



# ATLANTA BAR ASSOCIATION

LAWYERS WHO SERVE

Estate Planning & Probate Section

March 2014

## The Mortmain

Official Publication of the Atlanta Bar Association  
Estate Planning & Probate Section

### Save the Date!

Mark your calendars for the following Estate Planning & Probate Section events.

Details are subject to change. Check your emails and the Atlanta Bar Association website for updates.

#### Estate Planning & Probate Section Breakfast

Date: Wednesday, April 9th, 2014 - 7:30am  
"Key Life Insurance Considerations in Estate Plans"  
Speakers: Brent M. Eden, Nease Lagana Eden & Culley, Inc., and Nikola (Nick) R. Djuric, Sutherland Asbill & Brennan LLP  
Location: Buckhead Club  
[Register now](#)

#### Estate Planning & Probate Section Luncheon

Date: Thursday, May 1, 2014 - 11:30am  
"Georgia Law Update"  
Speaker: Professor Mary Radford, GSU School of Law  
Location: Maggiano's Buckhead  
[Register now](#)

#### Estate Planning & Probate Section Breakfast

Date: Wednesday, May 14, 2014 - 7:30am  
"Ownership transition- beyond the legal framework"  
Speaker: Jennifer Pendergast, Family Business Consulting Group  
Location: Buckhead Club  
[Register now](#)

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**Joint Section Social held on March 6 at Gordon Biersch and sponsored by the Elder Law Section, the Estate Planning & Probate Section, the Tax Law Section, and the Financial Planning Association**



Pictured from left to right are James Daniel (President of FPA), Robert Turner (Estate Planning & Probate Section Chair), Murray Saylor (Tax Law Section Chair), and Jay Fox (Elder Law Section Chair).

**The 10th Annual Estate Planning Forum Features Natalie B. Choate, a New Co-Sponsor, and the Presentation of Our Section's Second Distinguished Service Award**

By Loraine M. DiSalvo, Morgan & DiSalvo, P.C.



Thanks mostly to the tireless efforts of Shari B. Martin and the support of our long-time co-sponsor, *Diversified Trust Company*, the Estate Planning & Probate and Tax Law Sections of the Atlanta Bar Association presented the 10th edition of the Estate

Planning Forum on October 30, 2013. The event marked the Tax Law Section's first time as a co-sponsor.

[View the entire article](#)

**Why and How There is an Evolution of Estate Planning in the Future for Lawyers**

By Jacquelyn H. Saylor, The Saylor Law Firm LLP and Everett L. Morris IV, Morris Legal and Tax LLC

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**The Section Thanks its Annual Sponsors**





On September 11, 2013, The Atlanta Bar Association Estate Planning and Probate Section breakfast featured John (Jeff) J. Scroggin, of Scroggin & Company, P.C. He

spoke about the evolution of estate planning in the future with the changes in tax laws, demographics, and objectives of estate planning.

Mr. Scroggin believes that "[w]e are in the midst of some of the most radical changes in the estate planning profession since federal estate taxes were reenacted for the fourth time in 1916." He stated that these "changes are being driven by at least three major dynamics": 1) "the tax issues associated with estate planning are changing"; 2) "over the last six decades, American society has been undergoing a radical set of changes at an increasing pace"; (3) "the purpose of estate planning is being evaluated by many clients and their advisors."

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## **Kathleen Womack Instructs our Section in the Important and Changing Topic of "Estate Planning for Same-Sex Couples"**

By Jordan Alford, Law Office of Jordan Alford LLC



On November 13, 2013, our Section breakfast featured Kathleen M. Womack, a fellow Atlanta estate planning attorney, who specializes in planning for same-sex couples. Her presentation was especially timely, considering the changing dynamics around the country in respect to the legality of same-sex marriage. Ms. Womack provided the section with an illuminating report on the estate planning difficulties faced by same-sex couples in Georgia and the nuances that each practitioner should know when dealing with these obstacles.

