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OUR FILE NUMBER

NEWSLETTER AUGUST 2019

To Our Clients and Friends:

In this Newsletter, we will continue to update you by briefly covering topics that we have found to be of current interest to our clients.

SIMPLIFYING YOUR FAMILY TRUST

A. Changing to a "Simple Trust."

With you and your spouse still alive, and with an estate tax credit of $11.4M allowed to each of you currently on death, if your estate is less than that figure, it is easy to amend your Trust to avoid complexity after the first death. We would establish a simple one-part trust now to continue until both deaths. The advantage is to avoid separating assets into two shares after one death, requiring separate bank accounts, annual income tax returns and record keeping. Most assets would also qualify at EACH death for a full income tax basis step-up to avoid capital-gains tax after both deaths. The disadvantage of the simple one-part trust is that if you were to die first, you might prefer your one-half of the assets be held for life in a separate irrevocable trust (a "credit trust") for your spouse, so that after both deaths, the assets are certain to end up with your children (and not with a future "floozie" or "gigolo"); there is also a risk that a change by Congress in future tax laws could force couples to revert back to the standard, old two part trust.

B. Portability of Estate Tax Credit to Surviving Spouse.

The estate tax law allows the unused tax credit of the deceased first spouse to be "portable" to the surviving spouse. This portability enables the Simple Trusts to flourish, so that a married couple can still save estate tax for their children and claim an ultimate estate tax credit of double $11.4M (or whatever the credit is in the year of each death), by making an election with the IRS within nine months of the first death on an Estate Tax Return.

C. Potential Ability to Terminate old Credit Trusts Long After the First Spouse's Death.

Because the value of estates of some of our elderly surviving spouse clients is now below the $11.4M credit, we have recently been successful at petitioning the Superior Court to amend credit trusts which were established back when the first spouse died, so that all assets are now transferred to ownership of the spouse who is still living. The children are willing to consent to this court petition because when their remaining parent dies, they will be able to claim that all assets are

fully owned by the surviving spouse, and that the income tax basis should be stepped up to current value, avoiding capital gains tax and/or starting new depreciation. Because the surviving spouse may need to own the assets for at least one year before death to achieve the IRS tax savings and because the court procedure may take at least four months to be approved by the judge, it is urged that families and their accountants investigate this tax planning opportunity as soon as possible.

NEW CALIFORNIA INHERITANCE TAX LAW?

Some clients have expressed a fear that the State of California may institute an inheritance tax for estates over $3.5M. The newspaper report was published a few months ago. That bill, however, was dead on arrival, without even a floor vote in the California legislature. Thus, if no floor vote, it will not qualify for the 2020 ballot. Whew.

DEFENSIVE PLANNING AGAINST DISGRUNTLED HEIRS

Advance planning is crucial if you anticipate that someone might contest your estate plan.

Almost all trusts and wills include a standard no-contest clause. The problem is that courts are loathe to actually impose penalties for contest. So, the biggest assistance and gift of love that you can give is to alert the lawyer in advance to potential problems, to protect your designated child's inheritance, as well as protecting him or her from expensive and emotionally exhausting litigation following your death.

Sometimes the anticipated attack will be on grounds of whether you were competent to sign a will or trust. We have formats of competence letters to be signed by your physician or neurologist contemporaneously with signing the will. If there are serious questions, we sometimes encourage a neurological exam. We sometimes even have the client re-sign a similar trust document every four months to demonstrate that the client is still competent and still means it.

Sometimes the anticipated attack is based upon undue influence, i.e. the wife or child or other person is not only influencing you to bequeath certain assets to them, but is "unduly" influencing you, and you are not acting of your own free will. We sometimes have an independent attorney or neurologist interview the client to determine if the client is being unduly influenced; sometimes friends who know of the unhappy situation will be able to attest that you are not being "unduly" influenced. Sometimes it is appropriate to tape, video, write or otherwise memorialize the reasons why one person will inherit and another not.

Sometimes we add to the document's "no contest clause" that we particularly anticipate a contest from one particular person, who has been litigious in the past or has threatened a lawsuit, and that it is hoped by you that a judge would construe the trust broadly against that person; along with reducing that person's share of the trust by the legal defense costs incurred.

Family attacks of wills and trusts seem to occur more frequently now than in prior years, especially with so many second marriages and step-families. It is important that you focus time and energy in advance, while fully competent, to do as much as possible to see that your wishes are carried out.