



# Tax Laws & Estate Planning for 2022

Presentation Prepared for:

***The Apartment Association of Orange County***

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## Today's Topics

- (1) Current Tax Laws to Consider & Proposals to Watch
- (2) Proposition 19 is now in effect - Now what?
- (3) Estate Plans are Even MORE Important Due to Covid-19
- (4) Protecting Yourself and Your Assets if Things Go South



“For the taxes we pay, you’d think our trash could get picked up on time – and by limousine.”

## Topic 1 - Current Tax Laws to Consider & Proposals to Watch

- Assembly Constitutional Amendment 11

- Introduced by Ash Kalra (D- San Jose) and Alex Lee (D-San Jose)
- Increases Gross Receipts Tax on LLCs to 2.3% on amounts over \$2M
- A new 1.25% payroll tax on businesses with at least 50 CA resident employees, for services performed inside or outside of California
- A Personal Income Tax Surcharge for individuals earning more than \$149,509

Surcharge	0.5%	1%	1.5%	1.75%	2.5%
On Taxable Income	\$149,509-\$299,508	\$299,509-\$599,012	\$599,013-\$1,299,499	\$1,299,500-\$2,484,120	\$2,484,121+

## Topic 1 - Current Tax Laws to Consider & Proposals to Watch - CALIFORNIA

- Assembly Constitutional Amendment 11
  - FIRST - Need to pass both houses of the California legislature by 2/3 vote
  - SECOND - referred to the voter ballot, and would need a simple majority (2024?)

**GOOD NEWS** - BILL WAS RECENTLY DROPPED due to lack of votes, even though Democrats have 56 of 80 seats

# Topic 1 - Current Tax Laws to Consider & Proposals to Watch - CALIFORNIA

- California Wealth Tax

- This has been proposed in 3 previous bills, but has yet to pass
- This is not about income, but a tax on accumulated wealth
- Based on last introduction
  - 1% annual tax on net worth over \$50M
  - 1.5% annual tax on net worth over \$1B

- Loss of Ability to Use ING Trusts

- ING Trusts = Incomplete Non-Grantor Trusts
- Benefit of these trusts - Defer or avoid California income taxes on non-California sourced income
- California is attempting to legislate these types of trusts are no longer possible
  - If these ING Trusts did NOT work, then California would not have to change the laws to prevent them
  - Do them early so you have the possibility they are grand-fathered in prior to enactment

## Topic 1 - Current Tax Laws to Consider & Proposals to Watch - FEDERAL

- Changes to the Estate/Gift/GST Tax Exemption Amount
  - Currently in 2022, the exemption equals \$12,060,000
  - With no Congressional Action, exemption reduces to \$5M (indexed for inflation) on January 1, 2026
  - However, Congressional Action may reduce the exemption sooner and to an amount even less than \$5M
- Possible loss of the ability to use valuation discounts for estate planning
  - *Fractional Interests in Real Estate* - allows discounting 15% to 25%
  - *Transfers of Minority Interests in LLCs/LPs/Corps* - allows discounting 30% to 37%
  - With discounting, you could transfer more than \$12,060,000. It would equal \$34.4M worth of assets (assumes a 35% discount)
- Possible loss of the ability to use 1031 Exchanges in the Future

## Topic 2 - Proposition 19 is now in effect - Now what?

- Beginning on February 16, 2021, Proposition 19 went into effect
  - ***Ability to transfer base year value of a primary residence to a new primary residence for individuals over the age of 55***
    - This can now be done 3 times, anywhere in California
    - Value of new home above the prior home's base value is added to it
  - ***Ability to transfer real estate to between parents-children or grandparents-grandchildren have changed***
    - New principal residence requirement; NO LONGER ABLE TO TRANSFER "OTHER" REAL PROPERTY
    - New value requirement
    - Application of the exemption is temporary

## Topic 2 - Proposition 19 is now in effect - Now what?

- If You Are Unhappy With Proposition 19, Please Reach Out to the Howard Jarvis Taxpayers Association

