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OCTOBER 2024 NEWSLETTER

To Our Clients, Advisors, and Friends:

It is a pleasure to contact you once again with our thoughts about new laws and to discuss frequently asked questions.

URGENT REMINDER OF CTA AND FinCEN BUSINESS REGISTRATION

In our January 2024 Newsletter we wrote detailed information regarding the Corporate Transparency Act ("CTA") passed by Congress, and its requirement that almost all business entities existing before 2024 (LLCs, Corporations, Partnerships) must register online with FinCEN before 12/31/24. Business Entities formed during 2024 have 90 days after formation to register with FinCEN, and Business Entities formed after 2024 will need to register with FinCEN within 30 days of formation. After a report has been filed, if any of the previously reported information changes, an updated report must be filed within 30 days of such change.

Use information from our January 2024 Newsletter (look for it on blue paper or on our website) to register online. Some clients are having their accountants, attorneys, or third-party companies help them with the filing. Significant penalties are incurred for late filings or failure to file. You may find this video, produced by FinCEN, helpful with this filing requirement: https://www.youtube.com/watch?v=GydCvfbKxPw

ESTATE TAX AND GIFT TAX EXEMPTIONS FOR 2024 - 2025 - 2026

The Estate, Gift, and Generation-Skipping Transfer Tax Exemption Amount (the "Estate Tax Exemption") is $13,610,000 for deaths in 2024. In 2025, the Exemption is expected to slightly increase. Unless Congress acts to continue these high amounts, the Estate Tax Exemption will decrease to around $7,000,000 on January 1, 2026. The tax bracket on transfers in excess of these exemptions continues to be 40%.

Many clients with sufficient wealth, and who are willing to make large transfers of assets to family members, are expected to plan to use their full (around $13,610,000 individually and double that for a married couple) exemption with gifting during 2025, before the larger figure expires. Prior to making these large gifts, clients should strongly consider many factors, including whether they will have sufficient wealth afterwards to support their lifestyle, whether they will be comfortable making the irrevocable gifts (whether outright or in an Irrevocable Trust), and be willing to accept that if California real property is gifted, it will likely be reassessed upward to its current value for property taxes. Additionally, if appreciated assets are gifted, those assets would not be eligible to receive a step-up in income tax basis upon the client's death.

The annual gift tax exclusion has risen to $18,000, per person, per donee, in 2024. Gifts above that amount need to be reported on a Gift Tax Return and will reduce the Estate Tax Exemption available at death. A Gift Tax Return is normally filed with the IRS by your accountant at the same time as your income tax return, in the year following the gift. Don't forget in your planning that gifts in the form of direct payments to institutions or providers for medical or educational expenses for your children and grandchildren (or others) are allowed as additional gifts, not subject to tax. Those who have a taxable estate should consider gifting $18,000 (directly or in trust) for each loved family member, which could be $36,000 gifted per couple to each individual, to further reduce the size of the estate at death. The gift tax exclusion is expected to increase to $19,000 per person, per donee, in 2025. The annual gift tax exclusion is not expected to decrease in 2026.

STATEMENT OF INFORMATION-SECRETARY OF STATE FILINGS REQUIRED

California law requires that corporations file a Statement of Information with the California Secretary of State annually, and that California limited liability companies and non-profit corporations file these Statements every two years. There is a six-month window in which each entity can file a new Statement of Information, which is detailed on the following website: https://www.sos.ca.gov/business-programs/business-entities/statements/. Entities that fail to file these Statements may be subjected to penalties and/or suspension of the entity.

The California Secretary of State's online system to file Statements of Information has been changed, and you should now use the following website: https://bizfileonline.sos.ca.gov/. You can also use this website to view entity details, as well as the due date for your Statement of Information.

It has come to our attention that the reminders to file Statements, mailed as a postcard to the mailing address on file with Secretary of State, are no longer being sent. Many of our clients who relied on these postcard reminders are allowing their Statements of Information to become past due. Thus, we believe it prudent that if your entity is required to file a Statement of Information, you visit the Secretary of State website, search for your entity, make note of the Statement of Information due date listed for your entity, and calendar that date. When your next Statement of Information is filed, there is an option during the online filing process that will allow you to "opt-in" to email notifications, which might be more convenient. You can contact our office if you need our assistance in navigating the online filing system to file the Statement of Information.

IS YOUR LOVED ONE BECOMING "FORGETFUL"?

If you notice yourself, your spouse, or your parent becoming "forgetful," and you believe that lack of mental capacity might be at its beginning stages, that is the time to meet with us to discuss updates to your estate plan. For instance, for a joint trust, you may want to allow future amendments to be made to the Living Trust by only one spouse or by an Agent under a Power of Attorney; or, it may be decided to have a trusted child or friend immediately commence to act as a Co-Trustee with you, so that either can sign alone for bank and broker accounts, which could avoid the necessity of having doctors declare the person incompetent and could also allow that trusted child/friend to seamlessly take over paying bills, as needed.

The concern is that if you wait too long, when the person isn't competent or perhaps can't even sign, then all may already be set in stone, and nothing can be done to help, outside of a lengthy and costly court conservatorship proceeding.

