MEMORANDUM

To: **The Family Protector Program™ Clients**
From: **The Strategic Counsel, L.C.**
Date: **December 14, 2006**
Regarding: **Anticipated Changes To Estate Plans In Response to the New Florida Trust Code**

The Florida Legislature enacted the Florida Trust Code this year, which changes approximately 60% of the law regarding trusts in the state of Florida. This unfortunately includes all living trusts like those we set up for your family. Although the effective date is July 1, 2007, most of the new code will be applied retroactively to ***all*** trusts. A few provisions of the Code specifically state that it will be applied only to issues in the future; but the majority of the new law will apply to all trusts, whenever they were executed. We will be updating your plans at your 2007 Enhancement Workshop™ to comply with the new laws. Since this is a massive legal change, we have prepared this Memorandum to allow you an opportunity to review the changes and their impact on you in detail. This summary outlines the top 13 areas that will need to be modified and brought current under the law. For each identified change, we have explained the new law in this area, it's impact on your existing plan, and the change we propose to make to your planning to either eliminate the danger created by the new law or take advantage of the opportunity created by the new law.

1. Preserving the Creditor Protection Your Trust Provides for Your Beneficiaries

   Context: Many of you have chosen to leave your assets to your beneficiaries in a Lifetime Protective Trust. This allows the assets you leave to be creditor proof and divorce proof for the beneficiaries' lifetime. Many of you also have language in your trusts saying that these beneficiaries, when they reach a designated age, can have complete withdrawal rights to their trust share. This means the beneficiary can withdraw as much of the principal as they wish from their trust share. While you trust the beneficiary with their inheritance; you left it to them in a way that protects it from his or her creditors or a divorce.

   The New Law: The new law provides that if a beneficiary has an unlimited withdrawal right, then a creditor can reach into their trust and seize assets. Subsequently, if not properly addressed and updated, the new law will completely destroy the creditor protection for your beneficiaries.

   Our Recommendation: We will address this change by updating the language in your trust to state the withdrawal power is limited to distributions in the trustee's discretion for health, education, maintenance and creditor protection can be maintained. This major distinction will preserve the creditor protection while still allowing

your beneficiary to have flexible access to their trust. (Note, if you provided stricter guidelines for your beneficiaries' access to their trust, we will not make any change to your trust that will change your intention.)
Benefit: Updating your trust will allow your original intention of leaving assets to your loved ones protected from creditors to still be achieved.

2. Selecting the Financial and Legal Watchdog for Minor, Incapacitated or Disabled Beneficiaries.
Context: By law, beneficiaries have a right to be informed about the trust and protest decisions of a Trustee. When the beneficiary is a minor, suffers from a disability or is incapacitated, the law would say only the legal guardian serves as that financial and legal watchdog.
The New Law: The new law allows you to designate someone other than the legal guardian of a beneficiary in this watchdog role. This is important especially when the legal guardian may be your ex-spouse or if you are leaving money to grandchildren, your child's ex-spouse. It is also important if the legal guardian is someone not financially responsible or someone with a conflict of interest.
Our Recommendation: Our recommendation is the Trust Protector named in your trust serves as the trust watchdog since the situation will not come into play for many years. By naming the Trust Protector, an objective party can serve as the watchdog.
Benefit: Appointing either your Trust Protector or another person to serve as the representative for a minor or incompetent beneficiary to protect their rights implement a checks and balance system for your Trustee to ensure they are following your instructions. Most of your trust already allowed the beneficiary to watch over what the trustee was doing (unless for personal reasons you denied the beneficiary this right). This additional language will ensure that if your beneficiary is a minor or incapacitated, someone will be there to protect his or her rights.

3. Maintaining the Privacy of Your Trust
Context: After your death, the old law provided that every beneficiary, no matter how remote, receives a copy of your trust and related financial information.
The New Law: The new law redefines 'beneficiary'. A great benefit under the new law is the Trustee does not have to send this information to everyone, but only provide it if requested.
Our Recommendation: We will update your trusts so that it is consistent with the new law's definition.
Benefit: By complying with the new law's definition of 'beneficiary' we clarify who has the right to obtain information about your trust after your death. This helps maintain the privacy of your

trust. A great benefit under the new law is the Trustee does not have to send this information to everyone mentioned in the trust. The Trustee only needs to provide it upon request when the beneficiary is remote and does not have a current interest in the trust. It helps keep your trust private.

4. Additional After Death Privacy Protections About Your Trust

Context: Previously, all beneficiaries, no matter how remote, were required to receive specific notices, copies of your trust and accountings of your trust assets from your Trustee after your death.

The New Law: The new law limits which beneficiaries are required to receive specific notices, copies of your trust and accountings of your trust assets from your Trustee after your death. The new law provides that only "qualified beneficiaries" must receive this information. A "qualified beneficiary" is someone who has a current interest in the trust.

Our Recommendation: We will be defining "qualified beneficiaries" in your updated trust so only "living" persons who are current beneficiaries, intermediate beneficiaries and first line remainder beneficiaries (the people who receive after the current beneficiary has died) receive financial information about your trust.

