The Elder Law Advocate

"Serving Florida's Elder Law Practitioners"



Featuring:

- *Changes to the SSI program*
- *Navigating pour-over last wills: Disposition vs. incorporation by reference*
- *Elder Law Essentials & Annual Update: The story in pictures*
- *Honoring ELS members for their pro bono work*
- *To be or not to be: Tax law changes*

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The Elder Law Advocate

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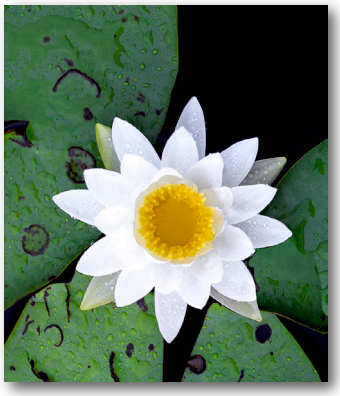
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The Elder Law Advocate will be glad to run corrections the issue following the error.



ON THE COVER
Water Lily
Randy Traynor Photography

4/2025

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Submit Articles

The deadline for the SUMMER 2025 EDITION is JUNE 15, 2025. Articles on any topic of interest to the practice of elder law should be submitted via email as an attachment in MS Word format to Genny Bernstein at gbernstein@jonesfoster.com, or call Emily Young at 850/561-5650 for additional information.



Message From the Chair
by Shannon M. Miller

What does leadership look like? Elder Law Section 2025

I have one perspective; I am sure there are outstanding leaders showing up in areas of our section that I am unaware of, but let me share a small sample of leadership in our section that I have witnessed this year—

John Clardy and **Brandon Arkin** were asked, midway through the planning process for the Annual Update, to take over and serve as co-chairs of the program. This is unusual because normally our section has a chair-elect who can run that committee and make the plans. I was able to create a framework for implementation—then John and Brandon took it and ran with it. We had an interactive half-day at the Annual Update for Essentials that was mind blowing! The Annual Update Committee tapped amazing speakers and put together a program that was, by far, one of the most phenomenal Essentials and Annual Updates that we have seen in a while.

Jason Neufeld facilitated the interactive day and went above and beyond, like he always does, by planning, implementing, and directing an amazing program. Jason is one of the higher ranking AFELA board members this year, so his foray into the Elder Law Section speaks to his commitment to elder law attorneys across the state. And he never toots his own horn, so let me just say thank you for your leadership, Jason Neufeld.

Jana McConnaughhay, **Twyla Sketchley**, and **Victoria Heuler** put together a "lockup" for veteran/senior attorneys in the form of a half-day series on how to exit your law firm gracefully. It was fantastic, and the room was packed. One of the reasons we sought so many veterans for this event was for their participation in the Essentials interactive program. It worked!

Veteran ELAs/past chairs did participate and mentor during Essentials, as well as engage in speed networking at lunch, and a fantastic probate trivia program was run by **Jason Waddell** and **Heather Samuels**. Once again, leaders stepping up.

Heather Samuels and **Danielle Fowler** running CLE this year has been incredible. They've put together a President's Showcase for the Annual Florida Bar Convention and have created an opportunity for us to once again showcase our wares.

Lisa Hostetler Brown traveled from South Carolina to explain the nuances of life care planning and why it has been such a fantastic career change for her. So many of us who experience life care planning are trying to spread the word about how this may be the future of elder law. An amazing leader from another state!

Amy Fanzlaw and **Debi Slater** have continued to create amazing levels of engagement with the chairs of our committees and have spent countless hours encouraging, mentoring, and improving our committees.

I've got to shout out **Victoria Heuler** for continuing in her role as past chair in a way that makes her role even more impressive. Not only has she run the Past Chairs Committee, but she also continues to engage with the Fellows program and always lends a hand, like participating in legislative events in Tallahassee, which continues to show us that she's a leader that will not, we hope, ever go away as part of our section.

Kandace Rudd is another unsung hero this year because of her continued willingness to engage in activities as she's tapped. In addition to co-chairing the Medicaid Committee, Kandace has learned about the Stop the Scammers legislation and has been ready to step up and engage with legislators to create a better piece of legislation that we can be proud of. Thank you, Kandace, for your willingness to jump into something that is a little outside your comfort zone but now you've magically made yourself an expert in.

Heidi Brown was asked for the first time to step into the Sponsorship Committee's chair role; she didn't have experience in this job but was willing to step into her discomfort. As an end result, we raised more sponsorship dollars this year than we have in a long time! I think it's because of Heidi's willingness to put herself out there into positions where she doesn't really know what she's doing but is willing to learn. Heidi will be our new incoming secretary into the Executive Committee, and we recognize that she is a shining star who will do great things for our section.

continued, next page

Chair's Message... Continued

How can we ever forget **Travis Finchum**? We are grateful for his continued financial support of the section through the Guardian Pooled Trust, as well as his timeless commitment to service of our section, including finding a way to get us to a balanced budget even when our dollars continue to be reduced by the Big Bar. His continuous efforts are not unnoticed, and he's, once again, a leader that never toots his own horn.

Stop the Scammers legislation drafters. Our Stop the Scammers legislation is coming up in the Senate this session, and my hope is that at this point we have been successful in creating a pathway for seniors that is safer, stopping scammers in their tracks. This interesting and innovative way of providing service on a scammer allows us to serve the scammers through the same method that they have been communicating with our victim. We feel very fortunate to have our lobbyists, **Brian Jorgerst** and **Tom Griffin**, who have been able to connect us with legislators to help carry this bill through to fruition.

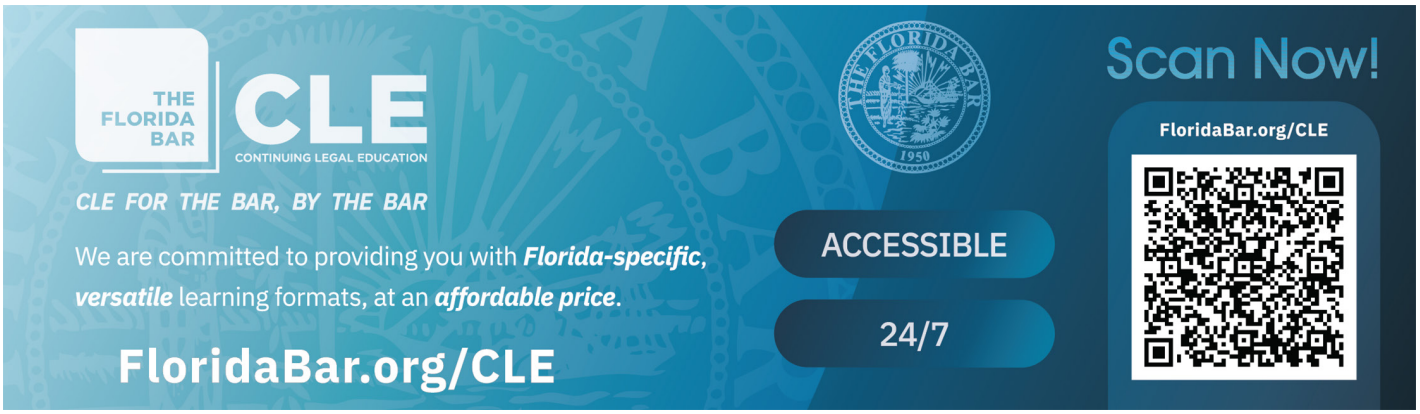
I'd like to personally thank the creators of the Stop the Scammers legislation, who literally figured out how to make this work in about an hour on Zoom during the middle of the Heckerling Institute last January. It is interesting what five really smart people can do together to create a change that might help to fight exploitation and scams across the entire United States. So, thank you, **Deborah Slater**, **Twyla Sketchley**, **Amy Fanzlaw**, **Victoria Heuler**, and **Ellen Morris** for your strong efforts, and even more so for your strong brains.

Social media contract and new website. We are getting ready to launch a new social media contract with Gabriella Behar, with plans for an Instagram page and a new beginning of our section's journey with social media. Our hope is to attract more members to our section, to communicate better with law students, and to engage in a different way. The website is due for an upgrade, and we have contracted with Nocturnal, who created the Business Law website. We are beginning to reconstruct our website in a way that makes it more accessible to members and the general facing public. Thank you, **Amy McGarry** and **Rachel McGarry**!

