

# SOLID FUNDAMENTALS IN ESTATE PLANNING TO NAVIGATE A CHANGING LANDSCAPE

Apartment Association of Orange County

**By: Anson T. Cain**

Albrecht & Barney

1 Park Plaza, Suite 900

Irvine, California 92614

[atc@albrechtbarney.com](mailto:atc@albrechtbarney.com)

## TODAY'S TOPICS

- (1) Possible Tax Legislation**
- (2) Fundamentals of Estate Planning**
- (3) Transfer Taxes: Today and What Might Come in the Future?**
- (4) Rethinking Gift Tax Planning**
- (5) Top Tips to Avoid Property Tax Reassessment**

# POSSIBLE TAX LEGISLATION

- **Tax Cuts and Jobs Act – Enacted in 2016, Set to Expire January 1, 2026**
  - Reduces the gift/estate tax exemption from \$13,990,000 to \$5,000,000 (indexed)
  - Likelihood of Extension?
    - Extending the Act would add \$4.6 trillion to the national debt ceiling
    - President Trump made various promises on the Campaign Trail
      - Exempt from Income Tax earning from overtime pay or tips
      - Increase the Child Tax Credit
      - Increase the SALT Limits
      - And Other Tax Promises

# POSSIBLE TAX LEGISLATION

- **Possible Repeal of the Estate Tax Entirely? – Death Tax Repeals Act**
  - Senate Majority Leader John Thune had 41 Senators co-sponsor a repeal bill in 2024.
  - Speaker Johnson is on record for supporting estate tax repeal as well.
  - The Legislation also has support from more than 230 organizations, which are doing significant lobbying in influential think tanks to try to make this happen.
  - While many advisors may say this will never happen, many pundits did not anticipate Trump winning the 2024 election... or winning it as significantly as he did, either.
- **What Would Happen if it Is Repealed?**
  - It would repeal the estate tax exemption and the generation skipping transfer tax.
  - However, it would keep the gift tax exemption to help prevent income shifting.

# FUNDAMENTALS OF ESTATE PLANNING

# HAVE YOUR ESTATE PLAN REVIEWED

- (1) **CHECK TITLE** - HELPS ENSURE YOUR ASSETS ARE PROPERLY TITLED IN THE NAME OF YOUR TRUST TO AVOID PROBATE
- (2) **TAX LAWS CHANGE** - SPECIFICALLY, IF YOU HAVE NOT HAD YOUR ESTATE PLAN REVIEWED SINCE 2012, I STRONGLY RECOMMEND YOU HAVE IT LOOKED AT AS TAX LAWS ARE VASTLY DIFFERENT NOW THAN THEY WERE THEN
- (3) **STATE OR LOCAL LAWS CHANGE** – NO CONTEST PROVISIONS, LANGUAGE TO AVOID CALIFORNIA PROPERTY TAX REASSESSMENTS
- (4) **FRIENDS AND FAMILY MEMBERS CHANGE** – THEREFORE YOU MAY NEED TO REVISE BENEFICIARIES, TRUSTEES, GUARDIANS, AND AGENTS FOR YOUR POWER OF ATTORNEY FOR ASSET MANAGEMENT AND/OR YOUR ADVANCE HEALTH CARE DIRECTIVE
- (5) **YOU CHANGE**
- (6) **NOTHING CHANGES – BUT WANT TO UPDATE BOILERPLATE PROVISIONS**

**Estate planning** -- the process that forces us to focus on two things most people want to avoid thinking about in life -- death and taxes. Try not to think of estate planning as another item at the bottom of your “to do” list. Estate planning really is an opportunity -- it is an opportunity to take care of your family in a way that can help them when you can no longer do so personally. Thought of that way, it’s practically a gift to your loved ones.

## 4 KEY LEGAL DOCUMENTS

**REVOCABLE LIVING TRUST**

1

A **Revocable Living Trust** avoids probate when your home and other assets are titled in your Trust. You determine who will be in charge (your Trustee) and set the rules for distribution of your assets to your beneficiaries.

**POUR OVER WILL**

2

A **Will** is the proper document to nominate guardians for your minor children. A Will does not avoid probate, so a Trust is executed at the same time. The Will functions to “pour over” any of your remaining assets into your Trust.