- **They are attempting to bring legislation to go back to the OLD parent-child exemption laws, and have it go retroactive as of February 16, 2021, so that it would be as if Proposition 19 never applied.**
- **THEY NEED SIGNATURES - so please reach out!**
- [www.HJTA.org/RepealTheDeathTax](http://www.HJTA.org/RepealTheDeathTax)

## **Topic 2 - Proposition 19 is now in effect - Now what?** *When CA Real Property Taxes are Reassessed*

- In California, the presumption is that on the transfer of California real estate, whether by sale, gift, or bequest, the State assumes a 100% reassessment of property taxes based on the current FMV of the real estate.
  - So this is the presumption on EVERY deed that we file.
- Reassessment will occur unless an exception applies.
- **The most commonly used exemption to property tax reassessment is the Parent-Child Exemption.**

## Topic 2 - Proposition 19 is now in effect - Now what?

### *The Parent-Child Exclusion - Timing*

### Timing Matters

Transfers On or Before February 15, 2021 = BOE-58-AH = OLD LAW

Deed **caused by Death** that Occurred on or Before 2/15/2021

Deed **signed and notarized** on or before 2/15/2021

Transfers On or After February 16, 2021 = BOE-19-P = NEW LAW

Deed **caused by Death** that occurred On or After 2/16/2021

Deed **signed and notarized** On or After 2/16/2021

## Topic 2 - Proposition 19 is now in effect - Now what?

### • Principal Residence or Use Requirement

- Exemption from reassessment as to transfers between parents and children is only allowed if (a) the parent transfer's their principal residence to their child and (b) the property becomes the child's principal residence.
  - No more exemption from reassessment for real estate that is not a parent's principal residence.
  - No more exemption from reassessment if a parent transfer's their principal residence but the child does not then use the property as their own principal residence.
- **PROVE IT** - File a Homeowner's Exemption within 1 year of the transfer

## Topic 2 - Proposition 19 is now in effect - Now what?

- **Value Requirement**

- If the principal residence requirements are met, the child's assessed value is then determined based on whether the property's value at the time of transfer is greater than the parent's assessed value by more than \$1M.
  - If the FMV of the property is LESS THAN the parent's assessed value plus \$1M, then the child takes the parent's assessed value.
  - If the FMV of the property is GREATER THAN the parent's assessed value plus \$1M, then the FMV of the property over and above the parent's assessed value plus \$1M will be reassessed for property tax purposes.

## Topic 2 - Proposition 19 is now in effect - Now what?

- Temporary Exclusion for Reassessment
  - So long as a child uses the home as his/her principal residence, the parent-child exclusion from reassessment applies.
  - Once a child no longer uses the property as his/her principal residence, then the property is reassessed based the value on the date of the ORIGINAL transfer to the child.

## Topic 2 - Proposition 19 is now in effect - Now what?

### *Common Questions*

- **Who Qualifies as a "child"?** - (a) a child born to the parents; (b) a stepchild or spouse to a stepchild while the relationship of stepparent and stepchild exists; (c) a son-in-law or daughter-in-law of the parents; (d) a statutorily adopted child, who was adopted by age 18; (e) a foster child of a state licensed foster parent
- **If a parent's principal residence is a unit in a duplex, does the whole property qualify for the parent-child exclusion?** NO - only the unit actually lived in by the parent is eligible, not the whole property
- **If a parent has an estate plan that gives their assets to their son and daughter, do both children have to live in the principal residence?** - NO, only one child needs to live in the home as his/her principal residence.
- **Is Proposition 19 Retroactive?** - NO, it only applies to transfers that occur on or after 2/16/2021
- **Does Proposition 19 Apply to Legal Entities?** - NO, it only applies to transfers by deed

