

January 2011

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## Estate Planning & Probate Law Section Webcast Series

In response to the suggestions you made on your surveys at the 2010 Estate Planning Forum, we are offering a series of webcasts this month to assist attorneys with a fundamental understanding of estate planning and probate in Tennessee.

The webcasts will take place on January 18, 2011 and January 25, 2011, as follows:

### Webcast 1:

Basics of Estate Planning 101  
Basics of Estate Planning and Probate in Tennessee Series

### Description:

The purpose of this series is to assist attorneys with a fundamental understanding of estate planning and probate in Tennessee.

This session will include an overview of basic estate planning documents and strategies, including advance directives, wills, revocable living trusts, testamentary trusts and basics of tax planning. This session will conclude with a question and answer time.

*\*\*We are also offering Basics of Estate Planning 102 following Basics of Estate Planning 101. Be sure to register for both programs.*

### The Basics:

Credit Hours: General: 1.00

Speaker(s): Angelia Nystrom, Victoria Tillman

All times listed are in Central Time

Course Schedule: January 18, 2011 12:00 PM - 01:00 PM

[CLICK HERE TO REGISTER FOR BASICS OF ESTATE PLANNING 101](#)

### Webcast 2:

Basics of Estate Planning 102  
Basics of Estate Planning and Probate in Tennessee Series

### Description:

The purpose of this series is to assist attorneys with a fundamental understanding of estate planning and probate in Tennessee.

This session will continue the discussion on basic estate planning documents and strategies, including advance directives, wills, revocable living trusts, testamentary trusts and basics of tax planning.

### The Basics:

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Credit Hours: General: 1.00

Speaker(s): Angelia Nystrom, Victoria Tillman

All times listed are in Central Time

Course Schedule: January 18, 2011 1:30 PM - 02:30 PM

[CLICK HERE TO REGISTER FOR BASICS OF ESTATE PLANNING 102](#)

Webcast 3:

Basics of Probate in Tennessee 101  
Basics of Estate Planning and Probate in Tennessee Series

Description:

The purpose of this series is to assist attorneys with a fundamental understanding of estate planning and probate in Tennessee.

This session will include an overview of the probate process in Tennessee, including basic documents required for probate, tax returns, issues related to TennCare and avoidance of probate pitfalls.

*\*\*We are also offering Basics of Probate in Tennessee 102 following Basics of Probate 101. Be sure to register for both programs.*

The Basics:

Credit Hours: EP: 0.00 Dual: 0.00 General: 1.00

Speaker(s): Angelia Nystrom, Victoria Tillman

All times listed are in Central Time

Course Schedule: January 25, 2011 12:00 PM - 01:00 PM

[CLICK HERE TO REGISTER FOR BASICS OF PROBATE IN TENNESSEE 101](#)

Webcast 4:

Basics of Probate in Tennessee 102  
Basics of Estate Planning and Probate in Tennessee Series

Description:

The purpose of this series is to assist attorneys with a fundamental understanding of estate planning and probate in Tennessee.

This session will continue the discussion on the probate process in Tennessee, including basic documents required for probate, tax returns, issues related to TennCare and avoidance of probate pitfalls.

The Basics:

Credit Hours: General: 1.00

Speaker(s): Angelia Nystrom, Victoria Tillman

All times listed are in Central Time

Course Schedule: January 25, 2011 1:30 PM - 02:30 PM

[CLICK HERE TO REGISTER FOR BASICS OF PROBATE IN TENNESSEE 102](#)

Please note that you **MUST** register separately for each webcast if you wish to view 2 or more of the webcasts.

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## An Invitation to Attend the Estate Planning Forum 2011

By: Donald J. Farinato  
Holbrook Peterson & Smith, PLLC

Please join us for the Estate Planning Forum 2011 on February 25, 2011. This is the 6th year for this annual seminar, and like each of the previous years, it is certain to be a worthwhile event. This seminar provides a unique opportunity to learn about relevant topics and socialize with colleagues from around the State.

A number of estate planning techniques will be covered, including asset protection trusts, community property trusts and qualifying personal residence trusts. There will be a panel discussion of sophisticated estate planning techniques and a panel discussion of complicated probate matters. Additionally, there will be a legislative update and an ethics presentation.

Matthew Thornton, Al Secor, David Parsons, Steve McDaniel, Virginia Love, Linda Koon, Bryan Howard, Donald Farinato and Andy Branham are the featured speakers.

The Estate Planning Forum 2011 will be held on Friday, February 25, in Nashville at the Doubletree Hotel. This seminar qualifies for 5 general hours and 1 dual hour of practical CLE. Lunch will be provided. We hope to see you there.

[CLICK HERE TO REGISTER](#)

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## Summary of Estate Tax and Related Law Changes From 2010 Year-End

Darsi N. Sirknen

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Act"). Under the law in effect prior to the Act, the estate tax was repealed for 2010 and scheduled to return in 2011 with an exemption of \$1 million per person and graduated rates reaching 55% on transfers over \$3 million. The Act reinstates the estate tax retroactively to the beginning of 2010; however, the executor of the estate of a decedent dying in 2010 may make an election to opt out of the estate tax and be subject to the modified carryover basis rules instead of the "step-up to fair market value at date of death" basis rules that would apply if the executor did not make such election.

The Act provides for the unification of the gift, estate, and GST tax lifetime exemption at \$5 million per individual (indexed for inflation after 2011). In addition to the enlarged and unified exemption, the Act provides that estates will be taxed at a flat rate of 35% on all transfers exceeding the exemption amount. The Act also introduces "portability," which allows a surviving spouse to use, in addition to his or her own estate tax exemption, any unused portion of the predeceasing spouse's estate tax exemption. Thus, a couple can enjoy the full \$10,000,000 exemption even if the first spouse to die leaves all of his or her estate to the surviving spouse outright. Portability does not apply to unused GST exemption; and of course it does not apply to the Tennessee inheritance tax exemption.

Although the portability concept may indicate that wealthy couples no longer have the need for the bypass trust system currently in use, that system should not be abandoned just yet. Unfortunately, the Act is structured to sunset on January 1, 2013, at which time the gift, estate, and GST laws are set to return to those that existed prior to 2001 (i.e., the \$1 Million per person exemption and 55% top tax rate, and *no portability*). It is unclear how the portability concept would apply if one spouse dies while the

Act is in effect but the surviving spouse lives until 2013 or later.

The Act does not include certain items that tax practitioners feared it might. First, many had speculated that there would be a prohibition on grantor retained annuity trusts (GRATs) that did not have at least a ten-year term and a remainder with some reportable value (i.e., "zeroed-out GRATs" would no longer be allowed). Fortunately, no such provision was included in the Act. Additionally, the Act did not limit or prohibit valuation discounts that may be applied to gifts of interests in non-operating family entities, as many feared would happen. Thus, at least for the immediate future, it appears that those strategies are still available. In addition to, or possibly in connection with, those strategies, wealthy clients may take advantage of the increased gift tax lifetime exclusion to make significant inter vivos transfers and reduce the size of their estates. Of course, such transfers would likely be subject to Tennessee gift tax (unless, perhaps, the transferor makes gifts of real estate located outside Tennessee), but the Act provides a significant opportunity to make such transfers with no federal gift tax liability. Due to the relatively short-lived nature of the Act's provisions, practitioners should be proactive in educating and encouraging clients to take advantage of the planning opportunities it allows.

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