**POWER OF ATTORNEY**

3

A **Power of Attorney** and **Advance Health Care Directive** are documents where you nominate people to make financial and medical decisions on your behalf in the event you are incapacitated (e.g., due to a coma, dementia, car accident, etc.), and where you can make your medical wishes known. Also now want to have HIPAA Waivers.

**ADVANCE HEALTH CARE DIRECTIVE**

4

If you do not select your Agents, the court will make that decision for you.

# MAIN PURPOSES OF AN ESTATE PLAN

- **Override State Law** as to:
  - Who gets to control your assets at your incapacity/death
  - Who gets to inherit your assets at your death
- **Avoid probate** and the long, public, and costly administration that happens with it
- **Name guardians** to care for minor children
- **Minimize Taxes** so that there is more for your heirs
  - Transfer Taxes – Estate Taxes and Generation Skipping Transfer Taxes
  - Income Taxes
  - Property Taxes

# WHY DO YOU WANT TO AVOID PROBATE?

- **Public Administration** of your assets, debts, and issues
- **Long Process** – Currently takes 18 to 24 months in CA (and sometimes longer)
- **Expensive**

<b>Gross Estate Value</b>	<b>Executor's Statutory Fee</b>	<b>Attorney's Statutory Fee</b>	<b>Total Fees (not including Court Costs)</b>
<b>\$100,000</b>	\$4,000	\$4,000	<b>\$8,000</b>
<b>\$300,000</b>	\$9,000	\$9,000	<b>\$18,000</b>
<b>\$500,000</b>	\$13,000	\$13,000	<b>\$26,000</b>
<b>\$1,000,000</b>	\$23,000	\$23,000	<b>\$46,000</b>
<b>\$2,000,000</b>	\$33,000	\$33,000	<b>\$66,000</b>
<b>\$5,000,000</b>	\$63,000	\$63,000	<b>\$126,000</b>
<b>\$10,000,000</b>	\$113,000	\$113,000	<b>\$226,000</b>

# HOW TO AVOID PROBATE?

- **Utilize non-probate transfers of assets**
  - Joint tenancy, TOD, POD, Beneficiary Designations
  - Problem with this option is that it often doesn't allow for backup designations or for you to put someone in control of the assets for the benefit of a beneficiary.
- **Have less than \$200,000 of assets (gross value) (as of April of 2025) in your name at the time of your death.**
  - Instead, of having the assets titled in the client's name, the assets should be titled in the name of his/her revocable living trust.
  - This means JUST HAVING a Trust is NOT ENOUGH – You Must FUND the Trust.

ESTATE PLANNING SIMPLIFIED  
TWO MAIN CATEGORIES OF QUESTIONS

- Category 1 – Who Do You Want to Inherit Your Assets? (and how?)
- Category 2 – Who Do Want to Be In Control When You No Longer Can Be? (same or different for health care decisions?)

**CATEGORY I**  
**WHO DO YOU WANT TO INHERIT YOUR**  
**ASSETS? (AND HOW?)**

- **Who Do You Want to Leave Your Assets To?**
  - Spouse, Children, Grandchildren
  - Friends, Extended Family, Others
  - Charities, Schools, or Other Organizations That Have Impacted Your Life
- **How Do You Want to Leave Assets to them?**
  - Outright – No restrictions, no rules, and the beneficiary can do anything
  - In Trust – You can set distribution rules, investment rules, or even have someone else in control of the beneficiary's trust, which may be very important.

# COMPARING OUTRIGHT V. IN TRUST

	<b>OUTRIGHT DISTRIBUTIONS</b>	<b>IN TRUST, DISTRIBUTE AT MILESTONES</b>	<b>IN TRUST FOR LIFE</b>
<u>BENEFICIARY</u> HAS FULL CONTROL	YES	NO	NO
<u>YOU</u> DETERMINE HOW ASSETS ARE USED DURING THE BENEFICIARY'S LIFETIME	NO	YES, BEFORE REACHING MILESTONES	YES
<u>YOU</u> DETERMINE WHERE ASSETS GO AT THE BENEFICIARY'S DEATH	NO	YES, IF DECEASED BEFORE REACHING MILESTONES	YES
ABILITY TO <u>PRESERVE PRINCIPAL</u> FOR FUTURE GENERATIONS	NO	NO	YES
<u>ASSET PROTECTION</u>	NO	YES, BEFORE REACHING MILESTONES	YES
<u>INCLUDED IN BENEFICIARY'S GROSS ESTATE</u>	YES	YES, IF BENEFICIARY REACHES MILESTONES	NO

## **CATEGORY 2** **WHO DO YOU WANT TO BE IN CONTROL?**

- **Control Over Assets**

- **Trustee of your Trust, Agent of Your Power of Attorney, Executor of Your Will**
- **Who to Select?** – Spouse, Child, Parent, Sibling, CPA, Corporate Trustee, Private Fiduciary
- Remember the individual doesn't need to be a “trained professional” familiar with estate planning. They can get assistance from an attorney, CPA, and financial advisor to help them along the way.