### PARENT-CHILD & GRANDPARENT-GRANDCHILD EXCLUSION

	Proposition 58/193 (Former Law)	Proposition 19 (Current Law)
<b>Principal Residence</b>	<ul style="list-style-type: none"> <li>→ Principal residence of transferor</li> <li>→ No value limit</li> <li>→ Residence and homesite (excess land may be excluded as "other property")</li> </ul>	<ul style="list-style-type: none"> <li>→ Principal residence of transferor and transferee</li> <li>→ Value limit of current taxable value plus \$1,000,000 (as biennially adjusted)</li> <li>→ Family homes and farms</li> </ul>
<b>Other Real Property</b>	<ul style="list-style-type: none"> <li>→ Transferor lifetime limit of \$1,000,000 of factored base year value</li> </ul>	<ul style="list-style-type: none"> <li>→ Eliminates exclusion for other real property other than the principal residence</li> </ul>
<b>Grandparent-Grandchild Middle Generation Limit</b>	<ul style="list-style-type: none"> <li>→ Parent(s) of grandchild, who qualifies as child(ren) of grandparent, must be deceased on date of transfer</li> </ul>	<ul style="list-style-type: none"> <li>→ No change: parent(s) of grandchild, who qualifies as child(ren) of grandparent, must be deceased on date of transfer</li> </ul>
<b>Filing Period</b>	<ul style="list-style-type: none"> <li>→ File claim within 3 years or before transfer to third party</li> </ul>	<ul style="list-style-type: none"> <li>→ File for homeowners' exemption within 1 year of transfer</li> <li>→ File claim for exclusion within 3 years or before transfer to third party</li> </ul>
<b>Implementing Statute</b>	<ul style="list-style-type: none"> <li>→ Revenue &amp; Taxation Code section 63.1 (implements Propositions 58/193)</li> </ul>	<ul style="list-style-type: none"> <li>→ Revenue and Taxation Code section 63.2 (implements Proposition 19)</li> </ul>
<b>Important Dates</b>	<ul style="list-style-type: none"> <li>→ Through February 15, 2021</li> </ul>	<ul style="list-style-type: none"> <li>→ Effective February 16, 2021</li> </ul>

### BASE YEAR VALUE TRANSFER - PERSONS AT LEAST AGE 55/DISABLED

	Current Law	Proposition 19
Type of Property	→ Principal residence	→ Principal residence
Timing	→ Purchase or newly construct residence within 2 years of sale	→ Purchase or newly construct residence within 2 years of sale
Location of Replacement Home	→ Same county → County with intercounty ordinance (10 counties)	→ Anywhere in California
Value Limit	→ Equal or lesser value → 100% if replacement purchased/new construction prior to sale → 105% if replacement purchased/new construction in first year after sale → 110% if replacement purchased/new construction in second year after sale	→ Any value → Amount above 100% is added to transferred value
How many transfers?	→ One time → Exception: After using once for age, second time for subsequent disability	→ Three times
Implementing Statute	→ Revenue & Taxation Code section 69.5 (implements Propositions	→ To be determined

## **Topic 2 - Proposition 19 is now in effect - Now what?**

### *There Are Still Planning Opportunities*

- While qualification for transfers under Prop. 19 may be MUCH MORE rare now, there is still an opportunity to transfer CA real property to children without reassessment.
  - Primary Residences
  - Apartments, Duplexes and Triplexes
  - Commercial Properties

### **WE MUST FOCUS ON WHAT IS BEING TRANSFERRED**

Real Estate via a Deed or an Interest in an LP/LLC/Corp

IT MATTERS

## **Topic 2 - Proposition 19 is now in effect - Now what?**

### *Changes in Ownership*

- Under Prop. 13, property will be reassessed when there is a change in ownership of real property.
- A change in ownership is comprised of three elements:
  - Transfer of a present real property interest;
  - Including the beneficial use thereof; and
  - The value of the interest is substantially equal to the value of the fee.

