

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

FEBRUARY 2022

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upComing EventS

2-23-22 Virtual Webinar, 1:00 pm ET

"Taxes: What's New in 2022" / Ruth Flynn Raftery, JD, CPA, AEP®

Presented in partnership with the FSP Detroit Chapter

[REGISTER HERE](https://us02web.zoom.us/webinar/register/WN_upc2Ug9bQGy7POxZ6lb3HA)

COMING SOON / April 2022 In-Person Event at the Skyline Club

"Pre-Nups and Post-Nups - Not for the Rich and Famous" - Presented by Patricia Lincoln, JD

SAVE THE DATE / May 23, 2022 Golf Outing at Wabeek Country Club

Details to Follow Shortly

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**PRESIDENT'S MESSAGE**

**2022…..A Brave New World!**

As 2021 has left so many of us forever changed, both personally and professionally, your Financial and Estate Planning Council of Metropolitan Detroit has also changed and evolved.

Before we jump into all of the positive changes, I would like to take a moment to share with you all that FEPCMD went though to get us to this exciting new year.

When the pandemic broke out in early 2020, your Board of Directors, led by our President, Sally Vaughn, immediately paused our events, hoping that the shut down would be quick and we could resume normal activities by mid-2020. As the year ticked along, we continued to hope that the world would reopen, only to face the reality that the pandemic wasn’t going to let us out of its grips.

Recognizing that coming together for our annual meeting would not be safe, we as a Board unanimously agreed to stay the organization for a year. Most of the Officers and Board Members would continue to serve until we could again meet in person. Some of our Board Members reached the end of their term and as such, we would like to thank Rebecca Herr, Robert Labe, and Colleen Theuerkauf for their dedicated service to the FEPCMD.

November of 2021 brought us lower Covid numbers, and we once again came together to learn and grow together. Our annual meeting was held, and the new 2022 Slate of Officers and Board Members were elected to serve. We are happy to welcome our new Board Members, Diane Moak and Hannah Thoms.

Additionally, I personally want to extend my gratitude to my fellow Board Members and Officers for continuing to serve with such devotion. They are as follows:

Sally Vaughn Immediate Past President

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James Smallegan Secretary / Treasurer

Margaret Amsden Board Member

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Glenn Barnes Board Member

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Andrew McCulloch Board Member

Sally Vaughn deserves a special thank-you for her devoted service and leadership during this unusual moment in history. Even with constant challenges, Sally kept a positive attitude and remained committed to the Members of the Financial and Estate Planning Council of Metropolitan Detroit. *I am so proud to have served with her and call her a close friend.*

We also want to thank two very important groups that allowed us to not just survive through the pandemic, but to actually thrive and grow. Both groups’ patience and understanding allowed the Board to adapt to the new normal. The first group is our Sponsors of the FEPCMD. Most continued with their financial support and commitment to advancing the estate planning community. The second group is YOU, our members. You extended patience and kindness to the leadership team, voicing your support of our efforts. You continued with your membership, knowing that we will one day emerge from this pandemic and again come together to celebrate professionalism in the estate planning community.

Now, as we enter 2022, we are still learning and changing as we are continually impacted by this pandemic-driven world. We optimistically scheduled our first event of the year. We sought out a dynamic speaker that has both informed and entertained our group before. We chose a venue that offers a stellar view high above the city, covered parking and great food. We started to promote it months in advance. We attracted an audience. Then…….Covid returned with a vengeance.

As a Board, we extensively deliberated whether to continue with the event as planned or shift back to a virtual platform. Recognizing that the Omicron variant is extremely contagious, and our medical system is already overrun, we determined that it is our social responsibility to not do anything that could increase the spread of the virus thus putting further stress on an already overtaxed medical system. We have scheduled a new presenter on the topic, and this event will be held online on February 23.

Although the pandemic left us with a new outlook on live events, it also gave us the opportunity to test new waters. During 2020 and 2021, we developed an online series of web events. Based on attendance, they were well received. Even as we fully emerge from the pandemic, we remain committed to offering future web events to support, not replace, our live events.

We remain confident that the Omicron variant will work its way through, and we will be back together from the second quarter on. We will be delivering great speakers at memorable locations, and, if the pandemic relents, we hope to even bring back the popular sunset boat ride.

Until we can all be together again in person, this Board wishes you good health and happiness!