TELLING THE KIDS EARLY WHAT THE TRUST SAYS

While there are strong arguments for privacy, many experts, including psychologists, judges, and estate attorneys, recommend that parents have a meeting with their mature children to review the estate plan, including who has been designated as Agents for financial matters and health, Executors, and Trustees, as well as the beneficiaries and Trust terms after death. Who are "mature children"? – probably those in their 50s, 60s, and older, who will be more likely to need to implement the estate plan when the time comes. Discussing an estate plan in advance with the family avoids surprises after death, and possibly avoids family fights and inertia. However, it does take a brave parent who will risk the unhappiness of a child or family member who expects an outright inheritance but discovers that it will be protected by a trust instead, or that the inheritance will be less than other siblings, or that a portion will go to other family members or charitable organizations, or that a family member who expects to be in charge was not selected as the Trustee. Some parents prefer to have this discussion at the office of their attorney so that there is a business setting and a built-in moderator. Sometimes we do not allow the children to take a copy of the Trust document away from the meeting with them, as we make it clear that the parents are still able to change the Wills, Trust, and related documents in the future.

There are families who have decided to speak to their heirs early, and often about many estate issues and assets. These may include parents' opinions on charitable giving, investment strategies, family business succession planning, tax planning, and health care/long-term care. Most especially in second families, with adult children of each spouse, these advance conversations can "avoid splitting heirs."

BEING AN EXECUTOR OR TRUSTEE IS A JOB NO ONE WANTS

After someone dies, there is a tedious, messy process of managing what they leave behind. The person designated as the Trustee of a Living Trust or Executor of a Will (collectively called a "fiduciary") must determine what assets are owned, how to deal with banks/brokers to take control of the assets, determine what someone owed the decedent and is owed by the decedent, and notify and make distributions to beneficiaries or heirs.

Many times, a child, close relative, or very close friend is designated as the fiduciary. This can lead to issues with other children and heirs as to decisions that must be made, delayed distribution due to California notice rules and reserves of funds for taxes and/or property management. Another choice is to name a trusted attorney or accountant to be the fiduciary, or to designate an impartial and experienced bank or licensed professional fiduciary.

If you are considering naming a family member as fiduciary, the criteria we recommend is that the person be very honest (not to steal or borrow from the Trust), and has common sense to hire the right attorney, accountant, and financial advisor to rely upon. It also helps if that person gets along with the other family members or beneficiaries. When clients want to designate all of the children as fiduciaries, "so no one feels hurt at being omitted," they need to consider that all (or a majority, if

written that way) will need to agree on all acts, each is allowed by law to hire his/her own attorney for advice, and if they don't get along, then they and their respective attorneys could spend exorbitant amounts of the Trust or personal funds to sue each other for court adjudication.

It is important for the fiduciary to be given or easily be able to find a list of where assets are and who your financial and estate advisors are. Additionally, a list of addresses of named Trust or Will beneficiaries can be very helpful so that the fiduciary doesn't need to sleuth through your records to locate that information. Since California law or a probate court may direct that your closest heirs be notified, even if not a beneficiary of the trust or estate, it helps to provide a family tree of who your siblings, cousins, or other next of kin are as well as their contact information.

AVOIDING PROBATE

If you have a Trust, we implore you (again) to frequently review the title of your assets and accounts, to ensure appropriate titles are in the name of the Trustee of your Trust. You should also check to be certain that beneficiaries of your retirement plans and life insurance policies are as you intend. Your Durable Power of Attorney should include the power of your agent to assign assets to the title of your Living Trust, even if you are incapacitated, so as to avoid probate and conservatorship.

We try to have our clients sign an updated general Grant and Assignment document every few years, so that even if an account or asset is inadvertently left out of the Living Trust title, it may be able to transfer in after death by a court order, but without a full multi-year probate proceeding.

ADDITIONAL CHANGES TO IRA RULES

There have been additional changes to the rules regarding IRAs by the SECURE ACT (previously discussed in our January 2023 Newsletter), and now SECURE ACT 2.0, and subsequent regulations. We recommend that any client who has designated their Trust as a beneficiary of their retirement account come in or contact us to have their Trust reviewed to ensure that it complies with the new laws and requirements.

REQUIRED CHANGES TO COMMERCIAL LEASES

A new California law, effective on January 1, 2025, requires landlords of commercial properties (office, industrial, and retail) to provide a certain number of days' notice to "qualified commercial tenants" before increasing the rent or terminating a tenancy, and also prohibits landlords from charging qualified commercial tenants fees to recover building operating costs unless certain conditions are met. Further, a person who negotiates a lease primarily in one of five languages (Spanish, Chinese, Tagalog, Vietnamese, or Korean) must deliver to the other party a translation of the lease in the language in which it was negotiated. A "qualified commercial tenant" is a "microenterprise" with 5 or less employees, restaurants with 10 or less employees, and nonprofits with 20 or less employees. You can contact our office if you want to discuss whether the new requirements would affect your lease as either a landlord or tenant.

We send our best wishes to all of you.

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