Benefit: This new change keeps the information about your trust private and only distributes information to the person or persons that have a current interest in the trust.

5. Protecting Your Charitable Distributions

Context: If you have left money to a charity in your trust, the law provides the charity with the same rights as your other beneficiaries to receive information about the trust and protest any mishandling of the funds. However, it is common for a charity to not have the financial means to hire an attorney to protect their interests and end up being taken advantage of.

The New Law: The new law provides the Attorney General of Florida can assert the rights of a qualified "charitable" beneficiary if the charity requests its assistance. The Trustee has no duty to send notices, information and accountings to the Florida Attorney General unless it is specifically requested by the charity.

Our Recommendation: We will update your trust with language compliant with the new law to allow any charity you name in your trust to receive this benefit.

Benefit: A charity you cared enough about to leave money to may now request the assistance of the Attorney General to protect their rights if they do not have the means to protect themselves. Remember, this will be a circumstance where a Trustee may not be doing their job.

6. Protecting Your Beneficiary's Creditor Protection and Tax Benefits

Context: If you left money to a beneficiary in a Lifetime Protective Trust™, you may have included a power of appointment for them. A Power of Appointment would allow them to effectively do their own Estate Planning and designate where the remaining amount in their Lifetime Protective Trust goes when they die. There are two (2) types of Powers of Appointment. A General Power would allow your beneficiary to leave the remaining money to anyone. A Limited Power would allow your beneficiary to leave the remaining money in their trust only to their children or a charity.

The New Law: The new law can have a devastating effect on anyone you gave a general power of appointment to through your planning. The new law may interpret the power of control you gave your beneficiary was so great, the monies in the trust will be counted in your beneficiary's taxable estate for estate tax purposes. It may also allow a creditor to reach into the trust share, thereby destroying the creditor protection you put in place for your beneficiary.

Our Recommendation: If you gave your beneficiary a general power of appointment in their Lifetime Protective Trust™, we will convert it to a Limited Power of Appointment. This will allow your beneficiary to direct their Lifetime Protective share after their death to their children, charity or any specific person you wish to specify. It will limit this power without destroying the creditor protection, tax benefits, or rights of contingent beneficiaries.

Benefit: Our update to your trust will preserve the creditor protection, tax benefits and rights of a beneficiary while still allowing your beneficiary the flexibility you gave them to designate who will receive the remaining money in their trust after their death.

7. Avoiding the Risk of Lengthy Administration After Death

Context: After your death, the law provides the trust to be administered in the location you select or where the trust is located.

The New Law: The new law provides that unless a specific place of administration is named in your trust, then your Trustees will be faced with up to seven different alternatives as to where the trust will be administered. This will cause a lengthy and confusing administration.

Our Recommendation: We will identify in your trust a specific place of administration, either our Bradenton office or our Tampa office. This will identify the Court's jurisdiction. This will make your Trustee's job much easier and more efficient. It will also eliminate potential location tug of war between the trustees and beneficiaries. The Trustee will always have the right to change the place of administration, but starting with an initial location will prevent disputes.

Benefit: This update will reduce time and work on your Trustee. Many clients stated one of their goals was to reduce time and confusion for their families after death. Addressing this legal change will continue to support that goal.

8. Protecting Your Beneficiaries Rights While Deterring Lawsuits

Context: One of the primary benefits of your trusts is you have taken efforts to deter potential lawsuits or family disputes. Most of you elected to have Mediation provisions in your trusts, which require anyone attempting to litigate against your trust to first go to Mediation in an effort to resolve the dispute. This gives everyone a chance to come to an agreement through a mediator before incurring expensive litigation fees and undergoing a lengthy court process. It has been our experience that Mediation resolves 90% of family disputes thereby reducing fees incurred and more importantly, less emotionally damaging manner.

The New Law: The new law helps deter litigation by limiting the time a beneficiary may pursue a lawsuit against the Trustee. Usually the time limit starts when the person or organization has "knowledge"; however, this was a vague definition. The new law clarifies that a person or organization has "knowledge" when documentation is received (i.e. an accounting with a questionable fee). This makes it clear and limits the time period under which a lawsuit may begin.

If we are dealing with an organization, the new law provides they have "knowledge" when an employee who has the responsibility to act under the trust receives it or the time the information would have been brought to the employee's attention if there were reasonable diligence.

Our Recommendation: We will be updating your trusts to incorporate this benefit provided by the new law so time limits are clear.

Benefit: Incorporating this change in the law will clarify and limit the time period a beneficiary can file a lawsuit against a Trustee. This should limit lawsuits after your death involving your trust. Additionally, if your beneficiary truly has reason to sue your Trustee it will make sure they are clearly informed about the time limit they have to do so.

9. Providing Flexibility After Death to Shorten Administration

Context: During the administration period after your death, there are many things that all Trustees and/or beneficiaries are required to do by law. Many times, if everyone were in agreement, it would be faster and less expensive to have everyone waive certain legal requirements. A common example is if everyone agrees to the expenses your estate incurred; they could agree to waive the preparation of a formal accounting. This would save a lot of time and work for your Trustee and allow the beneficiaries to receive their inheritance quicker.