- **Control Over Your Health**

- **Agent Under Your Advance Health Care Directive**
- **Who to Select?** - Spouse, Child, Parent, Sibling, etc.
- Think About The Decisions You Are Asking them to Make – and whether you think the person you choose as your Agent will honor your preferences.

# TRANSFER TAXES

TODAY AND WHAT MIGHT HAPPEN IN THE FUTURE

# TRANSFER TAXES - EXPLAINED

- A tax is levied on the transfer of your assets – but only when you TRANSFER the assets (gift during lifetime or bequest at death)
  - **LIFETIME transfers** – subject to GIFT TAXES
  - **DEATH transfers** – subject to ESTATE TAXES
- The IRS gives you a cumulative exemption amount that allows you to transfer assets without paying gift or estate taxes so long as you don't transfer more than the available exemption amount
  - You must keep track of the gifts you make during your lifetime, as certain gifts reduce your cumulative exemption amount
- The Exemption Amount changes from year to year
  - 2024 - \$13,610,000 (plus \$18,000 annual gift tax exclusion amount)
  - **2025 - \$13,990,000** (plus \$19,000 annual gift tax exclusion amount)
  - 2026 - \$5,000,000 indexed for inflation, so maybe \$7,000,000 (plus annual gift tax exclusion amount)

# TRANSFER TAXES - TIMING

## Four Reasons Clients Are Rushing to Plan Sooner than Later

- Possible Change in the Tax Laws - Clients generally want to utilize their cumulative exemption amount before it reduces in 2026.
  - Only hesitation is whether or not the law will actually sunset at the end of 2025. Only time will tell.
- Might Run Out of Time to Find a Good Attorney – if clients wait too long to do this planning, then there won't be any good estate planning attorneys or appraisers available to help them accomplish their goals.
- Might Run Out of Time to Implement the Recommended Plan – many advanced estate tax planning strategies take time to implement and cannot be carried out successfully under a time crunch.
- Time Value of Money – Sooner you get the asset out of your estate, the sooner the growth and appreciation is out of your estate.

# TRANSFER TAXES – FMV IS EVERYTHING

- **Transfer Taxes are Levied When the Transfer Occurs**
- **Time Value of Money** - As clients consider making lifetime gifts, the goal is to transfer assets before they appreciate in value..The sooner clients transfer assets out of their estate, the quicker they freeze the value of the assets, allowing them to transfer more to their beneficiaries while using less of their available exemption amount.
  - You buy an apartment building for \$1.5M in 2010. Now, in 2025, the apartment building is worth \$9M.
  - In 2025 – If you made a lifetime gift or pass away, it would use \$9M of your gift/estate tax exemption
  - If you had gifted it back in 2010, it would have used only \$1.5M of your gift/estate tax exemption, and \$7.5M of appreciation and its continued future growth would be outside of your estate and not subject to gift/estate taxes.
- **Discounts** – How much of your gift/estate tax exemption is used on a transfer is based on the fair market of what was transferred. However, if you can give something that is subject to a discount, you can use less of your gift/estate tax exemption and therefore gift even more.

# TRANSFER TAXES – DISCOUNT PLANNING

- Once you decide that you want to engage in transfer tax planning and freeze the value of various assets, the next question is whether there are certain assets that we can transfer that will take into account a discounted fair market value for any of the following reasons:
  - Lack of Control
  - Lack of Marketability
  - Fractional Interest Discounts
- These types of discounts can generally be taken when giving any of the following assets:
  - Interests in a Corporation, limited partnership, or limited liability company
  - Fractional interests in real estate
  - Various other assets