We are so lucky—so join us in developing your leadership story. It starts with committee work, attending events, applying for the Fellows program, stepping into projects when asked, seeking committee chairpersonship, or serving as vice chair. And your best place to learn more? The **Annual Retreat!** Journey to Sedona, Arizona, at The Wilde Resort and Spa, October 9-11. We have reserved a small block of rooms, and the Retreat Committee is planning to create opportunities for a more economical way to attend the retreat by incorporating some opportunities for space sharing. If you have never been to Sedona, it is an incredible place to learn about yourself, to engage in the nature that surrounds us (yes, energy vortexes), and also to dial inward toward more self-love for ourselves, which we can then use to help others.

Finally, I leave you with one of the practices of yoga that is actually one of the yamas (principals) of yoga, which is *the tapas* (the fire), or self-discipline. Tapas can be a time of great challenge, a time when we put our heads down and focus on the hard work that is required to get to the other side. So, if you are in the tapas at the moment, just know that it is temporary. There will be a time when you are no longer in the tapas, and you have exited to the other side and learned many good lessons from your experience and hard work. Just know that you are helping people, and your hard work is not unnoticed. I remain happy to be your chair and hope to continue to connect you with your bodies and yourselves. Don't forget to love yourself, and please join us in Sedona for even more dialing in to learn more about your beautiful self.

Namaste,
Shannon



Common sense changes to SSI program will benefit vulnerable Americans

by Kole J. Long

submitted on behalf of the Special Needs Trust Committee

On September 30, 2024, the Social Security Administration (SSA) unveiled sweeping changes to its Supplemental Security Income (SSI) program aimed at broadening eligibility and increasing monthly benefit amounts for millions of vulnerable Americans. These changes focus on two key areas: removal of food from the list of in-kind support and maintenance (ISM) and the rental subsidy policy.

Food and in-kind support and maintenance

For years, SSI benefits were reduced when recipients received "in-kind" support—non-cash assistance such as food or shelter provided by friends, family, or other sources. Traditionally, if an SSI recipient was given help with food or groceries, the value of that support was counted as income. This could lead to a reduction in benefits, sometimes by as much as one-third of the monthly SSI federal benefit rate.

Under the new rules, food will no longer be included in ISM calculations. This means that any help with groceries or meals, regardless of whether it comes from family members, charitable organizations, or a trust, will no longer trigger a benefit reduction. This change is designed to reduce the administrative burden on recipients—who previously had to report details about every instance of food assistance—and to promote food security among low-income individuals. This is a rare but refreshing common sense policy change by SSA.

Rental subsidy exception

Another critical adjustment in the rules targets how SSI benefits are affected by housing costs. Previously, if an SSI recipient rented a home or living space at a rate below the fair market value, most commonly from living with a relative or family member, SSA would impute the difference as additional income. This calculation, based on the concept of in-kind support for shelter, often reduced the overall SSI payment up to one-third of the federal benefit rate.

With the new rule, a rental subsidy exception is available to SSI recipients. As long as an SSI recipient's required monthly rent equals or exceeds the presumed maximum value (PMV), the housing assistance they receive under that arrangement will not count as in-kind support. The PMV is defined as one-third of the federal benefit rate plus $20. The federal benefit rate for 2025 is $967. This change is expected to benefit tens of thousands of recipients by preventing unwarranted reductions in their monthly benefits.

Moving forward

By removing outdated provisions that inadvertently penalized recipients for receiving necessary support like food and housing, the SSA is acknowledging the real-world challenges faced by low-income individuals, the elderly, and people with disabilities. In summary, the recent SSA changes to in-kind support and maintenance calculations and the expansion of the rental subsidy exception mark a significant common sense overhaul of SSI rules. These changes are expected to boost monthly benefits, streamline administrative processes, and ultimately help millions of Americans achieve a greater degree of financial stability and independence.



Kole J. Long *is an attorney with the law firm of Special Needs Lawyers, PA, where he practices elder, probate, guardianship, and special needs trust law. Kole is board certified as an elder law specialist by The Florida Bar.*

Reference

Social Security Administration, EM-24047 REV, SSI Living Arrangements Regulatory Changes (2025). Available at https://secure.ssa.gov/apps10/reference.nsf/links/01172025095433AM.

Navigating pour-over wills: Disposition vs. incorporation of trusts in Florida estate planning

by Lisa A. DiFranza

submitted on behalf of the Estate Planning & Advance Directives Committee, Probate

I recently attended the Elder Law Section's Elder Law Annual Update 2025. One of the best parts, other than learning what's new, is spending time with colleagues and finding out little nuggets and issues in other circuit courts that I may not see in my area. This time I learned of a potential change to section 732.512, Florida Statutes, after the Circuit Court in Palm Beach County recently held that a trust amendment not in existence at the time of the execution of a pour-over will cannot be incorporated by reference under the statute.

As estate planners and elder law practitioners, we frequently utilize pour-over wills and revocable trusts to direct asset distribution. While both approaches reference a trust, they operate differently. One approach transfers assets to a trust, leaving the trust to govern them, while the other integrates the trust's provisions into the will itself. Understanding this distinction is essential for estate planners and beneficiaries.

This article clarifies the legal differences between these two methods, examining their treatment under Florida law, particularly Florida Statutes 732.512 and 732.513, alongside relevant case law.

Pour-over will disposing of property to a trust

A pour-over will that transfers property to a trust simply directs estate assets into an already existing trust without incorporating its terms into the will. Florida Statute 732.513 permits a will to devise property to a trust created before or concurrently with the will.

A primary benefit of this approach is that the trust remains independent, and any modifications made during the testator's lifetime continue to govern the transferred assets. In *Pasquale v. Loving*, 82 So. 3d 1205 (Fla. 1st DCA 2012), the court upheld a will's transfer of assets to a trust that had been amended post-will execution. Similarly, in *Estate of Baer*, 446 So. 2d 1128 (Fla. 4th DCA 1984), the court recognized that even if a trust is revoked before death, its *referenced* dispositive provisions in the will may still govern asset distribution and the pour-over provision remains valid.

Pour-over will incorporating a trust by reference

By contrast, a pour-over will that incorporates a trust by reference makes the trust's terms an integral part of the will. For this incorporation to be valid under Florida Statute 732.512, the following criteria must be met:

1. The trust must have been in existence when the will was executed.
2. The will must explicitly express an intent to incorporate the trust.
3. The trust must be clearly identified in the will.

Unlike a pour-over will that transfers property to a trust, incorporation by reference effectively freezes the trust's terms as of the date of the will's execution. Later amendments generally do not apply unless the will explicitly allows for their inclusion. This principle was upheld in *Martin v. Martin*, 687 So. 2d 903 (Fla. 4th DCA 1997), where the court ruled that a trust created after the will's execution could not be incorporated by reference. Similarly, *Lewis v. SunTrust Bank*, 698 So. 2d 1276 (Fla. 3d DCA 1997), emphasized that a will's mere mention of a trust is insufficient for incorporation unless statutory requirements are met.

Key differences and practical considerations

1. Timing of existence:

- A pour-over will can transfer property to a trust existing at the testator's death.
- A will incorporating a trust by reference requires the trust to exist at the time of will execution.

2. Impact of trust amendments:

- A pour-over will allows trust amendments made after the will's execution to govern assets.
- A will incorporating a trust by reference generally does not recognize later amendments unless explicitly provided.

3. Probate implications:

- Assets passing via a pour-over will are governed by the trust's terms outside of probate.
- Incorporating a trust by reference subjects its terms to probate oversight.

4. Legal challenges:

- Contesting an incorporated trust requires a will contest.
- A trust receiving assets through a pour-over will can be challenged independently under trust law.

The distinction between these two types of pour-over wills carries significant legal consequences under Florida law. Estate planners generally prefer transferring property to a trust rather than incorporating a trust by reference, as it allows for ongoing trust amendments. However, incorporating a trust by reference may be appropriate when the testator wants to ensure the trust's terms remain fixed at the time of execution.

Careful drafting is crucial to avoiding unintended legal consequences. A will should explicitly state whether it is merely transferring assets to a trust or incorporating its terms, ensuring that the testator's intent is honored while reducing potential legal disputes.



Lisa DiFranza *is the CEO and founder of DiFranza Law, PA. She is an attorney whose practice focuses on elder law, guardian advocacy, guardianships, probate, and estate planning. She serves the majority of Florida from Northeast Florida to South Florida to Southwest Florida, She is the chair of the Elder Law Section's Estate Planning & Advance Directives Committee, Probate (a/k/a the Premortem and Postmortem Committee).*

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Fla. Stat. § 732.512.

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Lewis v. SunTrust Bank, 698 So. 2d 1276 (Fla. 3d DCA 1997)



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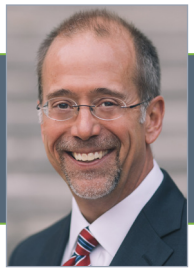


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Capitol Update
by Brian Jogerst

Session 2025: A preview

With the 2024 elections behind us, the Legislature turned its attention to the 60-day Legislative Session.