## Topic 2 - Proposition 19 is now in effect - Now what?

### *Proportional Interest Transfers*

- Revenue & Taxation Code Section 62(a)(2) excludes from a change in ownership "Any transfer between an individual or individuals and a legal entity or between legal entities... that results solely in a change in the method of holding title to real property and in which proportional ownership interests of the transferors and transferees... remain the same after the transfer."
- **Translation - However, you owned the real estate prior to deeding it into the entity, you must own the entity in the exact same proportion.**

## Topic 2 - Proposition 19 is now in effect - Now what?

### *Entity Transfers*

- Change of Control - Revenue & Taxation Code Section 64(c) provides that a change in ownership occurs when a person obtains control of **more than** 50% of the voting stock of a corporation or obtains more than 50% of the ownership interest in any partnership, LLC, or other legal entity.
- Change in Original Co-Ownership - Revenue & Taxation Code Section 64(d) provides that if property was transferred to a legal entity then in addition to the 64(c) rule, there is also a change of ownership when **more than** 50% of the original co-owner's interests are cumulatively transferred (this is called the "taint").
  - **HOWEVER - If the Legal Entity BOUGHT the real estate, you do not need to be concerned with this rule as it will not apply.**

## Topic 2 - Proposition 19 is now in effect - Now what? Joint Tenancy Transfers

- Revenue & Taxation Code Section 65(b) provides that “there shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the “original transferor or transferors” for purposes of determining the property to be reappraised on subsequent transfers.”
  - **TRANSLATION - Upon creation of a joint tenancy, no reassessment if each joint tenant owns an equal portion of the real estate beforehand.**
- Revenue & Taxation Code Section 65(c) provides that “upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal.”
  - **TRANSLATION - Upon termination of a joint tenancy, no reassessment if the property reverts to an original owner of the property prior to the joint tenancy**

## **Topic 2 - Proposition 19 is now in effect - Now what?** *Putting it All Together*

- Through various transfers, the above rules may be combined to successfully transfer California real property to a child without incurring reassessment on the transfer.

## **Topic 2 - Proposition 19 is now in effect - Now what?**

### *Hypothetical #3*

- Mom owns 100% of a commercial property located in California.
- Mom creates a limited liability company (LLC), of which she is the sole member, and transfers the property into it (proportional transfer - no reassessment).
- Thereafter, Mom gives a 50% interest in the LLC to Child (no change of control of more than 50% - no reassessment).
- Two years later, Mom and Child dissolve the LLC with each taking a 50% tenants in common interest in the property (proportional transfer - no reassessment).
- A year later, Mom and Child file a new deed, owning the property as joint tenants (no reassessment). Mom and Child are now both Original Transferors.
- Upon Mom's death, Child is the sole remaining owner of the property (no reassessment - all property vested in an Original Transferor).

## **Topic 2 - Proposition 19 is now in effect - Now what?**

*Potential Risks Involved*

- Parent dies before all transfers take place - may cause partial reassessment of the property
- Risk of lawsuit - no protection owning the asset in name alone (*i.e.*, not in a trust or in a business entity)
- Risk of parent and child dying together - probate
- Step Transaction Doctrine

## **Topic 2 - Proposition 19 is now in effect - Now what?**

*How to Get Real Estate Out of Your Estate and Avoid a Property Tax Reassessment?*

USE A "SLAT"

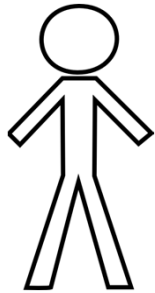
**Spousal Lifetime Access Trust**

## Topic 2 - Proposition 19 is now in effect - Now what?

*PLAN FOR THE Spousal lifetime access trusts ("SLATS") for Husband and Wife*

- **Step 1 - Husband uses his remaining gift tax exemption to establish and fund a SLAT for Wife**
  - This is an irrevocable trust where Wife is the primary beneficiary. Due to California law issues, distributions from the SLAT cannot be made to Wife to satisfy Husband's legal obligation to support her as his spouse. However, distributions that go above and beyond his obligation to support her can be made to Wife. The distributions will be more expansive after Husband's death.
  - While the SLAT will have its own taxpayer identification number, all of the income taxes of the SLAT will be reported on Husband's tax return. The grantor will be Husband. By Husband paying the income taxes of this SLAT, he is making tax free gifts to the SLAT which will inevitably help reduce his overall taxable gross estate.
  - The assets owned by the SLAT will not be includible in Husband's or Wife's gross estate at their deaths.
- **Step 2 - Wife uses her remaining gift tax exemption to establish and fund a SLAT for Husband**
  - This is an irrevocable trust where Husband is the primary beneficiary. Due to California law issues, distributions from the SLAT cannot be made to Husband to satisfy Wife's legal obligation to support him as her spouse. However, distributions that go above and beyond her obligation to support him can be made to Husband. The distributions will be more expansive after Wife's death.
  - While the SLAT will have its own taxpayer identification number, all of the income taxes of the SLAT will be reported on Wife's tax return. The grantor will be Wife. By Wife paying the income taxes of this SLAT, he is making tax free gifts to the SLAT which will inevitably help reduce his overall taxable gross estate.
  - The assets owned by the SLAT will not be includible in Husband's or Wife's gross estate at their deaths.

