



THE ADVOCATE

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Message from our President



Another summer has passed and our Association is geared up for another busy and exciting year. Our Board recently held its Retreat where it set its priorities for the upcoming year. We were excited to learn that our Executive Director, Linda Oroz is expecting her first child and we of course extend our congratulations to her and her husband, Oliver, and wish them all the best. Additionally, our committee chairs recently met. Many programs and events have been planned which not only allow our members to interact with our judiciary and earn CLE credits, but also increase our Association's exposure in the community. I look forward to helping direct the implementation of our aggressive agenda this year as your President.

It seems like only yesterday that we held our gala installation dinner which is our Association's signature event and acts as a major source of fundraising enabling us to underwrite our programs and events during this year. More than 200 of our members, their guests and our judiciary attended this year's gala held at Woodfield Country Club and a good time was had by all. At the gala, Judge Gillen was bestowed the jurist of the year honor and we again extend our congratulations to him and thank him for his service to our judiciary. I would also like to congratulate L.A. Perkins, our current Treasurer, on her receipt of the President's Award for her outstanding service to our organization. L.A. has been instrumental in insuring the diversity of our organization and for that we are ever grateful. I would like to thank all who attended and especially our sponsors without whom this event would not be possible. Many photographs were taken during that evening and you are welcome to view your friends and colleagues on our Facebook page.

On August 28, 2018, elections were held for 5 new judges in Palm Beach County. Sara Alijewicz won a majority of the votes in her contested election and will therefore be sworn in as our newest Judge. We congratulate her on the honor that has been bestowed upon her and welcome her to the Bench. Several contested races did not result in any one candidate obtaining a majority of the votes and therefore they will participate in the general election on November 6, 2018. Specifically, Scott Kerner and Alcoyla St. Juste, Maxine Cheesman and Marybel Coleman, Sarah Willis and Michael McAuliffe and Ashley Zuckerman and Allegra Fung will be in run off races and we wish them the best of luck. We encourage everyone to get out and vote for our newest Judges in this important election for our judiciary.

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been economically forced to move more of its production of its iconic motorcycles out of the United States. Chinese companies have reduced their purchase of American made items, and are now sourcing from other countries. That is why you may have read that American farmers are very nervous. Even the Florida Spiny Lobster Tail is on the retaliatory list created by China which added 25% to the cost of those items when imported into China. In effect, China was the biggest market for this Florida delicacy, but now none are being shipped there. China has expanded the number of countries with which it has free trade agreements as it looks to permanently change its international supply chain for products from the United States.

The danger say the overwhelming percentage of customs and international trade attorneys is that we have seen this before. When countries of the world erect barriers to trade, there is less international trade. Less international trade means less economic activity. In other words, a recession. In the opinion of this author, no one wins a trade war. No One Wins a Trade War. The United States and China are both super-powers in international trade.

In summary, although such unilateral actions in imposing extra tariffs is almost unheard of, we should not be surprised by Trump's international trade agenda. Trump's Trade Policy Agenda and Annual Report to Congress in 2017, as announced by U.S. Trade Representative Robert Lighthizer was to "promote free, fair, and reciprocal trade and strongly enforce U.S. trade laws" against "economic aggression" by China and other countries. The multilateral NAFTA (North American Free Trade Agreement) involving Canada, the United States, and Mexico, is a prime example of Trump's vision of a new world order for international trade relations. Whether the Trump Administration's stated objective of "eliminating China's acts, policies, and practices related to technology transfer, intellectual property, and innovation" are successful, only time will tell. In the meantime, U.S. Customs and Border Protection is detaining and seizing a record amount of infringing merchandise by the container load, and collecting a record amount of customs duties on imported merchandise as a result of the 25% extra tariffs.