During the 2024 Organizational Session, which is required to be held two weeks after the general election, the Senate formally elected Senator Ben Albritton Senate president, and the House formally elected Representative Danny Perez speaker of the House and Representative Wyman Duggan speaker pro tempore. Representative Duggan is a former Elder Law Legislator of the Year.

In early December, President Albritton and Speaker Perez announced the committee chairs and committee membership. Appointments of interest include the following committee chairs:

- House Budget – Representative Laurence McClure
- House Health Care Budget Subcommittee – Representative Alex Andrade
- House Judiciary – Representative Chuck Brannan
- House Civil Justice Subcommittee – Representative Traci Koster
- House Health and Human Services – Representative Josie Tomkow
- Senate Rules – Senator Kathleen Passidomo (two-time Elder Law Legislator of the Year and former Senate president)
- Senate Appropriations – Senator Ed Hooper
- Senate HHS Appropriations Subcommittee – Senator Jay Trumbull
- Senator Judiciary – Senator Clay Yarborough
- Senate Health Policy – Senator Colleen Burton (former Elder Law Legislator of the Year)

2025 Legislative Session

The 2025 Session is the "late session," beginning on March 4 and ending on May 2. Along with three special sessions in January and February, the House and Senate held committee meetings in preparation for the Legislative Session.

2025 issues

The Legislative Committee, led by Michelle Kenney and Travis Finchum, is actively reviewing legislative proposals for the 2025 Session.

Stop the Scammers/Substitute Service – Senate Bill 106 by Senator Jonathan Martin and House Bill 97 by Representative Kevin Steele addresses serving exploiters who hide behind internet or apps to avoid detection, identification, and prosecution. By way of background, during the 2018 Legislative Session, the Legislature adopted the Exploitation Injunction statute (sponsored by then Representative Colleen Burton and Senator Passidomo). Under the terms of the 2018 law—which was the first in the nation—if a vulnerable adult is financially exploited, a family member or the exploited person can go directly to the clerk of the court to file an injunction to freeze their assets. Working with the attorney general, in 2021, the law was improved by adding terms to criminalize undue influence, to disinherit exploiters, and to make the process more accessible by allowing agents under DPOA to file the petition.

Elder Law is well aware that the financial exploitation industry is getting more sophisticated in their methods to exploit victims. The legislation permits serving the alleged exploiters via the same communication style the respondent used to correspond with the victim, such as WhatsApp or Facebook. Once served in this manner, the respondent would have 30 days to appear to assert the nonexploitive nature of the transaction.

Elder Law is grateful to Senator Jonathon Martin and Representative Kevin Steele for sponsoring this bill.

Electronic Monitoring/Granny Cams – Senate Bill 64 by Senator Ileana Garcia and House Bill 223 by Representative Susan Plascencia allows electronic monitoring devices in long-term care facilities. Under the terms of the bill, the electronic monitoring devices must be a fixed position video or audio recording device (the camera cannot rotate in the room). Consent must be obtained by all residents in a shared room, and the Agency for Health Care Administration (AHCA) must adopt uniform consent forms. The nursing home or assisted living facility must post a notice at the entrance of the rooms that a monitoring device is in use.

Elder Law supports this bill.

Patient Directed Medical Orders – Senate Bill 556 by Senator Ana Maria Rodriguez and House Bill 353 by Representative Susan Plasencia addresses patient-directed medical orders, including telehealth provisions and requirements

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for withholding or withdrawing life-prolonging procedures.

Elder Law is actively reviewing this legislation.

Virtual Currency Kiosk Businesses/ Crypto ATMs – Senate Bill 292 by Senator Colleen Burton and House Bill 319 by Representative Tom Fabricio regulates virtual currency kiosk businesses. Elder Law is concerned that "scammers" are using bitcoin ATMs to steal money—especially targeting seniors and vulnerable adults who are depositing large sums of money into the unregulated crypto ATMs without any proof that the deposit was made or any daily limit on the amount deposited.

Elder Law supports regulation of the crypto ATMs, including daily transaction limits and a paper receipt providing proof that the money was deposited and including specific transactional information.

Your help is needed

This session, the Legislative Committee is actively reviewing key legislation and will review countless amendments and revisions.

If you want to participate on a substantive committee or review/comment on the bills that are filed, please contact the leadership of the ELS Legislative Committee:

Michelle Kenney

michelle@gapsattorneys.com

Travis Finchum

travis@specialneedslawyers.com

The Legislative Committee meets biweekly during the legislative committee weeks and *every* Friday at 8:00 a.m. during session to discuss issues reviewed by the ELS substantive committees.

We have enjoyed success on legislative issues by working with legislators and providing feedback to them as well as by testifying at committee hearings. It is imperative that we continue to have thorough and timely responses available during the Interim Committee Weeks and Legislative Session as meeting notices leave minimal time to respond. We are grateful for the grass-roots support we have received and for the difference it makes when working with legislators.

You can also help by meeting with your local legislators and being a local resource to them. If you do not know your legislator, we remain willing to facilitate an introduction with the legislator and/or their staff. Continued relationship-building with legislators, the state's policy makers, is a critical component of our advocacy efforts because the local relationships and outreach to legislators from trusted sources helps Elder Law be a trusted voice and improves our advocacy efforts.

***Brian Jogerst** is a partner at The Griffin Group, a Tallahassee-based governmental consulting firm. Recognized as a Health Care Influencer in Florida Politics'* INFLUENCE *magazine, he has more than 30 years' experience lobbying on health care and related legal issues. The Griffin Group is under contract with the Academy of Florida Elder Law Attorneys and the Elder Law Section of The Florida Bar for lobbying and governmental relations services in the State Capitol.*

Visit the Elder Law Section on Facebook

We are happy to announce that the Elder Law Section has created a Facebook page. The page will help promote upcoming section events as well as provide valuable information related to the field of elder law.

Part of the section's mission is to "cultivate and promote professionalism, expertise, and knowledge in the practice of law regarding issues affecting the elderly and persons with special needs…" We see this Facebook page as a way of helping to promote information needed by our members.

We need your help. Please take a few moments and "Like" the section's page. You can search on Facebook for "Elder Law Section of The Florida Bar" or visit *facebook.com/FloridaBarElderLawSection/*.

If you have any suggestions or would like to help with this social media campaign, please contact:

Amy L. McGarry
239/945-3883
amy@amymcgarrylaw.com

THE FLORIDA BAR
ELDER LAW SECTION

From the Joint Task Force for the Elderly & Disabled: Help build a database of Medicaid application problems

Elder law practitioners assisting their clients with Medicaid qualification have reported ongoing challenges in the Medicaid application process that arise in many different situations. As a result, the Joint Public Policy Task Force for the Elderly & Disabled (comprising both ELS and AFELA leadership) has initiated dialogue with the Florida Department of Elder Affairs and the Florida Department of Children & Families. A recent meeting arranged by task force lobbyists Brian Jogerst and Greg Black was held in Tallahassee with representatives of both DOEA and DCF, attended by task force members Emma Hemness, David Jacoby, Mike Jorgensen, and volunteer Angela Warren. This meeting was similar to prior meetings wherein the two departments requested examples of the issues we are experiencing. The task force believes we need to be prepared at all times to provide specific instances of any breakdowns in the application process.

In a continued effort to monitor and track ongoing challenges encountered in Medicaid case matters, we require your assistance in building a database of specific examples. Task force members Britton Swank and Jason Waddell have created the Medicaid Application Problems – Tracking Sheet. An interactive form is available to complete online. Please share this form with your staff members and encourage them to record issues encountered in the Medicaid application process as they occur. Once you or your staff members submit the form, it will be sent to the task force's database.

Pssst ... Don't forget to use the Medicaid Tracker to report issues with the Medicaid application process. Use the link or the QR code on this page to access it.

When we see a trend developing, we can raise the issue. This effort will be successful only if everyone participates. This information will enable the task force to continue meaningful dialogue with DOEA and DCF as we work toward solutions to these challenges, assisting both your practice and the clients for whom you advocate.

Access the online form by clicking the link or the QR code:

https://bit.ly/medicaid-tracking

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2025 Elder Law Essentials and Annual Update in the Books!