## Topic 2 - Proposition 19 is now in effect - Now what?



**Gift Remaining Exemption**



**SLATs**

Husband's SLAT is established and funded by Wife using her remaining gift and GST tax exemption.  
Wife's SLAT is established and funded by Husband using his remaining gift and GST tax exemption..

The SLATs will be outside Husband's and Wife's gross estates.

## **Topic 2 - Proposition 19 is now in effect - Now what?**

### *Summary of benefits SLAT TRANSACTION*

- The allows Husband and Wife to utilize their current gift tax exemption to remove assets out of their estate, along with their future appreciation. This will also keep these assets out of the Primary Beneficiary's estate for estate tax purposes as well.
  - Allows the ability to move real estate out of your estate without property tax reassessment
  - Allows Husband the ability to control his SLAT; Allows Wife the ability to control her SLAT
    - Most distributions (varies)
    - All Investments
    - Ability to rewrite where the assets of their SLAT goes at their death
- While we know that Husband and Wife have an \$12.06M exemption (less anything previously used) for the year of 2022, we do not know how much longer that will remain available. It is possible that we may see the exemption be reduced to \$3.5M or \$5M in the future (or at least to \$5M in 2026)

## **Topic 2 - Proposition 19 is now in effect - Now what?**

**HOW TO CONTINUE REMOVING ASSETS FROM THEIR ESTATE  
AFTER THEY HAVE UTILIZED ALL OF THE GIFT/ESTATE TAX EXEMPTION**

**BENEFICIARY DEECTIVE  
INHERITOR'S TRUST  
("BDITs")**

**FOR Husband and Wife**

## **Topic 2 - Proposition 19 is now in effect - Now what?**

### *BDIT BASICS: Beneficiary Defective Inheritor's Trust*

- (1) A BDIT (a Beneficiary Defective Inheritor's Trust) is a trust created by a parent or other third party who contributes \$5,000 in cash to the trust; no other gifts are made to the trust by anyone, especially by the beneficiary.
- (2) The trust creator is the grantor of the trust for transfer tax purposes and creditor rights purposes, but not for income tax purposes. That is, the BDIT is intentionally created as a non-grantor trust from the creator's point of view.
- (3) The trust is irrevocable, fully discretionary, dynastic, and GST exempt (because the creator allocated \$5,000 of his or her GST exemption to the only gift to the trust), and the beneficiary has a limited power of appointment over the trust, exercisable during life or at death.
- (4) The beneficiary is given a "Crummey" type power to withdraw the original gift, which right lapses. While the power of withdrawal is outstanding, the beneficiary is treated as the owner of the trust for income tax purposes under Section 678(a)(1). After the withdrawal right has lapsed in accordance with Section 678(a)(2), the beneficiary is thereafter treated as the owner of the trust for income tax purposes.

