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# Zolla Law Firm
# December 2016 Newsletter

# Happy Holidays!

Well, it''s that time of year again.  The time when I look at my family''s photos and think: "Really, not one decent photo for our family holiday card?"

It''s hard to believe we''re in December already!  This year marks my 20th as a lawyer and my 14th as a solo attorney.  Thank you to all of my clients and colleagues for your referrals and for allowing me to assist you in this important work.

## Lions and Tigers and Taxes, oh my!

For 2017, the Estate Tax Exemption amount is $5.49 million.  For a married couple, that means you can give away almost $11 million to family and friends without an estate tax.  The gift tax exclusion amount remains at $14 thousand per year.

As you may know, when a person dies, his "capital assets" (mainly real estate, taxable brokerage accounts, and business assets) get a step-up in basis at his death.  So, if you bought your house in Saratoga for $300,000 and now it's worth $2 million, the basis will jump to $2 million at your death.  The kids likely won't have to pay capital gains taxes if they sell your home after they inherit it.  There is no step-up in basis for IRAs, other retirement accounts, or cash accounts.  Also, the basis rules are tricky when property is held with two or more people.  But, the step-up in basis can make huge difference for a family.  And it gives families an incentive to hold on to a property until a death, so that capital gains taxes will disappear once the patriarch is gone.

It's anyone's guess what will happen once Mr. Trump gets into office.  During the campaign, he
proposed eliminating the Estate Tax, but also taking away the capital gains basis step-up rules for estates greater than $10 million.   This doesn't apply to most of my clients, but for people who own a lot of real estate, and especially real

Carol Elias Zolla

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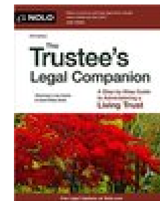
My Book



estate that has depreciated over time, the loss of the step-up in basis can be costly if the children inherit the property and want to diversify (or get out of being a partnership with their siblings). Congress attempted to repeal the step-up in basis a few times in the past, and it became very complicated because records get lost and families have a hard time calculating how depreciation or improvements can affect the basis of a parent''s property. Only time will tell whether Trump''s proposed rule is more or less successful than that wall on our southern border.

## Digital Estates

In my last newsletter, I discussed our Digital Estates: That is, what’s supposed to happen to your Facebook account, PayPal balance, and online photos after your death. At the time, California was wrestling with how to balance privacy (favored by the technology companies) and openness (favored by relatives of the deceased).

In September, Governor Brown enacted the Revised Uniform Fiduciary Access to Digital Access Act, which allows a person to designate what should happen to his digital estate upon death or incapacity. If a person states what he wants in his will, trust, or power of attorney, those wishes will override the "default" options in the user agreements we click on when we open a new account. Ultimately, this may allow more family access to online accounts.

I have been including a provision in my trusts and powers of attorney about digital estates for the past year. But, I''m not aware of any of my trustees or agents trying to enforce their right to access those assets against a technology company. This law may be difficult in practice, and I don''t know how many of my trustees will be willing to pay the court costs and attorney''s time to collect all of their deceased settlor''s photos and music from the "cloud". Stay tuned...

## Trustee Loan Modification

Thanks to a revision in the California Civil Code, banks and other lenders now have procedures to deal with a home loan after a decedent’s death. The trustee or family members have to provide notification of death to the lender, and the lender has to give the “successor in interest” certain options to avoid foreclosure on the loan. The bank may allow the successor to assume or modify the loan, in certain

instances.  But, keep in mind that the new owner of the property will have to be qualified to maintain the loan.

Many of these procedures were already informally followed by some financial institutions, but these protections give trustees and beneficiaries a little time to get their act together and deal with a loan.  I've known many beneficiaries who simply keep paying the loan, as written, and as long as the checks keep coming the banks are none-the-wiser. But it is typically better to be upfront with the financial institution and see if arrangements can be made.

## Zolla Law Firm

This year, I was appointed to the Executive Committee of the Trusts & Estates Section of the State Bar of California. This committee comments on and helps draft California legislation that affects wills, trusts, and conservatorships; sponsors high-level seminars for attorneys in the field; and edits a journal for California estate planning lawyers. I am very excited to be a part of this group of esteemed attorneys, even if that means weekend meetings in hotel conference rooms and extra Southwest points as I travel throughout the state.

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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