What Happens to a Club Membership Upon the Death of a Member

By: Brandan J. Pratt, Esq., CFP®, Huth, Pratt & Milhauser

Retirees flock to South Florida based on the allure of the South Florida lifestyle, which often includes memberships to various types of clubs including country clubs, golf clubs, beach clubs, tennis clubs and yacht clubs. Many club memberships are equity memberships that cost in excess of one-hundred thousand dollars to join. Members are partial owners of the clubs that have equity memberships, and often times, the equity membership can be transferred upon the death of a member. Estate planning lawyers may be under the impression that a club membership can be devised simply by drafting provisions in a will. However, the relationship between a club and a member is contractual. *Susi v. St. Andrews Country Club, Inc.*, 727 So. 2d 1058 (Fla. 4th DCA 1999). Further, a decedent's property can be transferred upon death outside of probate proceedings by way of contract. *Blechman v. Estate of Blechman*, 160 So. 3d 152 (Fla. 4th DCA 2015). "The common thread of such non-probate mechanisms is that the assets to which they apply are distributed to the designated beneficiaries immediately upon the transferor's death without the need for judicial intervention." *Blechman v. Estate of Blechman*, 160 So. 3d at 157. Therefore, because the relationship between a club and a member is contractual in nature, the club membership agreement typically controls the method by which the membership is transferred upon the death of a member even if there are provisions in a decedent's will that contrast with the terms of the club membership agreement.

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Although club membership agreements typically control the method by which a membership is transferred upon the death of a member, many times the club membership agreements are far from models of clarity. Club membership agreements often contain confusing, vague or ambiguous language related to (1) the refund of equity upon death of joint owners, (2) mandatory successor member provisions, (3) the ability to designate a successor member upon death, and (4) restrictions on who can be designated as a successor member. The confusing language in club membership can often cause disputes between children and surviving spouses who believed they are entitled to an equity refund or entitled to become a successor member.

Before filing suit, litigants should note that a club's decision (or interpretation of the club membership agreement) with respect to who is entitled to an equity refund or who becomes the successor member is likely to control. The Fourth District Court of Appeal has explained that ordinarily, courts will not intervene in the internal affairs of voluntary associations. *Susi v. St. Andrews Country Club, Inc.*, 727 So. 2d 1058 (Fla. 4th DCA 1999). However, courts will intervene to determine whether a club has violated its own rules. *Susi v. St. Andrews Country Club, Inc.*, 727 So. 2d 1058 (Fla. 4th DCA 1999). As the Third District Court of Appeal explained, "the results of internal association processes are subject to judicial reversal only if (1) the association's action adversely affects substantial property, contract or other economic rights and the association's own internal procedures were inadequate or unfair, or if (2) the association acted maliciously or in bad faith." *NCAA v. Brinkworth*, 680 So. 2d 1081 (Fla. 3d DCA 1996). In addition, many club membership agreements contain provisions that essentially state that the club has final authority to interpret the club membership agreement. If this is the case, the Fourth District Court of Appeal has explained that courts will interfere with a club's authority to construe its bylaws, when club's bylaws provide that the board has the final interpretive authority regarding doubtful or conflicting portions of the bylaws, only if their interpretation is arbitrary or unreasonable. *Boca West Club, Inc. v. Levine*, 578 So. 2d 14 (Fla. 4th DCA 1991).

In conclusion, the relationship between a club and a member is contractual in nature. Therefore, the club membership agreement typically controls the method by which the membership is transferred upon the death of a member, even if testamentary documents contain a conflicting disposition. Further, the club's decision with respect to who is entitled to an equity refund or who becomes the successor member will likely control because a club's decision is subject to judicial reversal only upon showing that the club's interpretation of the club membership agreement is arbitrary, unreasonable or done in bad faith.

Brandan J. Pratt, Esq., CFP® is a partner at Huth, Pratt & Milhauser in Boca Raton, Florida, where he focuses on trust, estate and guardianship litigation. Mr. Pratt earned his BS from the University of Illinois, his CFP from Florida State University, and his JD from Marquette Law School, *Cum Laude*. He has an AVVO rating of 10/10, has been selected by Florida Super Lawyers as a "Rising Star" in Trust & Estate Litigation for 2012-2018, and has been named a Top 40 Trusts & Estates Lawyer Under 40 by both the ASLA and the National Advocates for 2015-2018.