testator, notary and witnesses.

Ultimately, the Court held that the Argentine will was a notarial will, but was a type of notarial will that is noncupative because it was not signed by the testator. Thus, the unsigned Argentine will could not be admitted to probate in Florida.

The Court invited the legislature to revisit the Florida Probate Code to include definitions of "notarial," "noncupative," "holographic," and "nonresident."

Zelman v. Zelman, --- So.3d --- (Fla. 4th DCA 2015), 2015 WL 5125439

Does a spouse have a due process right to be heard, call witnesses and present evidence at an incapacity hearing? The Court in this decision held that because a spouse is an interested person, the spouse has standing to participate in the guardianship proceeding, and that participation must be meaningful. Meaningful participation must be more than being allowed to be present and to speak- the spouse has the right to introduce evidence at a meaningful time and in a meaningful manner. This is because the effect of a guardianship proceeding on a spouse is extensive. The proceeding can impact the marriage, the marital home and the marital finances. A spouse is also in a position to weigh in on what is in the ward's best interests. Here, because the trial judge precluded the spouse from participating in the proceeding, the Court reversed the guardianship orders and remanded the case for new hearings.

Barrier v. JFK Medical Center Ltd. Partnership, 169 So.3d 185 (Fla. 4th DCA 2015)

This decision centered around when the knowledge of a guardian is imputed to the ward for purposes of bringing a medical malpractice suit. Here, the mother of the ward was first appointed as ETG of her son. After sixty days, her son was determined to be incompetent and she was appointed as plenary guardian of his person and property. The issue on appeal was whether her appointment as ETG created a legal duty towards her son such that any knowledge of medical malpractice the guardian may have acquired could be imputed to her son and thus trigger the commencement of the statute of limitations. The Court held that since the appointment of an ETG is an interim measure, which gave the mother only the authority to make medical decisions for her son and manage his medical and financial affairs until the appointment of a permanent guardian, she did not have a duty as ETG to file a malpractice suit on his behalf. Knowledge of the medical malpractice can only be imputed from the date the permanent plenary guardian was appointed.

12. Did You Know?

The longest recorded flight of a chicken is thirteen seconds.

13. Firm Announcements

Sean M. Lebowitz was a panelist at an Eat-and-Educate Event sponsored by the RPPTL Section of the Florida Bar held at St. Thomas University School of Law on October 22, 2015.

Charles (Chuck) Rubin gave a presentation on October 10, 2015 at the Florida Bar Tax Section CLE How to Be an Estate Planning Wizard. The subject was the tax and other aspects of prenuptial and postnuptial agreements. The presentation covered both federal and Florida issues. For those with an interest in the subject, you can watch slides (with audio) here.

On September 16, 2015, Charles (Chuck) Rubin presented on the topic Catching Up on Tax & Estate Planning Developments at the FICA 30th Annual Accounting Show.

Charles (Chuck) Rubin had an article published in the September 2015 edition of Estate Planning (Vol. 42, Number 9), a Thompson Reuters publication, entitled "Roundup of Recent Estate Planning Developments."

DAILY TAX AND BUSINESS UPDATES AVAILABLE. View prior articles, updates that we didn't have room for in this newsletter, or read the above postings when they are first published, by visiting http://www.rubinontax.blogspot.com and http://www.rubinonprobatelit.blogspot.com. To read this issue, or past issues, online, visit http://www.floridatax.com/httpdocs/Resources.html (and scroll to the bottom of the page).

Most of the postings in this newsletter are first published on the Internet during the preceding month. If you use Twitter, you can be notified of postings as they occur by following #RubinOnTax. If you use Flipboard, search for the magazine "Rubin on Tax (and More)."

Having problems receiving this newsletter? Make sure that the E-mail addresses "taxandbusinessupdate@mail-list.com" and "crubin@floridatax.com" are marked as a friend or otherwise set to clear your spam filters! Subscribe and unsubscribe instructions accompany the email sending this newsletter - if not, send subscribe and unsubscribe instructions to crubin@floridatax.com. To be properly processed, unsubscribe instructions need to come from the applicable email address or send instructions to crubin@floridatax.com with the specific address being unsubscribed.

Feel free to forward this newsletter on to anyone who you think may be interested.

Gutter Chaves Josepher Rubin Forman Fleisher Miller P.A.
Boca Corporate Center
2101 Corporate Blvd., Suite 107
Boca Raton, Florida 33431
(561) 998-7847
www.floridatax.com

[CONTINUE TO NEXT PAGE FOR CHARTS AND ATTACHMENTS!]

Gutter Chaves Josepher Rubin Forman Fleisher Miller P.A. | ATTORNEYS AT LAW
ADVISE, PROTECT, ENHANCE

14. AFR Rates - November 2015

APPLICABLE FEDERAL RATES

Short-Term AFR	Annual	Semi annual	Quarterly	Monthly	Long-Term AFR	Annual	Semi annual	Quarterly	Monthly
December 2014	0.34%	0.34%	0.34%	0.34%	December 2014	2.74%	2.72%	2.71%	2.70%
January 2015	0.41%	0.41%	0.41%	0.41%	January 2015	2.67%	2.65%	2.64%	2.64%
February 2015	0.48%	0.48%	0.48%	0.48%	February 2015	2.41%	2.40%	2.39%	2.39%
March 2015	0.40%	0.40%	0.40%	0.40%	March 2015	2.19%	2.18%	2.17%	2.17%
April 2015	0.48%	0.48%	0.48%	0.48%	April 2015	2.47%	2.45%	2.44%	2.44%
May 2015	0.43%	0.43%	0.43%	0.43%	May 2015	2.30%	2.29%	2.28%	2.28%
June 2015	0.43%	0.43%	0.43%	0.43%	June 2015	2.50%	2.48%	2.47%	2.47%
July 2015	0.48%	0.48%	0.48%	0.48%	July 2015	2.74%	2.72%	2.71%	2.70%
August 2015	0.48%	0.48%	0.48%	0.48%	August 2015	2.82%	2.80%	2.79%	2.78%
September 2015	0.54%	0.54%	0.54%	0.54%	September 2015	2.64%	2.62%	2.61%	2.61%
October 2015	0.55%	0.55%	0.55%	0.55%	October 2015	2.58%	2.56%	2.55%	2.55%
November 2015	0.49%	0.49%	0.49%	0.49%	November 2015	2.57%	2.55%	2.54%	2.54%

Mid-Term AFR	Annual	Semi annual	Quarterly	Monthly	Section 7520 Rates	
December 2014	1.72%	1.71%	1.71%	1.70%	December 2014	2.00%
January 2015	1.75%	1.74%	1.74%	1.73%	January 2015	2.20%
February 2015	1.70%	1.69%	1.69%	1.68%	February 2015	2.00%
March 2015	1.47%	1.46%	1.46%	1.46%	March 2015	1.80%
April 2015	1.70%	1.69%	1.69%	1.68%	April 2015	2.00%
May 2015	1.53%	1.52%	1.52%	1.52%	May 2015	1.80%
June 2015	1.60%	1.59%	1.59%	1.58%	June 2015	2.00%
July 2015	1.77%	1.76%	1.76%	1.75%	July 2015	2.20%
August 2015	1.82%	1.81%	1.81%	1.80%	August 2015	2.20%
September 2015	1.77%	1.76%	1.76%	1.75%	September 2015	2.20%
October 2015	1.67%	1.66%	1.66%	1.65%	October 2015	2.00%
November 2015	1.59%	1.58%	1.58%	1.57%	November 2015	2.00%