

IN THIS ISSUE:

PROBATE FILING FEES

CALIFORNIA'S DOMESTIC PARTNERSHIPS

ESTATE TAX EXEMPTION

ON A PERSONAL NOTE...

ZOLLA LAW FIRM

1631 Willow Street,
Suite 100
San Jose, CA 95125
Tel: (408) 264-9822
Fax: (408) 266-1859
www.zollalawfirm.com

Welcome to the first issue of the Zolla Law Firm newsletter. I hope you will find the information useful. If you have any suggestions for improvement, please let me know.

Carol

PROBATE FILING FEES INCREASE DRAMATICALLY

Due to the budget crisis, California has increased its filing fees for probates. In Santa Clara County, the base filing fees were \$229.50. Now, the filing fees for a probate action are tied to the gross value of a decedent's estate. The fees range from \$249.50 (estates worth less than \$250,000) to \$3,869.00 (for \$3.5 million estates), and even higher for larger estates.

Keep in mind, these graduated fees only apply to a probate, not other actions such as conservatorships, trust litigation, or spousal property petitions

which occur in front of a probate judge. Probate filing fees are in addition to all other costs incurred by an estate, including publication fees, appraisals, cost for certified copies, attorneys fees, and executor's fees.

For years, I have been counseling my clients to execute living trusts instead of wills to save the client's family the time and money involved with a probate administration. These higher court fees further strengthen the case in favor of living trusts.

CALIFORNIA REGISTERED DOMESTIC PARTNERSHIPS BECOME MORE LIKE MARRIAGE

Over the past four years, former Governor Gray Davis and the California legislature enacted many laws designed to give certain couples in committed relationships equivalent rights to that of married persons. Among other requirements, to be considered California Registered Domestic Partners, the couple must either be the same sex or at least one of the partners must be over age 62. In addition, the couple must live at the same residence, be over 18, and have the capacity to consent to the relationship. There is a nominal filing fee for registering as a Domestic Partner with the State.

Registered Domestic Partners are treated as spouses if a partner dies intestate (without a will or trust), therefore a surviving Domestic Partner is entitled to receive an inheritance and

to act as the administrator of the deceased partner's estate. Registered Domestic Partners can also inherit real estate without a reassessment from property taxes and make medical decisions for a partner if the ill partner did not execute an Advance Health Care Directive. Beginning in 2005, earnings of Domestic Partners will be considered community property and partners will be able to avoid testifying against the other partner in court.

Federal law does not recognize domestic partnership and therefore California Registered Domestic Partners will not have any rights to the other partner's 401(k)s and pension plans. Domestic partners are not allowed to file joint income tax returns (either Federal or State) and are thus exempt from the Federal marriage penalty. Also, domestic partners don't qualify

REGISTERED DOMESTIC PARTNERSHIPS (CONT.)

for the unlimited “marital deduction” from estate taxes.

It remains to be seen whether the IRS will accept the community status of property held between domestic partners in California and honor the double basis step-up at the death of a deceased partner to minimize capital gains taxes.

NOTE: People who entered into Registered Domestic Partnerships in the last few years should pay attention to any notices they receive from the Secretary of State. The rules that go into effect in 2005 are very broad and may have financial and practical consequences that the parties did not intend when they paid their initial filing fee. It will also be more difficult to terminate a Registered Domestic Partnership. Like marriage, a court order will be required in most circumstances, including cases in which either partner has a child, owns real estate, or contests the termination. The court will determine whether spousal support is warranted, appoint responsibility for community debts, and rule on child custody.

ESTATE TAX EXEMPTION CONTINUES TO RISE

Under Federal law, the exemption from estate taxes (known as the “Applicable Exclusion Amount”) increases in 2004 from \$1 million to \$1.5 million. Therefore, in 2004 a single person may leave \$1.5 million to his or her heirs without incurring any estate tax on the assets. A married couple that has executed an A/B or A/B/C Trust may leave \$3 million to their heirs without incurring any estate tax. This exemption is scheduled to increase in large increments up to \$3.5 million in 2009.

If your Trust contains gifts that are tied to the size of the Applicable Exclusion Amount or if your

assets have changed significantly in value since you signed your Trust, I highly recommend reviewing your estate plan to be sure it suits your present needs.

Finally, with respect to the tax law, many of you have heard me refer to the \$1 million exemption as a “Unified Credit” from estate and gift taxes. Starting January 1, the exemption from estate taxes will no longer be unified with the credit from gift taxes. Previously, you could chose to give away \$1 million during your lifetime or wait until your death, but in either case there would be no taxes on the first \$1 million. Beginning in 2004, the estate tax

exemption will increase over the next five years, but the credit from gift taxes will remain at \$1 million. You can still give \$11,000 each year tax free to as many people as you choose using the annual exclusion from gift taxes.



ON A PERSONAL NOTE...

Those of you who haven't seen me in the past few months may not be aware that I am five months pregnant. Although I intend to work from home (as much as possible) on trust and probate matters from April to early June, I expect that I will be physically out of the office during that time. If you have been putting off signing your estate plan-

ning documents, I highly recommend that you make a New Years' resolution and contact me as soon as possible to schedule an appointment.

I intend to check my voice mail and e-mail often during my leave. I will also provide referral information on my voice mail if you need to contact an estate planning attorney for a new matter

during my absence. Hopefully, baby willing, I will be able to juggle the demands of a “working mother” pretty easily. Working for myself and having a very helpful husband allows me great flexibility and I appreciate your understanding as I figure out how to evolve into my new role.