

Life Planning Newsletter
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Long Beach CA, Carson City NV.
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Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests the effectiveness of your Estate Plan with actual California and Nevada Cases. We are particularly involved in Medicaid and Medi-Cal Estate planning. We create Special Needs Trusts and Estate Plans to ensure our clients meet the eligibility requirements, lower their share the cost expense, and reduce or eliminate the potential recovery by the State.

Our law firm integrates low cost Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

This newsletter is provided to our clients free of charge via e-mail and on line at www.jabusse.com

INSTRUCTION CORNER

You can control your own Check Book IRA

Many of us have IRA's or 401(k) savings plans. We get a choice of the plan administrator's "canned" investment strategies at best and sometimes we do not get a choice at all of what the plan invests in. Sometimes, as in the ENRON plan the company puts your money into a fixed investment and then makes it difficult to move your money out of the plan. We all know the results of ENRON. But for many of us that is really a good thing because we just don't have

the time or the inclination to research and do the work necessary to manage our own investments.

The result is that we take the safe way out and our investment return is limited by the safe investments our administrator picks for us.

But what if you could invest on your own? What if you used the \$100,000 in your IRA to buy an apartment building in Los Angeles in 1998? If you are like most, the \$100,000 in your IRA in 1998 has grown to about \$150,000 or \$200,000 by now if invested in an aggressive IRA fund. If invested in a money market fund it is worth about \$115,000 now. But if YOU used your IRA to buy the apartment, it would be worth almost \$1,000,000 now and if you used a ROTH IRA to buy it, that growth would be mostly TAX FREE. The IRS allows you to self direct your IRA. Better still, for those willing to do the work, you can even manage it through your own company. This means you have CHECK BOOK control over your own IRA. Your IRA funds are at your disposal to make investments on your IRA's behalf. You just can't spend it for yourself. This puts the control of your future squarely on your own shoulders. You can invest in real estate, start a company, or invest in hotels, films at your discretion. There are only a few "prohibited investments" you need to avoid.

Setting up a self directed IRA is not cheap and it does require YOUR oversight. Also, if you make a mistake in managing or in distribution, you could be hit with penalties, but the rewards are great too.

PLANNING BASICS –Very small estates

Estate size determines the procedure used to distribute the probate estate; That is, the

estate to be disposed of by Will. There are many good reasons to use a Will and probate to dispose of your estate so don't run out and change your estate plan based on this information. See you attorney first.

There are a number of ways to deal with small estates. One is for Very Small Estates (less than \$20,000) that contain real property. Let's say the decedent had a family home in the city worth \$400,000 in a revocable living trust, a small bank account with a "Pay on Death" clause to an individual, and a small plot of land in Trona, CA worth \$15,000 on the day the decedent died. The decedent forgot to put the property into the trust. The decedent had no pour over will. The estate attorney has two options for the Trona property. One, is to probate it using the Small Estate Set-Aside. The other to use what is called a Heggstad petition to put it into the trust. If the property is put into the trust, it will pass according to the terms of the trust. If the small estate set aside is used it will pass according to the laws of intestate (no Will) succession. The Heggstad petition requires specific pleadings and a court hearing. The Small Estate Set Aside (under Probate Code §13200) usually does not require a court hearing. In our case, assuming the heirs are the same in the trust and in intestate succession, it will probably be easier to use the Small Estate Set Aside by filing form DE-305. To file this form you need an Inventory and Appraisal from a Probate Referee showing the value of the property on the decedent's date of death and a Certified Death Certificate. Each beneficiary then signs the form and it is filed with the court where the property is located. Usually it will take the court two-weeks to process the paper and you will receive authority to distribute the property. The rules are different if the decedent died prior to June 8, 1982 because then California had a "Death Tax" for all estates and you need to find someone working for the State who remembers how compute and accept the obsolete forms. This is no easy task.

The lesson here is that there a number of ways to transfer small estates containing real property. In this case, the simple "Probate" is much cheaper and faster than a Heggstad petition. The real lesson is to not forget to put all your real property into your living trust.

NEW LAW

Nevada lengthens the Rule of Perpetuities.

On October 1, 2005, Nevada extended its rule against perpetuities to 365 years. This new law creates an opportunity for Nevada and other State residents, to put assets in a Nevada dynasty trust that is not subject to estate taxes, creditors and divorcing spouses of the trust beneficiaries for 365 years.

Prior to the passage of the new law, Nevada limited the duration of a trust under to the greater of 90 years or "lives in being plus 21 years," (90 to 120 years) before the trustee would have to distribute the trust assets to the heirs, thus exposing the assets to estate taxes, creditors and divorcing spouses. California law is similar under Probate code 21220.

A dynasty trust is an **irrevocable** trust that leverages the estate, gift and generation-skipping transfer tax exemptions for as many generations as applicable state law permits (365 years is a long time). A dynasty trust is drafted to encourage the trustees of the trust to keep the assets in trust for the benefit of the beneficiaries and to allow the beneficiaries to "use" the trust property rather than receive it outright where it will be subject to estate taxes, creditors and divorcing spouses.

For estate tax purposes, it is not sufficient to plan for only one generation at a time. The potential estate taxes that the clients' children's estates may face as a result of such inferior planning are often not given enough consideration by the attorney in drafting the trust. As of 2006, the tax code allows each person to transfer up to \$2 million without any federal generation-skipping transfer ("GST") tax. Meanwhile, the exemptions in 2006 for federal estate and gift taxes are \$2 and \$1 million, respectively. Interestingly, the estate and gift tax exemptions are utilized in nearly every estate plan, yet all too often "canned" trust agreements fail to utilize the GST tax exemption. Failure to use the GST tax exemption can result in significant economic waste over the course of time.

To see how these new regulations may affect your Estate Plan, contact:

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