Zolla Law Firm
December 2011 Newsletter

ZOLLA LAW FIRM

It's been a big year for me... I've reached a milestone age, I choked up as my daughter began kindergarten, and I'm enjoying a thriving practice. I'm so grateful for my health and the support of my family and friends.

In 2011, California trusts and estates law has been relatively stable. Unfortunately, the federal government has not yet settled on a long-term plan for the estate tax, so we'll have to live with tax uncertainty for another year (at least!).

Happy Holidays and best wishes to all of you in the New Year!

Carol

Estate Tax Update

As you'll recall, in late 2010 Congress and President Obama reached a last-minute comprise to extend the estate tax until the next presidential election.

Due to the cost-of-living increase, next year there will be no estate taxes unless a person dies with more than $5,120,000, and the tax rate above that is 35%. This is up from a flat $5 million exemption in 2011.

When I meet with a married couple and discuss the estate tax, I typically give them two options to protect up to $10 million ($10,240,000 in 2012) from estate tax: the A/B Trust and the Disclaimer A/B Trust. (If those terms are unfamiliar to you, the A/B Trust is discussed on my website.)

Thanks to the 2010 compromise, there is a third way to protect up to $10 million from estate tax. I call it the *No Planning Option*, but officially it's known as *Portability*. If a married couple with over $5 million doesn't undertake any estate planning and one spouse dies, the surviving spouse can file an estate tax return (IRS Form 706) and claim all or part of the deceased spouse's $5 million exemption. Then, when the surviving spouse dies, his executor will file a second estate tax return that reports all of the couple's assets, but deducts the deceased spouse's exemption that was previously claimed.

This method is great for people who have larger estates and haven't planned ahead. But it isn't for everyone. The growth in value of the deceased spouse's assets are subject to estate taxes at the surviving spouse's death, but those assets would have been free of tax had the couple planned ahead. And that growth is subject to tax at the rate in effect at the surviving spouse's death, which could be much higher than the current 35% rate (it was as much as 55% in recent memory).

If a couple comes into my office and wants to explore this option (plan for the *No Planning Option*), the primary advantages are flexibility and privacy; the surviving spouse won't have to file a second income tax return for the B Trust and won't have to notify relatives upon the death of the deceased spouse. Also, in the unlikely event the estate tax is completely abolished, the executor of the surviving spouse won't have to deal with any extra paperwork.

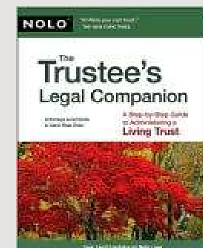
The drawback of the *No Planning Option* is that it is untested. Tax planners have been hoping for this option for a long time, so wealthy people won't be penalized if they don't see a lawyer and put a trust in place. But, since it's only been on the books for one year, I don't know any attorney who has yet filed an estate tax return to claim the deceased spouse's exemption. Also, Congress could take away this option at any time.

Carol Elias Zolla

My Website

Zolla Law Firm

My Book



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Once the federal government finally settles on an estate tax (income tax, payroll tax, etc.) compromise, we'll know if this option will be on the books for good. And, once the law is settled, it will be another tool in my estate planning toolbox. For now, it's a good way for a surviving spouse to minimize taxes when a couple failed to plan, but it's not considered to be the best option for wealthy clients.

"Small Estates" Get Bigger

California has enacted a law to eliminate probate for more people who die with relatively few assets.

As you probably know, assets held in a living trust do not go through probate. Also, assets with a namec beneficiary, such as 401(k) plans, IRAs, and life insurance go straight to the beneficiary without probate. Finally, joint tenancy accounts and assets held in community property belong automatically to the co-owner following a death.

Many people with relatively small estates don't create a trust or properly designate beneficiaries because they don't think they have enough assets to make the process worthwhile. However, when they die, it ca turn out that they have more assets than they thought.

The good news is that there won't necessarily be a probate, even if a single person failed to plan ahead. Previously, if a person died with a gross estate (of property without a beneficiary or co-owner) worth more than $100,000, a probate would have been necessary. But, effective January 1, the limit goes up to $150,000. If the assets are only personal property (i.e. bank or brokerage accounts), the deceased person heir can walk down to the financial institution 40 days after the death, sign a notarized affidavit saying she's the proper heir, and collect the funds.

If the assets are a mix of personal property and real estate, a relative will have to file some documents with the court and get the judge's approval for the distribution. Once the process is started it will be pretty quick (less than 2 months) and inexpensive (typically less than $2,000 for filing costs and attorney's fees). Unfortunately, the family member will have to wait 6 months after the death to file thes documents.

There's an even simpler procedure for real estate of small gross value ($20,000 in 2011, but going up to $50,000 in 2012). The heir can file some documents in the court which will be stamped by the judge, so that it can then be filed with the County Recorder to transfer the property. The fees for this process are even less than that for estates less than $150,000, but there is a 40 day waiting period. I have a feeling that this procedure may be used more in 2012 given that the limit has more than doubled. In California, we usually think that real estate values are so high this procedure is basically useless, but it can be helpfu for time shares and vacant land in remote areas.

So, if you know someone who's dealing with a death and concerned that they will have to deal with the cost and delays associated with a probate, you should try to reassure the person that a probate won't necessarily be required. A skilled attorney will look a the mix of assets -- what is held in joint tenancy, what has a named beneficiary, and what's left -- to figure out what procedure can be utilized to transfer assets in the most efficient manner possible.

Professional Honors

This year, I was honored to be selected to be included in the list of Northern California Rising Stars in Superlawyers Magazine. It's a list of "rising" attorneys who have either been in practice for less than 10 years or under age 41. They also profiled me in the front of the magazine.

I was also given an AV Preeminent rating from Martindale-Hubble (lawyers.com), which is the highest rating given for lawyers and reflects very positive review from my peers.

I was very happy to be included both of these organizations. But, from my perspective, the best and most helpful reviews come from those who know my work best -- my clients. Thanks so much for your referrals and recommendations.

Final Note

I will be raising my fees approximately 5% beginning April 1. If you know of someone who may be interested in undertaking estate planning, please encourage them to contact me and schedule an appointment prior to that date. This will be my first fee increase in three years. Please note that I will not be changing my rate for existing clients if a project is ongoing through 2012 (such as a trust amendment or continuing trust administration work).

**This Newsletter is for information and discussion purposes only. Before any action is taken, professional advice, based on your specific situation, should be obtained.