# TRANSFER TAXES – DISCOUNT PLANNING

## FRACTIONAL INTERESTS IN REAL ESTATE

- **Example – Mom and Dad want to transfer their primary residence to Son. Primary residence is appraised at \$1,000,000.**
  - Technically, the appraisal is for a 100% interest in the real estate.
  - Mom is transferring 50% to Son; and Dad is transferring 50% to Son. They each are only transferring a fractional interest in the real estate. This allows you to take a discount.
  - $\$1,000,000 \times 50\%$  (transferred by Mom/Dad) =  $\$500,000 \times 15\%$  fractional interest discount =  $\$425,000$
  - **So combined, Mom and Dad transfer a \$1,000,000 house to Son, but only use \$850,000 of exemption**

# TRANSFER TAXES – DISCOUNT PLANNING

## LLC THAT OWNS REAL ESTATE

- **Example – Mom and Dad want to transfer 99% of an LLC that owns Real Estate to Son. Real Estate is appraised at \$1,000,000, and the LLC has no other assets.**
  - Technically, the appraisal is for a 100% interest in the real estate.
  - Mom is transferring 49.5% to Son; and Dad is transferring 49.5% to Son. They each are only transferring minority interest (cannot control distributions or liquidation rights of the LLC); and the LLC isn't marketable. Thus, the transfer is entitled to Lack of Marketability and Lack of Control discounts.
  - $\$1,000,000 \times 49.5\%$  (transferred by Mom/Dad) =  $\$495,000 \times 35\%$  discount =  $\$321,750$

**So combined, Mom and Dad transfer a 99% interest in the LLC (\$990,000) to Son, but only use \$643,500 of exemption**

# TRANSFER TAXES – WHERE TO PUT ASSETS

- **Irrevocable Gifting Trust for Children/Grandchildren**
- **Irrevocable Gifting Trust for Spouse** – Spousal Lifetime Access Trust (aka “SLAT”)
- **Retain an Income Stream From Asset For Yourself**
  - Grantor Retained Annuity Trust
  - Sale of Assets to an Irrevocable Gifting Trust for Children/Grandchildren for a Promissory Note
  - Charitable Remainder Unitrust
- **Once You Have Fully Used Your Available Exemption Amount**
  - Grantor Retained Annuity Trust
  - Beneficiary Defective Inheritor’s Trust - BDIT

RETHINKING GIFT TAX PLANNING AND HOW  
YOU GIVE ASSETS TO OTHERS

## GIFTING ISN'T ONLY FOR LARGE AMOUNTS – ANY SIZE GIFT CAN PROVIDE BENEFITS

- **Often clients think that just because their estate is less than \$13,990,000, that there is NO need to do any gift tax planning. While there is some truth to that concept, it isn't entirely true.**
- **There are benefits of giving smaller amounts of assets away, either outright or in trust.**
  - Gifts can relieve financial stress or hardships of family members or loved ones.
  - Gifts can help a family member or loved one purchase their first home or investment property.
  - Sophisticated tax planning can still occur even in a small gift.

# GIFTS IN TRUST THEY OPEN A WORLD OF OPPORTUNITIES

- **By Gifting Assets in Trust, You Can Protect the Assets for That Beneficiary**
  - Divorce Protection
  - Creditor Protection
  - Investment Protection
  - Drug/Alcohol Abuse Protection
  - Test the waters to see how that Beneficiary uses/accesses/invests the trust assets
- **By Gifting Assets in Trust, You Can Chart Your Family Legacy**
  - You can define who you consider to be part of your “family”
  - Encourage Philanthropy – designate certain charities and charitable purposes beneficiaries can support

# GIFTS IN TRUST THEY OPEN A WORLD OF OPPORTUNITIES

- **By Gifting Assets in Trust, You Can Incentivize Family Priorities or Behavior**
  - Income Matching Provisions
  - Family Vacation Provisions
  - Investment Provisions
  - Education Being a Priority (or Not a Priority)
- **By Gifting Assets in Trust, You Can Retain Control**
  - In the short term by serving as Trustee of the Trust
  - In the long run by having designed the trust provisions

**Trusts Open A World of Possibilities – Making Gifts Into a Trust Will Ensure That Your Future Generations of Beneficiaries Will Always Remember Your Hard Work and Foresight!**

# 4 TOP TIPS TO AVOID PROPERTY TAX REASSESSMENT

## TIP I – FOCUS ON YOUR PRIMARY RESIDENCE

- **While you can ONLY have ONE primary residence at a time, you can have multiple primary residences during your lifetime.**
- **General Rule - So long as you transfer your primary residence to a child who takes the property as their primary residence, then the transfer qualifies for the parent-child exemption for property taxes.**
  - Child inherits your property tax basis + \$1M of property tax credit = PC Property Tax Amount
  - If the home's fair market value is greater than the PC Property Tax Amount, then the excess amount will be added to the property tax base and there will be additionally property taxes paid.
  - If the home's fair market value is less than the PC Property Tax Amount, then no reassessment and the child continues paying the same property taxes as his or her parent.