The Elder Law Section held its 2025 Elder Law Essentials and Annual Update on February 13-15 in Orlando, Florida. The Essentials day introduced a new interactive morning session in an open forum where colleagues discussed elder law issues in a relaxed setting. Attendees were grouped at different tables with a board-certified elder law attorney to watch fact patterns, to address and analyze them, and to participate in small group discussions, followed by the larger group interaction. This program allowed attendees the opportunity for open discussions, brainstorming, and collegial interaction. Thank you to our section "actors" Brittany Stewart, Brandon Arkin, and Jason Neufeld for their videos that served as the basis of our discussions. Lunch offered another opportunity for attendees to get to know their fellow Elder Law Section members. The afternoon sessions were divided into two programming options; the essential speakers discussing the ABCs of elder law areas of the law and the 20-plus year practitioners addressing business management and alternatives to practicing full time.

The Elder Law Section held its first annual Trivia Night, which was a blast. Jason Waddell was an amazing trivia host. Trophies and gift cards were provided to the winners! Congratulations to Len Mondshein's winning trivia team. You stepped it up. We also congratulate our second place trivia team under the leadership of Twyla Sketchley. A fun night was had by all.

The two-day Annual Update did not disappoint, addressing topics including guardianship, Medicaid, Baker and Marchman Acts, spousal support, Fair Hearings, and ChatGPT, to name a few. It was well received.

We encourage all who could not attend to plan on participating next year. We also give a shout out to our amazing speakers, our Elder Law Section past presidents, the chair of the section, the special committee chairs for this CLE and their committees, and all who participated. This program continues to be a success, a testament to our amazing section.

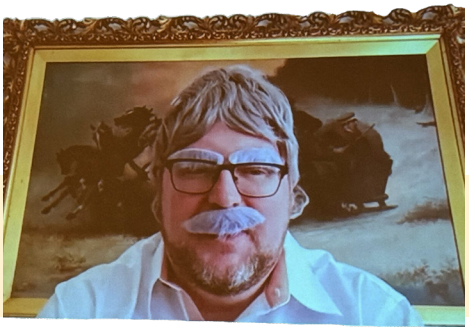
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The story in pictures ...

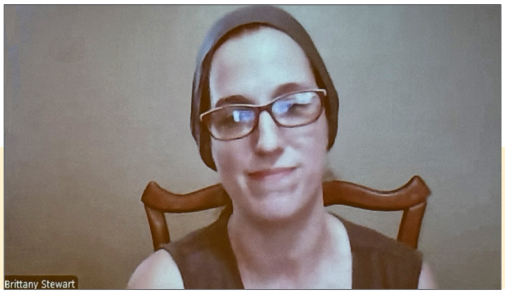


CLE co-chair John Clardy leads the way ...



Jason Neufeld moderates the morning interactive Essentials session … It was a conversation!





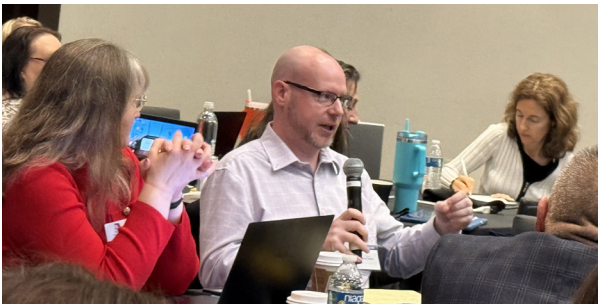
Interactive video actors Brandon Arkin and Brittany Stewart represent an elderly couple … nice mustache, Brandon!



The 20-plus years practitioners session features a panel of experts in law practice management: Kelly Overstreet Johnson, Jerome Novey, Carolyn Sawyer, and moderator Jana McConnaughhay.



The morning essential practitioners session includes interactive discussion tables.



Adam Owens participates in the conversation.



The 20-plus years practitioners audience show their appreciation to the presenters.



Jason Waddell, the amazing host of the Elder Law Section's Trivia Night—What a night!



Len Mondschein and his winning team celebrate victory!



Twyla Sketchly and her team take second place.



The coveted ELS Trivia Trophy!



Lisa Goday, Kaitlin Stolz, and Kimberly Sullivan



David Hook, Vicki Bowers, and Carolyn Landon



Travis Finchum and Lisa DiFranza



Emily Young with her trusty laptop—always at the service of the Elder Law Section!

Florida Supreme Court and The Florida Bar honor two ELS members for their pro bono work

The Elder Law Section is proud to have Jana McConnaughhay and Whitney Glaser counted among its members. They have dedicated numerous hours to serving those in need by providing their legal services pro bono in their respective judicial circuits, and now the Florida Supreme Court has recognized McConnaughhay and Glaser with The Florida Bar President's Pro Bono Service Award during a ceremony held January 16.

The Florida Bar annually recognizes pro bono service in each of Florida's 20 judicial circuits. McConnaughhay was the 2025 honoree for the Second Judicial Circuit, Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla counties. Glaser was the 2025 honoree for the 12th Judicial Circuit, DeSoto, Manatee, and Sarasota counties.



Jana E. McConnaughhay

Jana E. McConnaughhay, Second Judicial Circuit

(Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla counties)

Since July 2022, Jana E. McConnaughhay has given her time and talent as a guardian ad litem volunteer with the Statewide Guardian ad Litem Office. McConnaughhay's compassionate representation quickly established her as an invaluable member of the Guardian Ad Litem Office's team. For the children she is charged with defending, she makes herself available as both a legal resource and emotional support. From her first case in which she spent a year and a half working to reunite three children with their mother, to her most recent case, McConnaughhay has consistently been an empathetic and knowledgeable resource for children at their most vulnerable. McConnaughhay, who is board-certified in elder law, is also a dedicated advocate for Florida's seniors. She served on the Joint Task Force for Elders and the Disabled from 2010 to 2019, and she has been a member of The Florida Bar Elder Law Section for nearly two decades.



Florida Bar President Roland Sanchez-Medina, Jr., presents Whitney C. Glaser with a certificate recognizing her pro bono service to the citizens of Florida.

Whitney C. Glaser, 12th Judicial Circuit

(DeSoto, Manatee, and Sarasota counties)

Whitney C. Glaser is a dedicated pro bono attorney who helps Legal Aid of Manasota provide estate planning and guardianship legal services to disadvantaged clients in need. Since taking on her first pro bono cases through Legal Aid of Manasota in 2018, she has handled more than 20 cases and donated more than 295 pro bono hours. These 20 cases include one in which Glaser was tasked with helping to prepare estate planning documents for a terminally ill client. Her representation of this client's interests continued after death, as Glaser went on to handle the probate on behalf of the client's seven-year-old son. Glaser also volunteers for Lutheran Services Florida (Office of the Public Guardian), where she handles pro bono guardianship matters for indigent wards, and she provides pro bono services to clients in need individually, including pro bono consultations for those navigating the legal system on a pro se basis.

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Section News



Mark your calendar

Annual Florida Bar Convention
June 25-28, 2025
The Boca Raton
Boca Raton, Florida

Elder Law Section Retreat
October 9-11, 2025
The Wilde Resort & Spa
Sedona, Arizona

Committees keep you current on practice issues

Contact the committee chairs to join one (or more) today!

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Call for papers – Florida Bar Journal

Emily Young is the contact person for publications for the Executive Council of the Elder Law Section. Please email eyoung@floridabar.org for information on submitting elder law articles to The Florida Bar Journal for 2024-2025.

A summary of the requirements follows:

- **Articles submitted** for possible publication should be MS Word documents formatted for 8½ x 11 inch paper, double-spaced with one-inch margins. Only completed articles will be considered (no outlines or abstracts).
- **Citations** should be consistent with the Uniform System of Citation. Endnotes must be concise and placed at the end of the article. Excessive endnotes are discouraged.
- **Lead articles** may not be longer than 12 pages, including endnotes. **Review is usually completed in six weeks.**





Practice Management
by Audrey Ehrhardt

Are we successful despite sabotaging ourselves?

by Audrey Ehrhardt

It can be a hard question to answer honestly for ourselves and for our law firm.

In the high-pressure world of legal practice, success is often measured by how well we serve our clients and the accolades we receive along the way. But beneath the surface, many of us are struggling to maintain control over our own practices. We juggle countless responsibilities in the operations of our law practices, stay busy fighting fires on behalf of our clients, and often leave little time for the strategic work that could elevate our firms to new heights. It is as if we are navigating a maze, and despite making progress, we are sometimes our own biggest obstacle.

We tell ourselves that we are too busy to invest in our practices, enforce our own rules, or seek the support we need to thrive. The reality is that while we might be successful on the surface, we are also sabotaging our long-term growth by not addressing the underlying issues that hold us back. *The scary truth is that we might just be one bad stomach flu away from it all falling apart.* Yet, we continue to forge ahead, often relying on sheer willpower to get through the day.