On behalf of the Board of Directors,

Jeffrey R. Hoenle, President

SAVE THE DATE – FEPCMD GOLF OUTING

**Monday, May 23, 2022**

**Wabeek Country Club**



**THE FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT PRESENTS**

# Wednesday, February 23, 2022 / 1:00 pm to 2:00 pm ET

**Complimentary Virtual Webinar**

**“Taxes: What’s New in 2022”**

**Ruth Flynn Raftery, JD, CPA, AEP®**

[**Register Here**](https://us02web.zoom.us/webinar/register/WN_upc2Ug9bQGy7POxZ6lb3HA)



2021 looked like it would be the year for sweeping tax law changes. But, even though the Democrats held the White House and both Houses of Congress, that didn’t happen. Currently, debate continues about a scaled-back version of the Budget Reconciliation Bill (aka – The Build Back Better Act) and accountants are busy with the 2021 tax filing season. In this webinar we’ll discuss:

* What’s New in 2022
* What didn’t happen
* What might still happen
* General tax planning ideas
* Taxes and collaboration among members in the Financial and Estate Planning Council

**Ruth is a licensed attorney and a Certified Public Accountant with over 20 years of experience. As President and co-founder of Advanced Planning Educational Group (APEG), Ruth is responsible for creating and executing the design and strategic direction of APEG’s mission to support the needs of professionals who participate in the holistic planning process. In addition to her role with APEG, Ruth also serves as a Senior Advisor to AltaView Advisors, LLC a business valuation firm with offices in Orange County, San Francisco, Dallas and New York. Throughout her career, Ruth has held a variety of roles both within and outside of Public Accounting. Early in her career, she spent 12 years in the Tax Department at Deloitte, and most recently, was employed as a Director in the Estate, Gift and Trust Services Group at Wiss & Company LLP, a public accounting firm with offices in New York and New Jersey. Her expertise in both US and International estate, gift and trust taxation allowed her to serve clients including owners of closely held businesses, high net-worth individuals and families, and individuals who serve as fiduciaries for estates and trusts. In roles outside of public accounting, Ruth led Product Development for tax products at Thomson Reuters, was the Director of Business Development at FMV Opinions and participated in the planning process as a Wealth Advisor at Round Table Wealth Management. Ruth’s diverse experience gives her a unique perspective into to the role that various professionals play in the holistic planning process.**

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Florida Community Property Trust –
A Great Idea or
Fool’s Gold

*Alan J. Mittelman, J.D., CLU
and Dana Bernstein, Esq.*

In July while everyone was preoccupied with the pandemic of 2021, trying to determine how and if their business models needed to be changed, the Florida legislature passed a new law that is destined to have a big impact on estate planners, namely the Florida Community Property Trust Act (the “Act”). Now if one practices law in Florida and counsels clients who either are Florida residents or others thinking of relocating to Florida, one must be familiar with the new Florida law and the choice it presents.

Until this July, property rights in Florida were based upon the common law, like most of the rest of the country. The alternative is community property law. There only used to be eight states that had community property law in their jurisdictions. In recent years, three additional states, notably Alaska, created elective property ownership regimes that permit residents, and sometimes non-residents, to “elect” property held in that state be treated as community property. Now Florida has joined those ranks by permitting its residents to make an election to treat property held in trust as community property.

**What is Community Property?**

Community property law essentially governs the rights that spouses have in property acquired during a marriage. In common laws states, spouses can typically choose between joint tenants with right of survivorship or tenants by the entirety, tenants in common ownership or separate ownership. In community property states when a married person acquires a new asset, it automatically is deemed to be titled as community property even if the other spouse’s name is not listed in the title. Assets owned prior to the marriage and inherited property can remain as separate property.

Community property law is quite different from common law. The closest most of us come to community property law is when we read about California divorces. Unless there is a prenuptial or marital agreement, when one divorces in California, all the community property (the property acquired during the marriage) is divided in half between the spouses. That is quite different from Michigan divorce law. Also, preparing a Will for married California residents is much different because each spouse owns one-half of each asset acquired during the marriage. Therefore, even if a property is titled solely in the name of one’s client, the Will only will distribute one-half of the asset. A surviving spouse in a community property state does not have to rely on a state’s elective share law when the first spouse dies. Instead, the surviving spouse automatically gets one-half of all the community property. These rules can apply to property located in a community property state even if the owner is not a resident of that state. In fact, the rules also can apply to property owned by a former resident of the community property state. There are good reasons to get local counsel when dealing with clients that own property in a community property state or were ever residents of a community property state.

**Step-Up In Basis Differences**

So now one may be asking why Florida would institute an elective community property regime and what the perceived benefits are for Florida residents. The answer is quite simple! Taxpayers in the U.S. who own community property are treated differently when one of them dies for purposes of the “step-up in basis” rules. If a married couple resides in Michigan, when the first spouse dies, there is a step-up in basis for the separately owned assets of the decedent, but only one-half of the assets owned jointly with the surviving spouse get a step-up.

However, if a surviving spouse owns community property at his or her spouse’s death, then there is a full step-up in basis on all the community property, not just the decedent spouse’s half. For example, if a married couple owns an asset as tenants by the entirety in Michigan that has an adjusted cost basis of $300,000 and is worth $2 Million when the first spouse dies, then the surviving spouse’s new adjusted basis in the asset will be $1,150,000 ($150,000 or half of the adjusted basis of the surviving spouse’s half prior to the death plus $1 Million - the fair market value at death of the deceased’s half of the property). But if the couple were residents of California and they owned community property worth $2 Million when the first spouse died, then the total adjusted basis in the property would be $2 Million as a result of the community property basis adjustment rules. This has seemed unfair to many attorneys In common law states, who may not have understood the rationale. Of course, if one practices in a community property state, it is a fabulous loophole in the tax law.