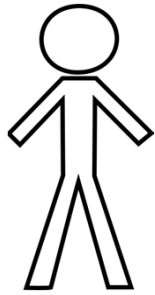
## **Topic 2 - Proposition 19 is now in effect - Now what?**

### *BDIT BASICS: Beneficiary Defective Inheritor's Trust*

- (5) As a wholly grantor trust from the beneficiary's point of view, the beneficiary pays tax on all trust income (with no gift consequences) - the "tax burn", and transactions between the beneficiary and the trust (such as sales or loans) are ignored for income tax purposes.
- (6) The beneficiary could be the investment trustee, but an independent trustee should be the distribution trustee and must be the insurance trustee with respect to insurance on the life of the beneficiary/trustee.
- (7) The BDIT can give the beneficiary investment control over the trust (except for insurance on his or her life) and a power of disposition over the trust assets at death (and again, except for insurance on his or her life), but the trust is creditor/predator proof and transfer tax protected from the beneficiary's point of view.
- (8) As a GST-exempt dynastic trust, the BDIT will continue after the beneficiary's death, subject to his or her special power of appointment, for the beneficiary's descendants, for life, with the same protections (though not as a grantor trust from their point of view).

## Topic 2 - Proposition 19 is now in effect - Now what?

### STEP 1a - ESTABLISH A BDIT FOR HUSBAND/WIFE



**Gift of \$5,000**

**BDIT FOR Husband/Wife**

The BDIT is established and funded by a friend with \$5,000 of cash. Since this amount is less than \$16,000 (the annual exclusion amount), there are no negative gift tax consequences to the friend in establishing the BDIT.

The BDIT cannot be directly or indirectly funded by Husband or Wife.

The reason why the BDIT needs to be established by a friend, and not by Husband/Wife, is because Husband/Wife is going to be the primary beneficiary of the BDIT and the income taxes will flow to Husband/Wife pursuant to IRC Section 678.

## Topic 2 - Proposition 19 is now in effect - Now what?

### STEP 1b - USE PRIOR TRUSTS AS A GUARANTOR TRUST

**IDGT FOR Kids**  
(Guarantor)

**SLATs for Husband AND  
Wife**  
(Guarantor)

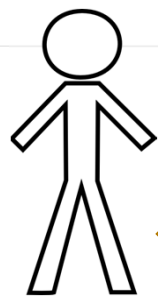
These irrevocable Trusts and SLATs will guaranty that the BDITs will make its installment payments to Husband/Wife. We prefer these because they are income tax neutral, but other individuals or entities could do this as well.

In exchange for this guaranty service, the Irrevocable Trusts and SLATs will be entitled to a Guaranty Fee (to be appraised, but generally close to 1.5%-2% of the amount guaranteed).

These irrevocable Trusts and SLATs need to jointly guaranty 20% of the purchase price of the assets sold to the BDITs.

## Topic 2 - Proposition 19 is now in effect - Now what?

### STEP 2 - Husband/Wife SELLS ASSETS TO THE BDIT (EXAMPLE HIGHLIGHTING HUSBAND)



Husband

**Sale of Assets**

**Installment Note = \$**

Interest Only - 20 Years at long term AFR  
Principal Due in 2042

**BDIT FOR Husband**

Guaranty  
Fee

**IDGT Trusts**  
**SLATs**  
(Guarantor's Trust)

Husband can sell any assets to the BDIT, but is limited to what the Guarantor Trusts can handle. In exchange for the interests sold, the BDIT will give Husband an installment note that provides for interest only payment at the long-term applicable federal rate ("AFR") for 20 years, with a balloon payment at the end of the term (2041).

- The note can be prepaid without penalty.

**Husband** = No income taxes due at this time as a result of this sale. Income taxes will also **not be owed** by Husband when any payments are made under the installment note to Husband. All income tax consequences are ignored for transactions between Husband and the BDIT

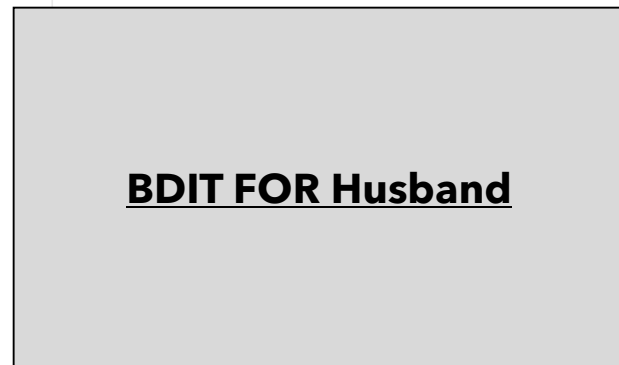
**BDIT** = No income taxes due on the purchase either, but the BDIT will inherit Husband's basis in the assets sold to it