But what if there is a better way? What if we could be even more successful by recognizing and addressing the ways we are holding ourselves back? This is the question we need to ask ourselves if we want to build practices that are not only successful but sustainable—and we need to answer it honestly. Let's discuss a few of the main challenges you may be facing in your firm right now, and get honest about solving them.

1. We do not take the time to invest in our practices. It is easy to focus on the immediate needs of our clients, but this means our own practice often takes a backseat. We know that investing in our practice, whether it is upgrading our legal tech software, streamlining our bookkeeping procedures, or refining our marketing strategies, is essential for long-term success. Yet, these tasks are often pushed aside because we are "too busy" handling what is right in front of us. Although we think about outsourcing this work, we have real fear because we have been burned before. The truth is, by slowing down and thinking about what you need now, as well as investing time in resources that work (that do not involve your manpower!), you will save countless hours and headaches down the line.

2. We do not enforce our own rules. We set rules and processes to help our practices run smoothly, but how often do we follow them? Are you a rule breaker or a rule follower? Are they your own rules? And if they are, do they need to evolve so you can adhere to them? The pressures of a jam-packed schedule can lead to cutting corners, which ultimately undermines our efforts. While enforcing our own rules might seem impossible when we are juggling so many responsibilities, there is no question that consistency is key to building a practice that not only survives but thrives.

3. We are doing a thousand things at once. Multitasking has become the norm, but it is not always effective. Even worse than multitasking can be the tremendous number of tasks we expect ourselves to be able to complete each day. When we spread ourselves too thin or set unrealistic expectations for ourselves, we risk burning out. We also can miss critical details that can impact our clients, ourselves, and our law firm business. It is important to recognize when, and more importantly where, we need help, whether that is delegating tasks, investing in technology, or seeking out coaching support to keep us focused on what truly matters and to avoid sabotaging the goals we are trying to achieve.

4. Our clients are always on fire. Let's face it, our clients come to us in times of crisis and we are trained to prioritize their needs. But if we are constantly putting out fires for our clients during the times we have blocked off to focus on our practice building, we cannot build the systems we need to ensure we are preventing fires in our own firm. By stepping back and addressing the root causes of our issues first, as opposed to our new clients' emergencies, we can create a more sustainable practice that benefits everyone.

It's time to break the cycle of self-sabotage. And trust me, I know it can be hard to see your way through to the other side of the challenge when you are working in your practice each day. It is absolutely critical, however, that you take the time to build a stronger, more resilient law practice.

***Audrey Ehrhardt, Esq., CBC**, builds successful law firms and corporations across the country. A former Florida elder law attorney, she is the founder of Practice42 LLC, a strategic development firm for attorneys. She focuses her time creating solutions in the four major areas of practice development: business strategy, marketing today, building team, and the administrative ecosystem. Join the conversation at www.practice42.com.*



Tips & Tales
by Kara Evans

Using a short-term rental as income-producing property

The tale: Sam and Ivan are the twin nephews and sole beneficiaries of their Aunt Pearl. Aunt Pearl has been in a facility, on a long-term care Medicaid program, for several months. All of her income goes to pay the facility cost. Sam and Ivan have been paying all the expenses of her home. They are not Florida residents but use the home to visit their aunt often. They are concerned about the rising costs of maintaining the home and come to you for advice. You explain the benefits of converting the home to an income-producing property. They are intrigued by the idea, but the home needs many upgrades, repairs, and capital improvements. They decide to go with the status quo and continue to use the home to visit Aunt Pearl.

One year later you receive another visit from the twins. They have invested $70,000 in upgrading, repairing, and improving Aunt Pearl's property and have listed it with a company that manages short-term rentals. They expect the short-term rental income to be double what a long-term rental would bring. They want you to advise them on how to report this to Medicaid. They would also like to get their $70,000 back as soon as possible.

The tip: First, it may be helpful to review the rules regarding income-producing property. Some investments are not counted as assets for Medicaid purposes. Income-producing property, usually rental property, falls into this category. The rules regarding rental income are discussed in the ESS Manual at 1840.0501 and 1840.0504 (https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-program-manual). For Florida's Long-Term Care Medicaid programs, the value of the underlying property is ignored and only the income stream from the property is counted. Expenses associated with the property can be deducted from the income stream generated by the property before the amount of income to a Medicaid recipient is determined. This is an exception to the gross income rule.

The Department of Children and Families calculates the income from rental property in the following manner. The income is the gross rent less ordinary and necessary expenses. Expenses include real estate taxes, interest on debts, utilities, maintenance, repairs, costs of advertising for renters, lawn service, interest and escrow, homeowners insurance, and property management expenses. Capital expenditures such as the principal portion of a mortgage or capital improvements (expenses for an addition or increase in the value of property for which the IRS allows depreciation) are not deductible. Rent charged should be comparable to the fair market rate for similar properties in the same location, and property management fees should not exceed 10% unless the additional charge is standard in that particular location.

While there is no requirement that the property produce a certain percentage of income per dollar of value, it should

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ADVERTISE in The Elder Law Advocate!

The Elder Law Section publishes three issues of *The Elder Law Advocate* per year. The deadlines are June 1, 2025 and October 1, 2025. Artwork may be mailed in a print-ready format or sent via email attachment in a .jpg or .tif format for an 8-½ x 11 page.

Call Emily Young
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produce income consistent with its fair market value unless there are extenuating circumstances. If an expense should happen to exceed the monthly rental, it can be deducted from the income in subsequent months.

The ESS Manual at 1640.0544 to 1640.0549 discusses the procedure for what happens if a property is not producing income consistent with its fair market value. The property's owner will be notified that they have 18 months to rectify the situation or the property will be treated as a countable asset.

While there is no prohibition against using seasonal or short-term rentals for income-producing property, the monthly income fluctuations present challenges. Will a change report have to be filed each and every month because the income changes monthly? This seems quite cumbersome. If there was a history of short-term rental for Aunt Pearl's property, the twins could average the income for reporting purposes. Even the much higher management fees from short-term rentals would be acceptable because it is the industry standard. However, in this case, the allowable deductible expenses far exceed the expected rent for more than 18 months. In addition, the twins will not receive reimbursement from the rental income for the capital improvements they made to the home.

This case presents unique challenges that call for a different solution. I am reminded of an Uber driver I met who rented a car for his Uber business. His income from driving covered the rent and allowed him to save enough money to purchase his own vehicle. This story kept coming to mind as I was pondering Aunt Pearl's case.

The solution to the twins' problem was quite simple. Sam and Ivan would become renters. They would rent the home from Aunt Pearl with a standard long-term rental contract for fair market value. Aunt Pearl could then calculate her rental income as allowed and report a consistent, predictable income. The twins could use the property as a short-term rental and would be able to keep any income from the property that exceeded the rent and pay themselves back with the excess. Whether they were reimbursing themselves for allowable expenses or for capital expenditures would be irrelevant. If they found that the short-term rental income did not satisfy the long-term lease, they could simply convert the property back to a long-term rental.

***Kara Evans, Esq.**, is a sole practitioner with offices located in Tampa, Lutz, and Spring Hill, Florida. She is board certified in elder law and concentrates her practice in elder law, wills, trusts, and estates.*





Tax Tips
by Michael A. Lampert

Tax law changes – If the tax law does *not* change

Numerous provisions in the tax law will expire or change—if the law is not changed. These provisions run the gamut from decreasing or expiring credits to increased or decreased deductibility to different tax rates, to name just a few provisions. Often these changing or expiring provisions are reinstated, in full or in part, and sometimes they are retroactively reinstated after expiration. Most of these expiring provisions were enacted as part of the Tax Cuts and Jobs Act (TCJA), and most expire at the end of 2025.

It is sometimes said that businesses and individuals prefer certainty over a better tax regime. (At least one that is not too much worse!) Why? At least with some tax law certainty, the taxpayer can plan. Now, not only do we have occasional major tax acts, but we also have periodic smaller tax law changes. Planning becomes very difficult.

As I write this article, there are numerous proposals for law changes. Estate tax elimination, no taxes on tips and overtime (happy to comment on that one!), a DOGE refund of some sort (not sure if that is a tax thing), and no tax on Social Security benefits. The reality is, we really do not know what the law will be when this article is published. But we do know what the law will "change" to if the law does not change.

What follows is a summary of some of the changes *if* the law does not change, with my (MAL) two cents (sometimes three) comments on these changes. This article may be out of date by the time it is published—if the law does change. And some of these changes are not a bad thing.