For Michigan residents thinking of relocating to Florida to obtain Florida’s many tax benefits, this can be one more reason to do so. Florida does not have a state income tax or a state inheritance tax. Getting a full step-up in basis on formerly jointly owned property could be another advantage to Florida residency.

Before describing the law in greater detail, chasing the step-up in basis tax benefit may be a short-lived planning technique. It seems that there may be major changes in the income, gift and estate tax law. Internal Revenue Code (I.R.C.) §1014 is one section that has been targeted for change for many years. We did have a short-lived experiment with carryover basis in 2010. But this time could be different.

**The Florida Community Property Trust**

Now that one understands the differences, let’s review the new Florida law to see how it works as well as review the benefits and the disadvantages. First, there is some question about whether the Internal Revenue Service will accept the “full step-up” rule when applied to community property in an “elective” state like Florida. Florida residents still are governed by a common law regime unless they “elect” to treat the assets as community property.

Second, the married couple must create a trust and transfer assets to the trust during their lifetimes. Creating and funding a Revocable Living Trust is a common estate planning tool for Florida residents, as Florida tends to be an expensive probate state and Florida law only allows spouses, children and certain other close relatives or Florida residents to be executors. Using a Living Trust may avoid probate and is a way around the executor limitation. In the trust document, the couple must elect to have the property held by the trust treated as community property. This act immediately transforms a tenancy by the entirety ownership Into community property, which is more akin to tenants in common. Each spouse controls his or her half at death. This means that each spouse is free to leave his or her half of the trust to someone other than the surviving spouse. This cannot happen with tenants by the entirety property. With tenants by the entirety, the entire property passes to the surviving spouse. As noted below, the Community Property Trust must be a newly formed trust, not just an amended existing Living Trust.

Third, when the Florida resident converts the ownership of tenants by the entirety property to community property in the trust by Florida residents, the couple loses the creditor protection quality of the tenants by the entirety form of ownership. With tenants by the entirety property, the creditors of one spouse cannot attach a lien to the property, effectively making the creditors wait until both spouses are deceased and then filing the lien if the debtor was the surviving spouse. At that point, the statute of limitations may have expired. Moreover, if the debtor spouse dies first, then the creditor is totally cut off. It is for this reason that many clients who are professionals and business owners prefer the joint form of ownership with their spouses - creditor protection!

Lastly, gifting is also more difficult with community property. A gift by one of the community spouses is treated as being made one-half by each spouse. Therefore, I.R.C. §2036 retained beneficial interest rules may create problems if the spouse is a beneficiary of an irrevocable trust to which gifts are being made by the other spouse or if the spouse is a trustee. This could violate one of the most important rules of gifting to irrevocable trusts. The settlor cannot also be a trustee of the trust. And if both spouses are treated as making a gift to the trust, then both spouses are deemed to be settlors.

**Intersection with Florida Homestead Law**

Under the Florida constitution and by statute, the ownership of a home by a married couple requires that the home pass to the surviving spouse. This is an important part of what is known as the homestead law. Florida homestead law also exempts one’s personal residence from creditors’ claims. There also is a real estate tax reduction for Florida homestead property. These preferences are retained under the Act which means transferring a home to the Community Property Trust does not change the creditor protection and survivor rights afforded by the Homestead laws.

**Creating the Florida Community Property Trust**

The Act states that the trust be created on or after July 1, 2021, which means that pre-existing revocable trusts will not qualify as Community Property Trusts. Revocable trusts can be decanted into a Florida Community Property Trust, which involves a court filing. Alternatively, the assets in an existing Florida revocable trust can be transferred into a new Community Property Trust. A Community Property Trust also can be an irrevocable trust, although it is likely most will be revocable trusts. The following also is required for a valid Florida Community Property Trust:

1. The trustee must be a “qualified trustee,” which is a natural person who is a resident of Florida or a company authorized to act as a trustee in Florida. This means children who are not Florida residents cannot serve as trustees.

2. Both spouses must be Florida residents.

3. One or both of the spouses must transfer property to the trust.

4. There must be a declaration in the trust that it is a Community Property Trust within the meaning of the Act.

5. The trust must be signed by both spouses.

6. The following language must be included in the body of the trust in capital letters:

THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE.

In conclusion, this is a very complex but very important new law. Any client contemplating a move to Florida should be made aware of its existence. And because so many Florida residents use revocable trusts to hold their assets, they should be informed of the new choice available to married residents.

The best advice - BE AWARE, ASK QUESTIONS AND GET RELIABLE ANSWERS

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 **Go To "About", and Click "Links"**

**(2)**

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