- All future income taxes of the BDIT will be reported on Husband's personal income tax return

**Guarantor Trust** = the IDGTs and/or SLATs will act as Guarantor's of the BDIT's purchase of assets from Husband. In exchange, the BDIT will owe the trusts that act as the Guarantor a Guaranty Fee (which is determined by an appraiser)

## Topic 2 - Proposition 19 is now in effect - Now what?

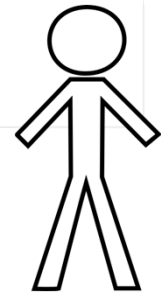
### STEP 3 - BDIT ADMIN. POST SALE, DURING HUSBAND'S LIFE (EXAMPLE HIGHLIGHTING HUSBAND)



Guaranty  
Fee from  
Original  
Sale



**Trust Beneficiary Distributions**  
Income - to Husband for any reason as directed by the Distrib. Advisor  
Principal - to Husband for any reason as directed by the Distrib. Advisor  
Withdraw Power - Husband can withdraw for his health, education and living expenses



Husband

Installment Note  
Mandatory Interest Annual Payments to Husband  
Optional Distributions of Principal Under the Note

#### Husband has 3 Main Ways to Get Distributions from the BDIT

- Payments to Husband to satisfy the terms of the installment note
- Payments to Husband or other beneficiary of the BDIT at the discretion of the distribution trust advisor
- Husband can withdraw assets from the BDIT for his health, education and living expenses.
- Distribution Preferences
  - At a minimum, interest payments on Note must be paid to Husband annually. Can prepay note at anytime.
  - In the event the BDIT makes any other distributions to Husband, those distributions should be used to reduce the principal balance of the installment note. This is optional, but preferred.
- **Guarantor Trusts** = will receive a Guaranty Fee from the BDIT so long as the Note is outstanding. However, the guaranty fee will be ignored for income tax purposes so long as the Guarantor Trust remain grantor trusts.

## Topic 2 - Proposition 19 is now in effect - Now what?

### STEP 4 - TRUST ADMIN. AFTER NOTE PAID OFF (EXAMPLE HIGHLIGHTING HUSBAND)

#### BDIT FOR Husband

#### Trust Beneficiary Distributions

**Income - to Husband for any reason as directed by the Distribution Advisor**  
**Principal - to Husband for any reason as directed by the Distribution Advisor**  
**Withdraw Power - Husband can withdraw for health, education and living expenses**



Husband

- Husband can receive distributions as a beneficiary of the BDIT at discretion of distribution trust advisor, at any time and for any reason.
- Husband can always go directly to the Trustee to withdraw assets for his health, education and living expenses
- Default Provisions at Husband's Death
  - *Default Rule* - The remaining balance of the BDIT is divided equally between the Husband's children and continue to be held in trust. (We can design this in another matter if appropriate)
  - *Rewrite Power* - Husband will have the power to rewrite how the BDIT is distributed following his death. This power can be exercised at any time down the road, or even multiple times. This gives Husband a lot of flexibility
- Investment Decisions - Controlled by the investment trust advisor (Husband).

## Topic 3 - Importance of an Updated Estate Plan

- If a global pandemic has taught us anything, it's that anything is possible and that anything can happen to anyone at any time but... we never really know for certain when it will happen.
- With that said, it's best to be prepared for anything.
  - Estate plans aren't just for the elderly!
  - And waiting to update an estate plan should not be put off until right before a surgery or vacation.

## Topic 3 - Importance of an Updated Estate Plan

- Remember the basic components of a Basic Estate Plan
  - Revocable Living Trust
  - Pour-Over Will
  - Power of Attorney for Asset Management
  - Advance Health Care Directive

## Topic 3 - Importance of an Updated Estate Plan

- Durable Power of Attorney
  - Are all your bills online?
  - Who has access to your digital assets if you are incapacitated?
    - How much access is granted? A log of emails or contents as well?
  - Have you set your legacy contacts on your Apple, Facebook, and Gmail accounts?

