

### **BUSH WINS. ESTATE TAX IN JEOPARDY!**

Following the 2000 election, the President reduced many Federal taxes, including the Estate Tax. Now, with his overwhelming win last month, Mr. Bush has already begun lobbying Congress and the American public to achieve his ultimate goal — Estate Tax repeal.

Whether Bush is able to get an Estate Tax repeal through Congress depends on the economy and the Federal budget deficit. Although he apparently prefers immediate repeal, he may have to settle for a gradual reduction in tax, culminating in permanent repeal in 2010.

For many of my clients, the status of the Estate Tax is irrele-

vant. The current exemption from Estate Tax of \$1.5 million per person (rising to \$2 million in 2006) covers most residents of Silicon Valley. Only if an estate's net assets are greater than that exempt amount will the excess be subject to the 45-48% tax.

Even without the Estate Tax, many clients will continue to execute living trusts to avoid probate. As I explained in last December's newsletter, attorney's fees for a \$1 million gross estate are \$23,000 and the court filing fee is now \$1,171 in Santa Clara County. Also, previously married clients may consider a living trust to provide

for their current spouse before benefiting children from an earlier marriage. Finally, living trusts give parents the ability to control gifts to children: providing an incentive to reach a goal, maintaining separate property, or slowly distributing trust property until the children reach a specified age of "maturity."

If avoidance or minimization of Estate Tax was the primary reason you executed your trust, please contact me. You may wish to keep a trust structure to avoid probate, but we can discuss revising the trust to simplify distributions to beneficiaries.

### **CALIFORNIA LAW GIVES TRUSTEES SOME RELIEF FROM LIABILITY**



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Two California laws take effect January 2005, promising some protections for Trustees. The first, AB 1990, amends Probate Code Section 16461. It allows a Settlor (creator of a trust) to relieve a Trustee of liability for her actions on behalf of the trust unless the Trustee commits a breach of trust intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiaries. The trust instrument may also relieve a Trustee of liability for her actions if the actions are adequately described

in a report or accounting and the beneficiary does not object to the report or accounting within 180 days.

The second law, SB 1021, amends Probate Code Section 16337 and adds Sections 16500 through 16504, allowing a Trustee to give notice of proposed action to the trust beneficiaries prior to taking a course of action or deciding not to take a certain action. If no beneficiary objects in writing within 45 days of notification, the Trustee may take the (in)action and

## **TRUSTEES OF SPECIAL NEEDS TRUSTS**

Many of my clients with developmentally disabled children have reluctantly chosen a family member to act as trustee of their child's special needs trust. They know administering the



SNT will be a lot of work due to the federal and state regulations, but they don't think they have another choice because the trusts are relatively small (less than \$400,000). I have recently become aware of two non profit groups that administer small SNTs and some private professional fiduciaries who will do the work.

Yes, they are more expensive

than family members. But, I strongly believe that, for many clients, a third party trustee is the best choice. Using a third party trustee relieves family members of the stress and hassle associated with the governmental regulations and phone calls from disgruntled beneficiaries, allowing family members to enjoy a friendly relationship with the disabled child.

## **CALIFORNIA LAW (CONT.)**

cannot be held liable. The notice provisions cannot be used for certain actions that would benefit either the Trustee or the Trustee's attorney, such as approval of compensation or sale of trust property to either the Trustee or her attorney.

This law attempts to protect

Trustees in a way similar to that provided to Executors in a formal Probate. As in a Probate, if a beneficiary objects, the parties can go to Court for a judge's approval. However, in my experience, it is more likely the judge will try to settle the matter between the parties be-

fore substituting his judgment over that of the Trustee.

This Notice provision doesn't protect all Trustee actions, but it does help a Trustee who is nervous about making a decision and wants to avoid future liability.

## **A PERSONAL NOTE**

My son, Aaron, is now seven months old and my husband and I are delighted to have a happy, healthy baby who crawls, sleeps through the night, and eats most of his fruits and vegetables.

I am currently working Tuesday-Thursday 9-5. If you have an emer-

gency on Monday or Friday, PLEASE make that clear to the receptionist in my office. Otherwise, I will gladly return your call first thing Tuesday morning. I am very lucky to have a practice and wonderful clients who allow me to try to balance my work and family life. Thank You!

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