Note: RIA Checkpoint, TCJA Prognosis for 2025 is used as the basis of this article.

Credit vs. deduction

As a reminder, there is a significant difference between income tax credits and income tax deductions. A deduction reduces your taxable income and is then applied to the tax rate to determine your tax. A credit reduces the actual computed tax due.

Income tax credits come in two variants—nonrefundable and refundable. Nonrefundable credits mean that if the credit reduces the tax to zero, but there is a remaining unused credit, then the remaining credit is effectually lost.

A refundable credit is just that. If the credit reduces the income tax below zero, the taxpayer can receive a "refund" of the income tax the taxpayer never paid in. Refundable credits in particular have led to significant fraudulent tax filings in order to improperly claim a "refund" of a refundable credit.

Individual income tax rates

Internal Revenue Code (IRC) § 1(j)

Current law through 2025: Seven brackets: 10%, 12%, 22%, 24%, 32%, 35%, 37%. Income thresholds indexed annually to chained Consumer Price Index (CPI).

Changes if the law does not change (i.e., TCJA expires): Marginal rates will revert to their permanent pre-TCJA levels of 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%. Aside from the first two brackets (10% and 15%), these rates apply over different ranges of taxable income than the TCJA rates. These income ranges are annually adjusted for inflation.

MAL comment: For many, if not all of our clients, the tax rates will cause an increase in income tax liability. With that said, it is possible that for some clients, other changes could mitigate the tax increase. Read on.

Increased standard deduction

IRC § 63(c)(7)

Current law through 2025: The TCJA nearly doubled the basic standard deduction amounts in 2018 to $12,000 for single filers, $18,000 for head of household filers, and $24,000 for married joint filers. These amounts were annually adjusted for inflation after 2018. In 2025, these amounts are $15,000, $22,500, and $30,000, respectively.

Changes if the law does not change: The basic standard deductions will revert to their TCJA levels and then be adjusted for inflation. For 2018, prior to the TCJA, the basic standard deduction amounts for 2018 would have been $6,500 for single filers, $9,550 for head of household filers, and $13,000 for married taxpayers filing jointly.

continued, next page

MAL comment: For clients with few itemized deductions, this change may also cause an income tax increase. However, clients with deductible expenses greater than the lower standardized deduction will need to itemize their deductions and have appropriate backup to support their deductions. Many clients will have increased complexity in record keeping for tax return filing. For clients with few itemized deductible expenses, this could effectively be an income tax increase.

Suspension of personal exemptions/ dependency exemptions

IRC § 151(d)(5)

Current law through 2025: Under the TCJA, the personal exemption was temporarily reduced to $0, effectively suspending the provision.

Changes if the law does not change: Personal exemptions will revert to their pre-TCJA levels and then be adjusted for inflation.

MAL comment: This is certainly helpful to reduce overall income tax, especially for larger families. Once again, close attention will be required to determine if a client qualifies for the dependent exemption, whether for children, parents, or others.

Enhanced child tax credit

IRC § 24(h)

Current law: The child tax credit allows a taxpayer to reduce their federal income tax liability by up to $2,000 per qualifying child. Lower-income taxpayers, with little or no federal income tax liability, may be eligible to receive some or all of the credit as the refundable portion of the credit—the additional child tax credit (ACTC). For higher-income taxpayers, the credit amount phases down if income exceeds the phaseout threshold. Maximum credit: $2,000 per child. Maximum ACTC: $1,400 per child. (The ACTC is adjusted for inflation and equaled $1,700 in 2024.) Formula for the ACTC: 15% of earned income above $2,500, up to the maximum credit Phase-out threshold: $200,000 unmarried taxpayers/$400,000 married taxpayers. Aside from the maximum ACTC amount, none of the parameters are adjusted for inflation.

Changes if the law does not change: The child credit will revert to its pre-TCJA structure. Maximum credit: $1,000 per child. Maximum ACTC: $1,000 per child. Formula for the ACTC: 15% of earned income above $3,000, up to the maximum credit. Phase-out threshold: $75,000 unmarried taxpayers/$110,000 married taxpayers. None of the parameters are adjusted for inflation.

MAL comment: For those that otherwise qualify, this will generally operate as a tax increase. This credit also is a common source of IRS enforcement actions. Legitimate claims are denied, forcing low-income taxpayers to "prove" the child. Literally. Unfortunately, unscrupulous tax preparers (and taxpayers) also "make up" children to improperly claim the credit.

Credit for dependents

IRC § 24(h)(4)

Current law: The "credit for other dependents" or "other dependent credit" (ODC) allows taxpayers to reduce their income tax liability by $500 for each dependent that is ineligible for the child credit.

Changes if the law does not change: This credit will expire.

MAL comment: More tax. Note the interface between this credit, the child care credit, the personal exemptive/dependency exemption, and the standard deduction.

ABOVE THE LINE DEDUCTIONS

Limitation of moving expense deduction to Armed Forces personnel

IRC § 217(k)

MAL comment: Don't skip this section—this really might apply to you or your clients.

Current law through 2025: Only members of the Armed Forces can claim an above-the-line deduction for moving expenses incurred as a result of work at a new location (effectively repealing this deduction for other taxpayers). Other taxpayers are not eligible to claim this deduction.

Changes if the law does not change: All eligible taxpayers will be able to claim an above-the-line deduction for moving expenses incurred as a result of work at a new location, subject to certain conditions dealing with the individual's employment status as well as the distance of the move. (These conditions will not apply to members of the Armed Forces.)

MAL comment: While it is possible that, overall, Florida may have an outflow of residents in 2025, clearly that is not the case in many communities. With DOGE reductions in force, moving to be closer to family, or for lower cost housing, and for other reasons, this deduction may be valuable for those who qualify.

Limitation of moving expense reimbursement exclusion to Armed Forces personnel

IRC §132(g)(2)

MAL comment: Again, do not skip this section—this might apply to you or your clients.

Current law: Employer reimbursements for moving expenses are excludable from income and wages for members of the Armed Forces only and pursuant to military order for a permanent change of station. For all other employees, such benefits are considered wage income and hence subject to income and employment (i.e., "payroll" taxes). **Expires** end of 2025.

Changes if the law does not change: Qualified moving expense reimbursements from an employer will be excludable from an employee's wage income and hence not subject to either income or employment (i.e., "payroll") taxes.

MAL comment: This is a corollary to the individual deduction. This allows

employers to pay certain moving expenses of their employees without including it in the employees' taxable income. As an added bonus, the payment is deductible by the employer.

60% AGI limit for cash donations to public charities

IRC § 170(b)(1)(G)

Current law through 2025: The TCJA temporarily increased the adjusted gross income (AGI) limit for cash donations made to public charities from 50% to 60%. Other limitations based on the form of the donation and the recipient organization were unchanged by the TCJA.

Changes if the law does not change: Cash contributions to public charities will generally be limited to 50% of the taxpayer's AGI.

MAL comment: First, this is a reminder to obtain proper receipts with the proper donation language on it and obtain proper approvals when required. While many clients may not push up against this limit, it is not uncommon for a client to make a larger donation one year. If the donation exceeds the allowed percentage of their AGI, the excess deduction cannot be taken that tax year. The unused portion of the charitable contribution can be carried forward and used in subsequent years; however, the carried forward charitable deduction will be lost if the donor dies before the deduction is used in full.

$10,000 limit on state and local tax deduction

IRC § 164(b)(6)

Current law through 2025: Taxpayers who itemize their deductions can deduct up to $10,000 in state and local income, sales (in lieu of income), and property taxes, as well as foreign income taxes (but not foreign real property taxes). Property taxes associated with carrying on a trade or business are fully deductible (i.e., not subject to a cap).

Changes if the law does not change: The $10,000 cap on this deduction will not apply and hence taxpayers will be able to deduct all eligible state and local income, sales (in lieu of income), and property taxes, as well as foreign income taxes. Taxpayers will also be able to deduct foreign real property taxes.

MAL comment: This will be particularly valuable for our snowbird and higher net worth/income clients. This will also be valuable as property values and the attendant property taxes increase. Remember that many states and some municipalities have income taxes making this deduction ever more valuable in those jurisdictions.

$750,000 limit on home mortgage debt on which interest may be deducted, and disallowance of deduction for interest on home equity debt

IRC § 163(h)(3)(F)

Current law: Taxpayers who itemize their deductions may deduct interest paid on the first $750,000 ($375,000 for married filing separately) of mortgage debt (combined for first and second homes). The limitation applies to new loans incurred after December 15, 2017. **Expires** end of 2025.

