

ZOLLA LAW FIRM

DECEMBER 2020 NEWSLETTER



Is 2020 over yet? Despite the deep divides in our Country, we can all agree that it's been quite a year. In estate planning, it started off with a bang with the quick implementation of the [SECURE Act](#), segued into so many clients concerned about executing their paperwork during the first months of COVID-19, and ended with an incredibly memorable election.

I wish you all a safe and joyful Holiday season.

Proposition 19

In commercials this Fall, Proposition 19 was marketed as a way for homeowners who are over 55 or disabled to buy a replacement home but keep the property taxes the same, even after multiple moves or a change in counties. I have many clients who move from the expensive South Bay to less-expensive homes in the Sacramento area, and this property tax benefit is a huge relief.

What wasn't widely advertised is that the law also changes how properties will be assessed after a property owner's death. The previous law allowed a parent to transfer property to her children (and sometimes grandchildren), and the children would retain the parent's lower property tax basis, so long as the property was the parent's personal residence or real estate with an assessment totaling less than \$1 million. So, if a parent owned a home in Campbell, a condo in Truckee with an assessment of \$250K, and a duplex in Milpitas with an assessment of \$550K, all of those properties could be transferred to the parent's children without an increase in property taxes because the total *assessed value* of the non-residential property was just \$800K (regardless of the properties' current fair market value).

This new law, which becomes effective on February 16, 2021 (very soon!) will only allow the Campbell home to retain the parent's property tax basis, and only if (i) the recipient child lives in the home and (ii) the current value of the home is no more than \$1 million above its assessed value. For instance, if the Campbell home has an assessment of \$500K, but it's now worth \$1.4 million, the child will retain the parent's property tax assessment (a \$900K difference). If the Campbell house is now worth \$1.8 million, then the new assessment for the property will be \$800K because only \$1 million in appreciation is protected from a tax increase.

I know this is complicated, and I've had a lot of calls and emails from clients who want to rush lifetime gifts under the old law. However, for most of my clients it won't make sense to transfer the property as a gift. I know it sounds obvious, but if a property is gifted to a child it no longer belongs to the parent – the parent can't get the income from a rental property or stop a child from selling or borrowing against the property. Also, if the property is gifted, then the child retains the parent's basis for *capital gains purposes* – meaning, if the child sells the property he'll pay the same capital gains tax the parent would have paid – but if the property is inherited by the child following the parent's death, the property typically gets a step-up in basis, which means that the property can be sold by the child free of any capital gains taxes.

So, in a nutshell, there are some limited situations where it may make sense to gift the property before February 16 (perhaps a family vacation property that will not likely be sold for many generations or a property that has recently received a step-up in basis due to the death of a parent). But, if the children are likely to eventually cash-out and won't respect the parents' intentions, then there's no rush to transfer.

I would be happy to schedule a half hour consultation with my clients to discuss the pros and cons of a quick transfer. (Please keep in mind that I will bill for that consultation, even if the ultimate decision is not to make a gift.) Unfortunately, because there is a very short time before the law will go into effect, I will not be able to assist non-clients with these discussions or implementation.

Federal Tax Laws

Now that we know Joe Biden will be our President but the Senate will likely stay Republican, there's very little expectation that the federal tax laws will change any time soon. Prior to the election, I had a number of clients express concerns that Democratic executive and legislative branches would lead to lower estate tax exemptions and the loss of the step-up in basis for inherited property. But it seems unlikely that there will be any comprehensive federal tax legislation in the next two years.

The exemption for estate taxes will increase to \$11.7 million next year, and the annual gift tax exclusion will remain at \$15K.

On January 1, 2026, if Congress doesn't act, the estate tax exemption will automatically drop to \$5 million + inflation (close to \$6 million). Certainly, my wealthier clients will want to work on some long-term gifting strategies as we get closer to that date, but I don't see any proactive tax legislation in the near term.

Does Your Child Need Any Estate Planning?

I've been a lawyer for 24 years, and have therefore seen an entire generation of future beneficiaries grow up into adulthood. Although my clients' young-adult children may not have a lot of money, they should still execute some estate planning documents to ensure that a trusted adult can assist in the case of an emergency.

The three documents every young person should sign are: a HIPAA authorization, Health Care Directive, and Financial Power of Attorney. These forms can be found for free or very low cost (say \$50) online, and should be executed in the state where the child lives. Due to conflict of interest rules, it is difficult for me to prepare those documents for my clients' children (it could be self-serving if a parent insists that his child name the parent as his health care agent), but it is incredibly easy for a child to print out and sign on their own.

Sadly, as we've learned with COVID-19, disability and long-term medical issues can occur at any age.

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When COVID-19 started, we all hoped that the deaths would be few and the inconveniences would be short-lived. Unfortunately, as infection rates continue to climb, we're likely going to have to hold tight until next Summer before we all have access to vaccines and go back to "normal".

This year, most of my initial interviews and follow-up appointments have been over Zoom. I'm incredibly impressed that so many clients – young and old – have adapted to online meetings. I've also sent a lot of paperwork to clients by password protected emails and secure portal, and am working on a way for clients to upload their paperwork to my portal as well. I'm also now sending clients electronic calendar entries for each appointment, which ensures fewer scheduling complications. I'm looking forward to getting back to more in-person appointments, but I am grateful for the technology we've all adopted so quickly, which allows me to continue to serve my clients.



New edition coming in March!

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

