

# The Texas Legal Alert

Accidents-Wills-Trusts-Real Estate-Probate

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This newsletter is published by the law offices of Andrew Traub. It is for informational purposes only and no legal advice is intended. Each case is different and you are invited to discuss your legal questions with Mr. Traub at no initial cost.



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## The Grass Looks Greener on the Other Side of the Inexpensive Estate Plan

Valuation planning is a significant part of estate planning used to reduce estate or gift taxes. Valuation planning illustrates the age-old concept that "you get what you pay for" in estate planning. The method of determining the value of the property is extremely important because estate and gift taxes are imposed on the value given, whether a gift or a bequest. It is equally important to use valuation planning to reduce the taxable value. What exactly is the estate or gift tax value of an item of property? In the IRS regulations (20.2031-1(b)) the value of an item of property is the amount at which the property will change hands between a willing buyer and a willing seller, each with reasonable knowledge of the facts, and no compulsion to buy or sell. This is the so-called "hypothetical buyer" test, meaning the estate planner may use techniques that would cause a hypothetical buyer to pay less for a client's property after the planning strategy than they would have before. There are several strategies estate planners can use to reduce the taxable value of a client's estate, but choosing the correct option can make all the difference.

### Valuation Planning Strategies

Remember the famous phrase from the commercials, "Pay me now or pay me later?" Estate planners have a similar, though less famous, mantra of their own: "Pay me now or pay them later." So while there may be less expensive methods to produce a particular estate or gift tax

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## Austin Events for December 2007

### Rockin' Christmas Party

November 22– December 30  
Zachary Scott Theatre  
1510 Toomey Rd., Austin, TX 78704  
<http://www.zachscott.com>  
512-476-0541

Rockin' Christmas Party turns fourteen this year reigning as one of the longest-running Austin traditions of all time. Bigger, brighter and merrier than ever our award-winning cast sure knows how to put the Christmas spirit in your heart as they shake, rattle and roll down Santa Claus Lane.

### Whole Foods Market Ice Rink

December 1– December 30  
Whole Food Market  
525 N. Lamar Blvd., Austin, TX 78703  
<http://www.wholefoods.com>  
512-476-1206

Even in Texas it wouldn't be the holiday season without ice skating on the Whole Foods Market Ice Rink. The rink is open from 10am–9pm every day. Tickets are \$10 per person for each 45 minute session (same-day purchase only) and include skate rentals.



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## Foreclosure “Rescue” Scammers Focus on Stealing Homes

These criminals skip over foreclosure notices on newer homes with sub-prime loans and mortgages made with low down payments or none at all.

They are looking for foreclosures on homes with loans that are a decade old or more, those that have a nice buildup of equity. They arrange to get the equity for themselves.

Though there are legitimate, mostly nonprofit, operations that can help homeowners in distress, there is a growing army of criminals that prey on this group.

They get leads from sites such as PreForeclosure.com and All-foreclosure.com. The sites compile public records to provide leads for legitimate investors, but anyone can access them. People on the list say they receive letters daily that offer to help them avoid foreclosure.



Here’s how the scam works: Rescuers say they will refinance through a designated investor or arrange a rent-to-own plan that will allow homeowners to buy their homes back. Somewhere in the paperwork, there is a quit claim or deed of gift in which homeowners sign their houses over to the investor.

At that point, the rescuers charge the former owners rent high enough to ensure they can evict them and pocket the equity built up in the property.

The rescuer may also take out a first and second mortgage on the property. If the former owners do get the property back, what they owe on it could be more than the house is worth.

Several states have passed foreclosure protection laws, but its still up to individuals to protect themselves from scam artists.

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## Do the Long Term Disability Insurance Companies Defraud the Social Security Administration?

As you know, I am not fan of group long term-disability policies offered by employers. By and large, these policies protect little and contain so many “weasel clauses” as to let the insurance companies get out of paying many claims.

Here’s something I’ve been thinking about for a long time and it really bothers me. I think the major long-term disability companies are, in effect, defrauding the Social Security System.

Here’s what happens. Most policies will protect you for the first two years of your disability if you cannot work in your own job. This is “own occupation” disability. This is not the same as being totally disabled, however. What the insurance companies do, if they start paying you because you cannot work in your own occupation, is force you to apply for social security benefits, even if they know you don’t meet the social security administrations’ definition of total disability. If you don’t fill out a claim form with the Social Security Administration that claims that you are totally and completely disabled, the long term disability insurance company can reduce your monthly benefit.

The “defrauding” is this: even though you don’t by any stretch of the imagination satisfy the social security definition of disability when you apply as directed by the insurance company, a government employee must take the time to review your file and draft the denial letter. Worse than that, your application now “stands in the same line” as legitimate claims, and delays processing of those claims. This makes no sense whatsoever and is, in my opinion, one more way that the long-term disability insurance companies are ripping off the American people.

### ***Thank You! Thank You! Thank You!***

Special thanks go out to all of our clients and friends who graciously referred our law firm to their friends and neighbors last month! Our practice is built based on positive comments and referrals from people just like you. We just couldn’t do it without you: Doug Copeland, Larry Taylor, Jason Miller, Richard Parks, Salah Ahmed, Mario Ortez, Matt M. Dean, and Gary Murphy.

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**Need a new will? Need to update an existing will? Call me at (512) 343-2572.**

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## Motorcycle Fatalities Rise for the 9th Straight Year

The National Highway Traffic Safety Administration (NHTSA) reports that motorcycle deaths rose by 5.1 % to 4,810 in 2006. Part of the blame goes to the states.

Only 20 have laws requiring helmets for all motorcycle riders.

Fatalities rose for all age groups, but older riders were affected most. In the last 10 years, fatalities have risen by 250 % in the 30-and-older age group and by 350 % in the 50-and-older age group.