Taxpayers with mortgage debt incurred on or before December 15, 2017, who itemize their deductions, may deduct interest on the first $1 million ($500,000 for married filing separately) of combined mortgage debt.

No deduction is allowed for interest payments made for new or existing home equity debt if such debt is used for purposes unrelated to the property securing the loan.

Changes if the law does not change: The $750,000 limitation will increase to $1 million of combined (first and second home) acquisition debt regardless of when the debt was incurred. The interest on the first $100,000 of the home equity debt will also be deductible, regardless of whether or not the taxpayer incurred the debt to finance costs associated with the home.

MAL comment: While it is a nice deduction for clients with higher value homes with larger mortgages, for many clients, the biggest benefit is the deductibility on the first $100,000 of the home equity debt.

Nondeductibility of personal casualty and theft losses other than those resulting from disasters

IRC § 165(h)(5)

Current law: Taxpayers who itemize their deductions can generally claim a deduction only for non-compensated personal casualty and theft losses associated with a disaster declared by the president under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Casualty losses are generally deductible if they exceed $100 per casualty and to the extent aggregate net casualty losses exceed 10% of adjusted gross income (AGI). **Expires** end of 2025.

Changes if the law does not change: Taxpayers will be able to claim an itemized deduction for non-compensated personal casualty and theft losses regardless of whether the losses resulted from a federally declared disaster.

MAL comment: Some of the readers know of my longstanding involvement at both the leadership and operational levels of the American Red Cross. One thing I have learned is that to an individual or family, a destroyed home, significant theft, or other loss is a major disaster to that family, regardless of whether it is part of a larger, nationally declared disaster. This provision will help those clients. It also may help clients that are victims of financial fraud.

Gambling losses, deductibility

IRC § 165(d)

Current law: Taxpayers who itemize their deductions can deduct gambling losses, provided those losses do not exceed gambling winnings included in gross income. Gambling losses include deductible expenses incurred in carrying on the gambling activity, for both recreational and professional gamblers. **Expires** end of 2025.

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Changes if the law does not change: Gambling losses will no longer include expenses incurred in carrying on the gambling activity. Professional gamblers will be able to deduct ordinary and necessary non-wagering business expenses.

MAL comment: While I have to deal with this in my tax controversy practice, the biggest change I see is the potential for more gamblers to try to claim they are professional gamblers.

Suspension of miscellaneous itemized deductions

IRC § 67(g)

Current law: There is no itemized deduction for certain miscellaneous expenses such as unreimbursed employee expenses or tax preparation fees. **Expires** end of 2025.

Changes if the law does not change: Individual taxpayers who itemize their deductions will be able to deduct miscellaneous expenses to the extent that such expenses collectively exceed 2% of their AGI. Expenses subject to the 2% floor will include unreimbursed employee expenses, tax preparation fees, and certain other expenses.

MAL comment: This will help many clients who otherwise itemize their deductions. I suspect that this change will benefit many of the readers of this article. What it will entail is starting once again to keep expense records.

Suspension of overall limitation on itemized deductions

IRC § 68(f)

Current law: The total amount of itemized deductions that can be claimed by a taxpayer is the sum of all allowable itemized deductions, and there is no overall limitation on itemized deductions. **Expires** end of 2025.

Changes if the law does not change: For taxpayers with AGI above certain thresholds, the total amount of itemized deductions will be reduced by 3% of the amount by which their AGI exceeds the threshold. (For 2018, before the TCJA, the thresholds once adjusted for inflation would have been $320,000 for married taxpayers filing jointly and $267,700 for singles.)

MAL comment: This hurts high-income taxpayers. Remember that with other of the changes, if there is no law change, there will be more deductible items. Higher income taxpayers may run into these deductibility limits.

ALTERNATIVE MINIMUM TAX (AMT)

Increased AMT exemption amounts and more favorable exemption phaseout rules

IRC § 55

Current law: For 2024, the AMT exemption amounts are $85,700 for single/head of households and $133,300 for married couples. The AMT exemption amount phases down when a taxpayer's income exceeds a phaseout level. These levels are $578,150 for singles/head of households and $1,156,300 for married couples. **Expires** end of 2025.

Changes if the law does not change: The AMT exemption and exemption phaseout will revert to pre-TCJA levels and then both will be adjusted for inflation. For 2018, prior to the TCJA, the higher 28% rate applied to incomes above $191,500 for married couples. For 2018, prior to the TCJA, the exemption amounts were $55,400 for singles/head of households and $86,200 for married couples, and the exemption phaseouts were $123,100 for singles/head of households and $164,100 for married couples in 2018. (Note: Personal exemptions will again be in effect upon the expiration of the TCJA. See "Personal exemptions.")

MAL comment: In addition to the changed rates and more deductions, it is possible that more taxpayers will be impacted by the AMT. Remember that AMT calculations include more income items and allow fewer deductions than "regular" income tax calculations. You generally pay the higher number.

ABLE ACCOUNTS

Increase in ABLE account contribution limit

IRC § 529A(b)(2)(B)

Current law: Under the TCJA, a designated beneficiary who is employed can contribute an additional amount to their ABLE account (above the annual gift-tax exclusion amount). The additional amount is equal to the lesser of (1) the applicable federal poverty level for a one-person household in the prior year, or (2) the beneficiary's compensation for the year. A beneficiary cannot contribute this additional amount for the year if any contribution is made on their behalf to certain defined contribution plans. **Expires** end of 2025.

Changes if the law does not change: Designated beneficiaries won't be able to contribute the additional amount.

MAL comment: This eliminates one of the arrows in the planning quiver for those with special needs.

Pre-2027 saver's credit allowed for contributions to ABLE accounts

IRC § 25B(d)(1)(D)

Current law: Designated beneficiaries who make qualified contributions to their ABLE account can qualify for a nonrefundable (pre-2027) saver's credit of up to $1,000. **Expires** end of 2025.

Changes if the law does not change: Designated beneficiaries will not be able to claim the saver's credit for their contributions. Note: The SECURE 2.0 Act of 2022 (Section 103 of P.L. 117-328) included a provision aimed at promoting retirement savings among low-income households that effectively repeals the saver's credit under IRC Section 25B and replaces it with a saver's match under IRC Section 6433, effective January 1, 2027.

MAL comment: Another provision making it more challenging for those with special needs.

529-to-ABLE account rollover

IRC § 529(c)(3)(C)(i)(III)

Current law: Rollovers from a 529 account to an ABLE account (plus any other contributions to the account for the year) that are less than or equal to the annual ABLE contribution limit are not subject to income taxation, provided that the accounts have the same designated beneficiary (or the designated beneficiaries of the two accounts are members of the same family). The portion of the rollover (plus any other contributions to the account) in excess of the annual contribution limit is taxable. **Expires** end of 2025.

Changes if the law does not change: All rollovers from 529 accounts to ABLE accounts will be subject to taxation.

MAL comment: This significantly reduces the flexibility of both 529 planning and ABLE accounts. May need to see to what extent 529 accounts can be used for nontraditional 529 allowable expenses.

BUSINESS PROVISIONS

Qualified business income deduction

IRC § 199A

Current law: Pass-through business income is taxed according to ordinary individual income tax rates. The TCJA created a deduction equal to 20% of qualified business income. **Expires** end of 2025.

Changes if the law does not change: The Code Sec. 199A deduction will **expire**. Hence pass-through business income will generally be taxed according to ordinary individual income tax rates without a deduction for qualified business income.

MAL comment: For many of us with our own practices or in small law firms, who do not earn beyond the 199A threshold, this will hurt. Tax lawyers and CPAs have spent hours trying to understand Section 199A, but the deduction many of us enjoy will be gone.

Limitation on losses of noncorporate taxpayers

IRC § 461(I)

Current law: For taxpayers other than C corporations, a deduction in the current year for excess business losses is temporarily disallowed, originally through 2026 by the TCJA and subsequently extended to 2028 by the Inflation Reduction Act (P.L. 117-169, IRA). In addition, such losses are treated as a net operating loss (NOL) carryover to the following year. **Expires** end of 2028.

Changes if the law does not change: Businesses will generally be permitted to carry over an NOL to certain past and future years. Under the passive loss rules, individuals and certain other taxpayers will be limited in their ability to claim deductions and credits from passive trade and business activities, although unused deductions and credits can generally be carried forward to the next year. Similarly, certain farm losses may not be deducted in the current year but can be carried forward to the next year.

MAL comment: This may help our clients with businesses who had a bad year.

Expensing of property/bonus depreciation

IRC § 168(k)

Current law: The TCJA temporarily allowed full expensing (i.e., 100% bonus depreciation) through 2022, before phasing down ratably through the end of 2026.

