

Zolla Law Firm

December 2013 Newsletter

Happy Holidays!

As I started to write this newsletter, I was honestly stumped at what to tell all of you. I started to think that nothing happened in the trust and estates world this year. Boy do I have terrible memory!

We live in a very different place than we did this time last year. The estate tax is now settled (at least until the next administration) and married same sex couples will enjoy the same federal benefits and burdens as heterosexual couples. I sent out some of this information to my targeted email lists earlier in the year, but now that I've had a few months to gain some perspective, I think it's worth sending out a summary of the federal law changes to all of you.

I also wanted to alert you all to how your personal information is all over the Internet (even if you don't have a Facebook account). So, I've written about that in the last article of this newsletter.

Hope you find this information interesting and helpful. If you have any comments, or any suggestions for next year, please let me know.

Estate Tax Law is Permanent (for now)

In January, Congress and President Obama ended their stalemate and finally signed legislation to avoid the Fiscal Cliff. In addition to coming to terms with income tax rates and Medicare surcharges, we now have some finality with transfer taxes. Here's a summary of the estate and gift tax law as it now

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stands:

- 1) There are no estate or gift taxes on transfers to a U.S. citizen spouse or to a qualified charity.
- 2) There are no gift taxes on transfers of up to \$14,000 to any person in any one year. (This rises with inflation, but will not increase in 2014.)
- 3) There are no estate or gift taxes on transfers to non-spousal/non-charitable beneficiaries if the grantor transfers \$5 million or less during his lifetime or at death. The \$5 million is indexed for inflation, so for 2013, the tax code protects \$5.25 million and in 2014, \$5.34 million will be sheltered from tax.
- 4) The tax rate on transfers over \$5 million (indexed for inflation) is a flat 40%.
- 5) If a married person dies and doesn't use up all of his available \$5 million exemption at his death, his surviving spouse can file a tax return to capture the unused exemption so that it may be utilized by the spouse on future lifetime or death transfers. This provision is called "portability" and was added to the tax code in 2010. It is very helpful for couples who hold their assets in joint tenancy (they don't have a trust), when one spouse has considerably more assets than the other, or when assets are likely to greatly appreciate between the spouses' deaths. I discuss portability in more detail in my [website](#).
- 6) Special note: the Charitable IRA rollover provisions are scheduled to expire at the end of 2013. There are no guarantees it will be re-instated in 2014. If you have been contemplating the rollover, be sure to speak with your financial adviser or accountant before the end of the year.

I know some accountants who are skeptical that this law will be around for long. It's always possible that after the 2016 election Congress will tinker with the

law, changing rates or exemption levels. But, that's pretty far off. The reality is that the transfer tax generates a small percentage of the overall federal tax revenue. If the government wants to truly make progress on reducing our debt it would, sadly, make much more of an impact to raise our income taxes.

Same Sex Marriage

In June, the Supreme Court came down with two landmark decisions that will affect the future of same sex relationships in this country.

1) The actual case brought before the Supreme Court to challenge the Defense of Marriage Act (DOMA) was *Windsor v. US*, in which a woman was required to pay over \$363,000 in estate taxes following the death of her wife. Following the Supreme Court ruling, Ms. Windsor was entitled to receive a tax refund. Going forward, any wealthy same sex couple in a committed relationship should consider marriage (vs. registered domestic partnerships or civil unions) to ensure that their estate will not be taxed at the first partner's death.

2) Same sex married survivors are now entitled to roll over their spouse's 401(k)s, IRAs, and other qualified retirement plans. Unless you have a financial emergency and need to tap in to the retirement plan right away, it's typically to a spouse's advantage to roll over a plan and defer making withdrawals until the surviving spouse/new owner attains age 70 1/2. The plan can have additional decades to grow and, if the spouse is retired when the withdrawals begin, the income tax rate will likely be lower than had the plan been withdrawn during the survivor's peak working years.

3) Same sex spouses are now able to file a federal income tax return as a married couple. Although California allowed joint returns for quite awhile, it will certainly simplify matters and minimize accountancy

costs to treat the relationship the same with both the IRS and FTB.

In my practice, I have changed a few provisions in my documents to include same sex couples because because Santa Clara County is filled with all types of families and I am happy to help all of them plan for their futures.

Electronic Information

Many of my client have Facebook, LinkedIn, and even Google + accounts. And in those accounts, they've probably chosen to let their "friends" and "friends of friends" know about their college alma mater, current job, and where they last went to drinks. But, these websites are carefully cultivated by the users themselves.

Did you know that it is really easy to find out how much a person paid for their house, what they're paying this year in property taxes, whether they've got their house in a living trust, and whether they've filed for divorce or had a custody issue? There are a ton of services that offer this information (for a fee), but it is very easy to find the information yourself online, if you know where to look.

You can find out the owner of a property by going to the [County Recorder](#) website and looking up the property by parcel number (APN).

Property taxes can be viewed at the [County Assessor's](#) website and to find out whether taxes have been paid, check out the [Tax Collector](#). (And if you don't know the APN to find out the owner of a property, you can use the Assessor to look up the APN, and then work backwards.)

If you want to find out about a civil or criminal case, you can go to the website of the [Superior Court](#) and type in the name of any party to the action, including a

deceased person. You can even look up a lawyer to find out all of the cases they have in the Court.

For privacy reasons, most County agencies do not yet have the underlying paperwork online. That means, if you want to actually see the deed to the house of your next door neighbor, you'll either have to go to the Recorder's office to get a copy by microfilm, or else ask for help from a lawyer who probably has access to a private database (I do). The Santa Clara Superior Court has been scanning probate-related documents for over a year (this affects probates, trust matters, conservatorships, and most guardianships), but you can't see the papers from your home computer. You can, however, go to the Court clerk's office and access the information from their computers. You only have to pay the cost to print the documents.

Some counties have put court records online. When I had a matter in Contra Costa last year, it was extremely helpful to see that my documents had been filed and access all of the records. Los Angeles County has records online, but to access them, there's a nominal fee.

As you can tell, right now it's a hodge-podge. We can't find the information by Googling it (at least not yet), but it's easy to find if you know where to look. As the Courts and Counties get more organized, you can assume that it will become even easier for someone to research all of your public records in the next few years.

Zolla Law Firm

As this marks the 11th year of the Zolla Law Firm, I have to reflect on how lucky I am to have this practice. I'm very happy to have a job that allows me to work in the beautiful town of Los Gatos and meet such interesting people. It's a pleasure to create documents that support healthy, functional families and I appreciate that you have let me into your lives.

I will be raising my fees approximately 8% beginning January 1. This will primarily affect new clients, as I will not be changing the rates for existing clients if there is a matter ongoing (if you're in the middle of a trust amendment or a court matter). If you have any concerns about this change, please do not hesitate to contact me directly.

I will be working from home from December 20 - January 2. If you need to reach me, please do not hesitate to leave me a message or send me an email, and I'll do my best to get back to you promptly. I'm planning on a little family time and a chance to refresh before 2014.



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

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