One factor is the increased power of motorcycle engines. Often older riders return to biking with the same skills that were safe some 20 years ago. They should take a refresher course before getting on a powerful bike.

Alcohol plays a role in crashes involved riders of all ages. The report shows that 39 % of 35-to 39-year olds killed in a fatal crash had blood alcohol levels of .08 or higher.

The NHTSA says wearing a helmet and the right gear, checking equipment before riding, never drinking and riding, and getting the right training can make a big difference in motorcyclists' safety.

"Share the Road" programs teach motorists and motorcyclists that they both have the right to be on the road, and they are responsible for each others safety. Such initiatives can have an impact on the numbers of crashes, injuries, and fatalities.

*(Continued from page 1)*

reduction technique, there may also be consequences to using the perceived less expensive method, thus causing it to be most costly. Let's assume that our client John, a single man with one adult daughter, has an estate worth \$1,000,000 and is concerned about his health and the legacy he built up for his children and that \$800,000 of John's property is in the form of rental real estate. The estate planner advises John that the value of John's taxable estate could be reduced from its current value of \$1,000,000 to \$650,000 with little difficulty. John is also advised that certain valuation planning techniques would result in an estate tax savings of approximately \$135,000. Needless to say, John is interested in these planning strategies and wants to learn more. What's the next step?

### Choosing the Strategy

The estate planning attorney explains there are two primary methods to reduce the value of his rentals, such that the total value of his estate will be in the amount of \$650,000 or less. The first method is to create a Family Limited Partnership, or FLP, and transfer the rentals to the FLP. John could then make gifts of some of the FLP interests to his daughter. Because of restrictions in the FLP agreement, we assume that our hypothetical buyer will only pay \$400,000 to John for his share of the FLP. That means John's non-rental property valued at \$200,000 and his FLP interests valued at \$400,000 produce a non-

### *Thanks For The Kind Words...*

"Good follow up on new client comments even with a heavy litigation load."

-Anonymous

taxable estate in the amount of \$600,000. John wonders about the fees and costs. The estate planner estimates \$4,000 to be the typical fee in John's area for this kind of FLP. John is somewhat taken aback by the cost and inquires about another method. The attorney suggests to John that he reconsider the FLP, but note that transferring a small interest in each rental to his daughter will likely create the same discount as the FLP. However, the attorney cautions John that he will not be able to exert control over his daughter's share as with the FLP. John inquires about the fees and costs of the small gifts of interests in each rental. The estimate is less than \$1,000 in John's area. He sees no justification to pay over \$1,000; he knows he can control his daughter. The estate planning attorney prepares and records the deeds-John has created his estate plan.

### The Phone Call

A week later, John calls the estate planning attorney and wants to discuss the rental properties. His daughter was in a car accident (she was at fault), and a lawsuit may be on the horizon. At the meeting, John is advised that the injured party's attorney is willing to settle the lawsuit for \$100,000, or else the injured party will take the fractional interests in John's property and force a sale. Thus, John would incur a sizeable capital gain on the sale since he held the property for many years. The attorney negotiates a settlement of \$50,000 with the injured party. John hesitantly asks what would have happened if he had used the FLP as the valuation planning strategy rather than tenant in common ownership? Would the things have been different? The attorney responds that he would likely have paid less than \$10,000 because limited partnership interests, (which is what the daughter would have owned), are virtually useless to a creditor. John just sighs and looks out the window.

### Summary

The grass always looks greener on the other side of the fence, or rather, the inexpensive estate plan. But remember to buy quality - don't focus solely on the price when crafting an estate plan, and you'll be sure to come out ahead. Valuation planning strategies can reduce your estate and gift taxes - and should be seriously considered to protect your loved ones."



## CORRECTION

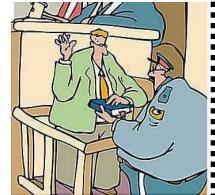
The October 2007 newsletter (Volume 7, Issue 10) contained an incorrect reference to Chicago Title-Austin in connection with an explanation of legal services offered by the Traub Law Office.

Chicago Title Insurance Company does not provide legal advice, draft contracts or provide legal advice to the buyers or sellers in a real estate transaction.

Andrew Traub of Traub Law Office is a fee attorney licensed to act as an escrow officer in closing real estate transactions in the name of Chicago Title Insurance Company.

In performing any of the legal services for a buyer or seller in a real estate transaction, the attorneys at the Traub Law Office act in a licensed attorney capacity and not on behalf of Chicago Title Insurance Company.

## “How to Lose Your Auto Accident Case”



It doesn't matter how good your case is, if you lie to your lawyer or the insurance company about past injuries and accidents, the jury is going to make sure you lose.

Remember, the insurance companies have access to vast databases about your private life, including past lawsuits, claims and injuries.

Honesty is the best policy. Tell your lawyer all about past claims. Then he can deal with it.

The worst thing is for your lawyer to be the last one to know!

## Reminder About Our Firm's Communication Policy

Our promise to you is that while we are working on your case we don't take inbound phone calls, faxes or emails. Andrew Traub takes no inbound unscheduled phone calls whatsoever. It makes him much more productive and helps get your case resolved faster. You can always call Andrew's Assistant, Tamar Bork (512) 343-2572 and schedule an in person or phone appointment, usually within 24-48 hours. This is a lot better than the endless game of "phone tag" played by most businesses today. Remember too, that email is "quick" but is checked no more than twice a day. Replies are then scheduled into the calendar. So if it's really important, don't email— call Tamar instead.

If you or a friend is need of legal assistance, please have them call me at (512) 343-2572.

Do you enjoy reading our newsletter?  
Call, fax or email us with your comments

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