## Topic 3 - Importance of an Updated Estate Plan

- Advance Healthcare Directives (AHCDs)
  - Broad AHCDs are important
    - Is your Agent's authority valid via phone calls and Zooms, or only in person?
    - Is your AHCD specific to more than just one hospital or doctor?
  - Do your Agents know where to locate your AHCD if you are in an accident?

## Topic 4 - Easy Ways to Protect Your Assets

### Timing is Everything

- Once you have a creditor, it is likely too late to shield your assets from that creditor.
- All planning should be undertaken while your "seas are calm."

## Topic 4 - Easy Ways to Protect Your Assets

### Insurance is Important

- Whether it's car insurance, homeowner's insurance, renter's insurance, etc., insurance will always be your first line of defense against a creditor.

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There is no protection against creditors for real estate owned in (a) your own name or (b) in a revocable living trust.

- For example, say you live in Nevada but own, in your living trust, a piece of property on the beach in California where a renter slips and falls - even though Nevada is a debtor friendly state, a California judge may award the California property to the creditor if insurance doesn't cover the damages.

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It is better to own real estate in an LLC or Partnership

- An entity that owns real estate can shield the asset from liability.
  - Inside Liability Protection: if there is a slip and fall on the property owned by the entity, the creditor can only reach assets owned by the entity to satisfy the debt.
  - Outside Liability Protection: if the business owner has a personal creditor (ex., a car accident), the entity may shield the entity's assets from being collected to satisfy the debt.

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Different states offer different levels of protection.

- A charging order is an order issued by a court directing an LLC's manager to pay to the debtor-member's personal creditor any distributions of income or profits that would otherwise be distributed to the debtor-member.
- In California, single member LLCs are not afforded charging order protection, and California treats spouses as one member for this purposes.
  - Furthermore, a creditor may move to foreclose the LLC to satisfy their judgment.
- Nevada allows for single member LLC charging order protection.
  - Nevada does not allow a member's creditor to foreclose the LLC or take a members' interest in the LLC.
  - Charging orders are the sole remedy of the creditor.

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It is riskier to have multiple properties in one entity.

- Having entities for each piece of real estate provides better protection for those assets.
  - If one LLC owns multiple pieces of real estate and there is a slip and fall on one property, each piece of real estate owned by the entity may be used to satisfy the creditor's judgment.
  - If there is only one piece of real estate per LLC, a slip and fall on one property would not affect the property owned by another.

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It is riskier to have multiple properties in one entity.

- With having each piece of real estate owned by a separate entity, they may all be connected by an additional entity, which manages the others.
  - Profits from each real estate-owning entity may be pushed up to the managing entity, thus helping to protect the rental income from the real-estate owning entity's potential creditors.

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The Family Revocable Trust is the member of the Managing LLC to avoid probate.

Family Revocable Trust

The Managing LLC distributes profits to the Trust.

The Managing LLC is the member of Entity A, B, & C.

Managing LLC

Entity A, B, & C distribute profits to Managing LLC.

Entity A  
Owns Black Acre

Entity B  
Owns White  
Acre

Entity C  
Owns Green  
Acre

A slip and fall on Black Acre does not put White Acre or Green Acre at jeopardy.

## Topic 4 - Easy Ways to Protect Your Assets

### Protect Your Assets From Needless Income Taxes

- (1) Out of State Trusts - Helps avoid California income taxes on non-California Sourced Income
- (2) Charitable Remainder Trusts - Allows you to (a) get an income tax deduction to take this year (5 year carryover); (b) the trusts avoids paying Federal and State income taxes on the sale of the asset or real estate; (c) the assets of the trust are used to pay you an income stream for the rest of your life; and (d) at your death, the remaining balance goes to charity or a donor advised fund
- (3) File California Income Tax Returns

## 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 ME FOR A COMPLIMENTARY PHONE CALL OR ZOOM MEETING.**

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