## TIP 2 – NEVER PURCHASE PROPERTY IN JOINT TENANCY

- **For property tax purposes, NEVER buy property in joint tenancy.**
  - At the death of the last joint tenant, it will trigger property tax reassessment.
- **INSTEAD – purchase property as tenants-in-common AND THEN do a second deed transferring from tenants-in-common to joint tenancy.**
  - At the death of the last joint tenant, there will be NO property tax reassessment

**While this seems crazy, the forms used...and the order they are used....matters more than the substance of the overall transaction.**

**In this above example, we get to the same place. But by doing it one way versus the other, there may or may not be property tax reassessment.**

## TIP 3 – ALWAYS BUY INVESTMENT REAL ESTATE IN AN LLC/LP

- **If an LLC/LP purchases the real estate, there will only ever be property tax reassessment in ONE SITUATION – a CHANGE IN CONTROL**
  - **General Rule** - When someone new acquires more than 50% of the LLC/LP = reassessment
    - So long as that never happens, then **NO** property tax reassessment.
  - **Example** – If you have 2 kids and want to leave the investment property to them at your death, you can simply leave each 50% of the LLC at your death and they get the property with no reassessment as no one acquired MORE than 50%.
- **INSTEAD...if you first bought the real estate and THEN transfer the real estate into an LLC/LP, then there will only ever be property tax reassessment in TWO SITUATIONS – (1) a CHANGE IN CONTROL (same as above); and (2) CHANGE IN ORIGINAL CO-OWNERS**
  - **Original Co-Owners** – the individuals who own the LLC/LP at the time the real estate was transferred into the legal entity
  - **General Rule** – When the “original co-owners” **COLLECTIVELY** transfer more than 50% = reassessment
  - **Example** – If you have 2 kids and want to leave the investment property to them at your death, while leaving them each 50% does not result in a change of control....you....the “original co-owner” who owned 100%, transferred that 100% to you 2 children. This triggers a property tax reassessment.

## TIP 4 – LEVERAGE YOUR PARENT’S PROPERTY TAX BASIS

- **As previously discussed, if a parent transfers their primary residence to a child who takes the property as their primary residence, then it qualifies for the parent-child exemption.**
  - THIS CAN BE VERY VALUABLE.
  - However, how many children actually want to live in their parent’s home?
- **So long as the child is 55 ½ years old, they can SELL their newly inherited primary residence and TRANSFER their inherited property tax basis to a newly purchased primary residence**
- **Example** – Dad dies leaving his primary residence (“Dad’s PR”) to son. Dad’s PR has a property tax basis of \$1.5M and a fair market value of \$2.5M at his death. Son claims Dad’s PR as his own primary residence, and then sells Dad’s PR for \$3M paying zero long term capital gains (step up in basis at dad’s death and he and his wife lived there for 2 out of the last 5 years). Son then takes that \$3M of cash and buys a new home for \$3M and can elect to utilize the inherited property tax basis of his dad. So while Son has a new \$3M home, his property tax basis is \$1.5M.

**CONTACT ME TO DISCUSS FURTHER**

REMEMBER TO CREATE YOUR BASIC ESTATE PLAN (AND HAVE IT PERIODICALLY REVIEWED). IF YOU WOULD LIKE TO SCHEDULE A MEETING TO CREATE AN ESTATE PLAN, REVIEW AN ESTATE PLAN, OR TO DISCUSS ADVANCED ESTATE PLANNING TECHNIQUES, **PLEASE CONTACT MY ASSISTANT, MELISSA RIOS (MAR@ALBRECHTBARNEY.COM) TO SCHEDULE A COMPLIMENTARY PHONE CALL, ZOOM MEETING, OR IN-PERSON MEETING AT MY OFFICE.**

**ANSON T. CAIN, ESQ.**

ALBRECHT & BARNEY LAW CORPORATION

I PARK PLAZA, SUITE 900

IRVINE, CALIFORNIA 92614

PHONE: (949) 263-1040

EMAIL: ATC@ALBRECHTBARNEY.COM

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