[View the entire article](#) and [view CLE materials](#)

## **Matthew Howard Provides Us "An Introduction to Microcaptives and the 831(b) Election"**

By Jeff Mangieri, deAndrade Mangieri LLC

Matthew Howard, of *Moore Ingram Johnson & Steele*, helps his clients tap alternative risk transfer mechanisms and create 831(b) captive insurance companies. On October 9, 2013, at our Section breakfast, he shared the benefits of his extensive experience with microcaptives that meet the requirements of Internal Revenue Code Section 831(b).

Mr. Howard stated that the name "microcaptive" refers to small insurance companies - those with less than \$1.2 million in annual premiums - that provide insurance to, and are controlled by, their owners. Code Section 831(b) allows these companies to



elect to have their federal taxes based only on their investment income - not on insurance profits.

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## **Section's September Luncheon Features Professor Jeffrey N. Pennell's Update on Recent Wealth Transfer Developments**

By Loraine M. DiSalvo, Morgan & DiSalvo, P.C.

Our Section's September 26, 2013 luncheon featured Professor Jeffrey N. Pennell, of the *Emory University School of Law*. Professor Pennell provided attendees with information regarding a number of important developments in the estate planning arena, as well as with some thoughts about what the future may hold. As usual, his written materials contained a wealth of information beyond that covered during the meeting. Those who were unable to attend the meeting may download a copy of the materials from the Section's website. Pennell began by predicting that there will be no significant new wealth transfer tax legislation in the remaining months of 2013. This prediction likely comes as a great relief to many Section members who remember the chaos which occurred in late 2012 as clients and advisors scrambled to make large gifts and take advantage of estate, gift, and generation-skipping transfer tax exemptions which were, at that time, about to expire.

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## **Considerations for Advisors When Planning for Art and Collectibles**

By Millie Baumbusch, Gaslowitz Frankel LLC



Our December breakfast featured Michael Duffy, Vice President, Strategic Wealth Advisory Team, Goldman Sachs, who discussed some issues that estate planners should consider for clients who hold art and other collectibles.

A primary concern should be title. There are generally no title registration requirements for artwork and collectibles, so proving title can be onerous and costly. Title needs to be considered when purchasing and when selling or donating art. There are a few companies that will provide title insurance for artworks; such policies will pay for the defense of the claim and for the loss of the art if the defense is unsuccessful. Some charities are now requiring donors to purchase this coverage before they will accept the donation of a piece of art.

[View the entire article](#)

## **Case Law Updates: When May a Copy of an Original Will be Probated?**

By Rhylan Simmons, Georgia State University School of Law 3L

**Johnson et al. v. Fitzgerald, 324 Ga. 160 (2013), Decided November 18, 2013, Case No. S13A0762.**

### **Overcoming the Preponderance of the Evidence Standard**

The executor of a will offered a copy of the original will, which could not be found, for probate in solemn form to the probate court. After evidence and argument, the court allowed the will to be probated. This decision was appealed, and after a jury trial, the Superior Court affirmed. The decision was then appealed to the Supreme Court of Georgia, who also affirmed.

The Default Rule for a Lost Original Will is Revocation. The contest came from heirs at law of the testator who claimed the original will was revoked because the testator had it destroyed. In Georgia, when an original will cannot be found there is a presumption that the testator's intent was revocation. O.C.G.A. § 53-4-46(a). However, this assumption can be overcome if a preponderance of the evidence shows both that the replacement will is a copy of the original, and that the testator did not intend to revoke the original will. O.C.G.A. § 53-4-46(b).

[View the entire article](#)



### **Case Law Updates: Probate Court Lacks Authority to Extend Time to Appeal an Order Beyond 30 Day Statutory Time Frame**

By Julia Hightower, Georgia State University School of Law 3L

**Duncan v. Moreland, 751 S.E.2d 139, (November 6, 2013)**

Two of testator's three daughters petitioned to admit a Will to probate on May 27, 2008. The purported Will appointed all three daughters co-executors of Testator's estate. Duncan, the non-propounding third daughter, filed a caveat. After a hearing on the caveat, the trial Court approved the Will propounded by the two daughters and issued letters testamentary as co-executors to only the two daughters on December 13, 2011.

[View the entire article](#)