The New Law: The new law allows beneficiaries and trustees to engage in binding agreements without having to obtain court approval. This may enable the trustees and beneficiaries to avoid expenses and delays associated with technical requirements of the trust, like mailing of accountings or the contents of the accountings when everyone is in agreement. In some cases, beneficiaries and trustees may waive some technical requirements in order to expedite administration of the trust after death.
Our Recommendation: We will update your trusts to allow you to take advantage of this new benefit.
Benefit: Complying with this new law will reduce complexity and time for your beneficiaries and trustees after your death while continuing to keep your trust out of the court system.

10. Reducing the Risk of Your Trust Being Challenged During Your Life
Context: During your life, your trust is revocable. It can be changed by you at any time. It cannot be changed during your lifetime by anyone other than yourself. After you die, it becomes irrevocable, meaning no one can go back and change your instructions.
The New Law: The new law allows your trust to be challenged during your life if you are incapacitated. This is a very powerful change and dangerous because it allows a court appointed guardian to challenge the validity of your trust.
Our Recommendation: We have already taken steps to help you avoid being involved in guardianship court. You have created a Disability Panel, called a Disability Guard™, in your trust to decide if you are incapacitated rather than the court. As a protective measure, you have also signed a Declaration of Pre-Need Guardian pre-selecting your guardian if you ever do end up in guardianship court. We will adjust the language in your trust to make it more difficult for your trust to be contested during any guardianship proceeding, if one were to occur. Remember, by having the Disability Guard™, you have drastically reduced your chance of being involved in a guardianship. This is an additional preventative measure which helps protect you.
Benefit: Addressing this legal change reduces the risk of your trust being contested during your lifetime.

11. Protecting Your Right to Amend and Change Your Trust During Your Life
Context: Because your trust is revocable, you are allowed to change it during your lifetime, as long as you are not incapacitated.
The New Law: The new law provides some formal execution requirements for trusts, but its instruction for amending or restating a trust is vague. We expect it will cause confusion about the proper procedure to correctly change or update a trust. As a result, it may

increase the ability for someone to contest the validity of a change you make after the creation of your trust.

Our Recommendation: Addressing this issue is important so we can ensure you are able to effectively change your trust at any time without increasing the risk of it being contested later. Since the law does not provide clear instruction in this area, we will update your trust to have its own clear instruction on how to change or update your trust. This will make sure that any changes you make are considered valid.

Benefit: This change will make sure you can continue to change or update your trust as you wish.

12. Reducing Confusion When Stock Owned By Your Trust Splits or Mergers

Context: We have assisted you in integrating your assets with your trusts. Many of these assets are stock shares that are now owned by your trust(s). During your life, when there is a stock split, merger or dividend you have the authority to handle any relevant actions or decisions. However, after your death, it is tougher for your Trustee or beneficiaries to handle these matters.

The New Law: The new law provides some direction for the trustee when the trust owns stock and there has been a stock split, merger or dividend. This is important because there is often confusion when this occurs as to whether the beneficiary is entitled to the value of stock before the split or merger or whether the beneficiary is entitled to the value after the split or merger. Now, the Trustee is now able to provide the beneficiary with four different alternatives in this circumstance, and in theory, there should be less confusion.

Our Recommendation: We will update your trusts to include these new options.

Benefit: This will provide guidance to your Trustee and beneficiaries, thereby reducing complexity.

13. Accomplishing Your Wishes About Who Receives Your Assets After Your Beneficiary Passes

Context: Wherever you named a beneficiary in your trust, you also gave instructions about who should receive those funds if your beneficiary either predeceased you or died and funds remained in their share.

The New Law: The new law presumes that if a beneficiary dies before you or the beneficiary dies before the trust share has been exhausted, you would not want that distribution to lapse or go away. The law says that unless you specifically name someone to receive those funds in this scenario, then it will pass to the beneficiary's children or heirs. If the beneficiary is not related to you, then the distribution will lapse. This means that money will go back into your trust and be divided among the remaining beneficiaries that are living.

The new law does say that you can name whomever you wish in your trust to receive money in the event your beneficiary dies. Because you have the ability to override the legal default, it will be important to include survivorship language or alternative beneficiaries so you continue to control who will receive the funds in your trust after your death.

Our Recommendation: Because you have the ability to override the legal default, it will be important to include survivorship language or alternative beneficiaries so you continue to control who will receive the funds in your trust after your death.

Benefit: By including language to accomplish your wishes in your trust, you can continue to control who receives money from your trust.

These are some, but not all, of the major changes the legislative change will require. Other changes may be necessary that are of a technical nature only. We believe these changes are important to make sure your trust complies with the law and to reduce complexity for your Trustees and beneficiaries. However, due to its extreme technical nature, we have not outlined all of them for you. If you wish to read the entire statute itself, you will find the new law in Chapter 736 of Florida Statutes at http://www.leg.state.fl.us/statutes.