

## Fall 2011

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### WELCOME

Richardson & Tyler, LLP is pleased to bring you the 2011 fall edition of our newsletter. This newsletter is to share new matters of general interest with our clients. It is not intended to provide legal advice. Please speak to an attorney before applying this information to your specific situation. If you would prefer to be taken off of our mailing list, please call or e-mail richardsonandtyler@rtlegal.com and let us know.

### ELDER LAW – ESTATE PLANNING - ANNUITIES

Massachusetts lawmakers overhauled *MassHealth* (Medicaid) a few years back to close “*legal loopholes*” making it harder to preserve funds for a senior’s family without disqualification from MassHealth assistance.

New regulations tightened up conversion of cash to an annuity (e.g., a promise to pay income for life). While regulations did not specifically state private annuities were off limits, that seemed to be the “rule” the agency wanted. So, attorneys and clients erred on the side of caution, labeling private annuities “off limits”.

In a *surprise development*, private annuities are still acceptable under a recent court decision, provided they comply with certain MassHealth regulations.

We suggest an elder with significant bank deposits or investments assets may wish to consider a private annuity contract with a trusted family member, friend, or advisor, to conserve assets for the family.

For more information, contact Lauren Killman to schedule an appointment.

### EMPLOYERS – EMPLOYEES – DISABILITIES & BUSINESS

Most employers know they must *reasonably accommodate* handicapped or disabled employees to permit them to perform essential job functions. A trap for the unwary is “associational discrimination”.

*Associational discrimination* is based on the handicapped or disabled condition of an employee’s spouse or other closely related individual. It may also arise from race, religion, sex and national origin discrimination, resulting in a Massachusetts Commission Against Discrimination damage award.

#### We suggest:

- Adopt a policy prohibiting discrimination based on the race, disability, sex or national origin of an employee *and others closely related* to an employee.
- When making disciplinary or termination decisions, consider whether the decision might trigger an “associational discrimination”.
- When in doubt, consult with qualified counsel before acting, to avoid such claims.

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### REAL ESTATE – BUSINESS LAW – JOINT VENTURES

In today's fluid economy, more businesses are "partnering" with others for specific projects or "joint ventures". Participants may include many professions, including:

- Real estate owners
- Service Companies
- Contractors
- Financiers
- Architects
- Consultants

Such arrangements are complex and often warrant a *written agreement* that sets forth *rights, responsibilities, and liabilities*, such as:

- What will each party contribute: expertise, funds, other assets?
- If funds run short, will a *capital call* for additional funds be binding?
- If one party fails to contribute, can their ownership share be "squeezed down"?
- Who will enjoy management and control?
- What is the "compensation formula"? Payment for services rendered? Payout at project conclusion? Pro rata payments? Incentive payments? Attainment of "mileposts"?
- How will tax consequences be allocated and optimized?
- Are borrowings anticipated? Guarantees? Extra compensation to guarantors for extra risk?
- Is participation "transferable" to another?

These and many other issues should be discussed, resolved and documented at the outset with assistance of competent legal and accounting counsel, to avoid later costly misunderstandings and disputes.

### CORPORATE SCAM ALERT

The latest variation on a recurring scam was a mass mailing entitled "Annual Minutes Requirement Statement", sent to many Massachusetts corporations. It misleadingly solicited a \$125 fee, wrongly implied that payment and a response were legally required, and looked suspiciously similar to a form required by the Secretary of State's Office. If you received this mailing, do not send money and do not reply.

As a reminder, corporations and limited liability companies:

- Must file a public annual report to avoid dissolution; and
- Should maintain private complete minutes with a designated officer as a preferred practice.

If you have any doubts about your corporate compliance requirements, just give us a call.

#### RICHARDSON AND TYLER, LLP

If there is a particular topic you would like to see in our newsletter please email us at [richardsonandtyler@rtlegal.com](mailto:richardsonandtyler@rtlegal.com)



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