For long-production-period property, the phasedown period begins after 2024. **Expires** end of 2026.

Changes if the law does not change: Businesses will generally capitalize the cost of the property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.

MAL comment: While this full expensing provision may expire, IRC § 179 is not set to expire. It allows the full deduction of many purchases up to a threshold amount. Therefore under § 179, many small businesses will still be able to fully deduct purchases. For example, my law firm will be able to deduct, in full, the new computer that it is about to purchase rather than having to depreciate the purchase over a number of years. This will impact purchases larger than the § 179 limits. Not only is the § 179 provision not set to expire, but the 2025 expensing limit is $1,250,000.

OTHER PROVISIONS

Increased estate and gift tax exclusion amount

IRC § 2010(c)(3)(C)

Current law: Estate and gift taxes are levied at a rate of 40% on transfers after excluding a fixed amount from taxation. For decedents who die in 2024, the exclusion amount is $13,610,000 per decedent ($10 million per decedent statutorily adjusted annually for inflation). **Expires** end of 2025.

Changes if the law does not change: The estate and gift tax exclusion amount will be reduced from $10 million per decedent to $5 million per decedent statutorily and then adjusted annually for inflation.

MAL comment: As a rough estimate, figure approximately a $7 million exclusion in 2026. For many clients, this makes little difference. It will make more important the filing of estate tax returns to claim the deceased spouse unused exclusion (DSUE) at the death of the first spouse to die, so at the death of the second, they benefit from both estate tax exemptions.

As I write this article, there is a proposal to eliminate the estate and generation-skipping tax. That proposal does not eliminate the gift tax, as there is a concern about income shifting. Remember that, historically, some law

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Tax Tips . . .
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changes have been retroactively made. In addition, for many clients the estate tax is not the issue—the basis step-up (and down) is. Please pay close attention to how basis adjustment at death is handled.

Twelve states, plus the District of Columbia, have an estate tax. Six states have an inheritance tax. Maryland is the only state to have both. Be alert to state-level exemptions as some are far lower than the federal exemptions.

Employer credit for paid family and medical leave

IRC § 45S

Current law: In general, a 12.5% credit on eligible wages paid to qualifying employees while they are on family and medical leave. Under TCJA, this credit originally expired on December 31, 2019. The Taxpayer Certainty and Disaster Relief Act of 2019 (Division Q of P.L. 116-94) extended the credit through 2020 while the Taxpayer Certainty and Disaster Relief Act of 2020 (Division EE of P.L. 116-260) extended it through 2025.

Changes if the law does not change: No credit will be available for employer-provided paid family and medical leave.

MAL comment: This will make it less cost effective for companies to provide paid family and medical leave. This is also an example of repeated law changes making it difficult to plan.

Other

Other areas of "non-change changes" include Qualified Opportunity Zones and Bicycle Commuting Reimbursement.

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Case Law
by Elizabeth J. Maykut

Summary of Selected Case Law

by Elizabeth J. Maykut

Testimony by psychiatrist that testator had dementia was insufficient to invalidate will disinheriting grandson where there was ample evidence testator had testamentary capacity on date will was executed.

Reeves v. Gross, 50 Fla. L. Weekly D274 (Fla. 3rd DCA January 29, 2025)

Issue: Whether the testator had sufficient capacity to execute a will two months before he died at age 100.

Answer: Yes. The testator was presumed to have capacity, plus evidence submitted showed that he was lucid and had capacity on the date the will was executed. A mere possibility proposed by the psychiatrist that the testator did not have testamentary capacity was not enough to satisfy the heavy burden necessary to invalidate a will.

Grandfather (GF), who had a sizable estate and had made inter-vivos gifts to his only grandson (GS), executed a will at age 100 two months before his death in 2019 in which he disinherited GS, leaving most of his estate to charity. GS sued the personal representative (PR) seeking to revoke the will for lack of testamentary capacity. After substantial discovery, PR moved for summary judgment on the basis that it was undisputed GF had capacity when the will was executed, which was granted.

In affirming the trial court, the Third District reviewed the following evidence supporting the fact that GF had capacity: (1) GF's "general counsel" who had represented him for 50 years and met with him frequently in 2019, testified GF knew the details about the properties he owned, their financial status, and the people involved, and that he understood the new version of his will, which he reviewed with him before it was executed; and (2) both the general counsel and GF's estate planning attorneys testified that GF was of sound mind and had testamentary capacity when the will was executed. In opposition, GS submitted an affidavit from a geriatric psychiatrist who never treated or examined GF, but who reviewed his medical records for the period surrounding the date of execution of his will. The

psychiatrist opined that GF was suffering from dementia with delirium beginning the month before the execution of his will and therefore, "within a reasonable degree of medical certainty, [GF] did not having the required capacity to execute an estate plan" on the date his will was executed.

In reviewing the law, the appellate court started by stating that GS must carry a heavy burden to invalidate a will for lack of testamentary capacity as Florida recognizes a presumption of testamentary capacity. It then reviewed the three tests for testamentary capacity, which are (1) the ability to understand the nature and extent of property owned; (2) to name the natural objects of the testator's bounty; and (3) to understand the practical effect of the will as executed. In refusing to accept the psychiatrist's opinion of incapacity, the court reiterated that individuals with issues of mental capacity often experience lucid moments and that, as long as the testator had mental capacity when he executed his will, his will could not be revoked for lack of testamentary capacity even if he had already been declared legally incapacitated. In short, the psychiatrist's statement was not enough to overcome the presumption of capacity and the evidence that he was lucid when he executed his will. In making this determination, the court also took into account the fact that GF had first executed a will disinheriting GS in 2015.

Practice tip: Before commencing with a signing ceremony for an elderly client, ask questions sufficient to ensure the client has testamentary capacity and document that in your file. If you are advising a potential client on the likelihood of success in pursuing a claim to invalidate a will based on lack of testamentary capacity, keep in mind that a diagnosis of dementia or an expert's opinion of dementia may not be sufficient to overcome the presumption that the testator had capacity when the will was executed.

Daughter and son-in-law who cared for decedent in their home were reasonably ascertainable creditors as PR had actual knowledge of their claims for compensation and reimbursement for expenses.

Grant v. Kunke, 397 So.3d 758 (Fla. 2d DCA 2024)

Issue: Whether the decedent's end-of-life caregivers, who were husband and wife, were reasonably ascertainable creditors (RAC) who did not receive timely notice and were therefore entitled to an extension of time to file their claims.

Answer: Yes. The personal representative (PR), who was the wife's brother, had actual knowledge of their claims but failed to serve them as he did not consider them to be "creditors" under the law.

When the decedent's health started to fail, she expressed her desire to live with her daughter, Jennifer, and son-in-law, Geoffrey, and to compensate them from her estate. Although the decedent's attorney prepared a personal services contract for the decedent and Jennifer, the decedent never executed it. The decedent eventually moved in with Jennifer and Geoffrey who adapted their home to her needs and cared for her. After the decedent's death, Jennifer requested $22,000 from her estate based on her mother's verbal offer to pay her $2,000 per month. One of the other beneficiaries (Beneficiary) refused to agree. After learning this, Jennifer filed a claim in the estate for $129,000 for care, room and board, and other expenses incurred for the decedent six months after publication of the notice to creditors. When PR proposed a plan of distribution that allotted the entire estate to partially satisfy Jennifer's claim, Beneficiary filed an objection. Thereafter, Geoffrey filed a claim for $27,639.80 for remodeling, time lost from work, and funeral expenses. Beneficiary objected to the timeliness of Geoffrey's claim.

When both Jennifer and Geoffrey sought an extension of time to file their claims, the trial court found Jennifer to be a RAC and granted her time to amend her $22,000 claim (if all of the beneficiaries agreed) or to file a separate civil suit to pursue her $129,000 claim. However, it determined Geoffrey was not a RAC.

The Second District held that Geoffrey was a RAC because PR had actual knowledge the decedent had chosen to receive care in their home and pay for that care. Accordingly, the court held that Geoffrey's claim should be reinstated, but he could be required to defend it in the civil division. As to Jennifer's claim, the Second District affirmed the trial court's ruling that Jennifer was also a RAC, but because Beneficiary had objected to her claim, she was required to defend it in a separate civil action, which she did not do in a timely manner.

Practice tip: Clients who desire to pay their children for care should be encouraged to execute a caregiver's agreement and to pay the caregiver contemporaneously with the care provided. A client who desires to pay the caregiver from his or her estate should include specific provisions related to that payment in his or her will. Further, a personal representative should serve the notice to creditors on anyone he knows provided paid care for the decedent.

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