

# HALES, HALES & GEORGE

ATTORNEYS AT LAW

N E W S L E T T E R

Devoted to Estate and Business Planning Law and Trust Administration Since 1972.

## LOOKING BACK ON MY SILVER ANNIVERSARY AS AN ATTORNEY

by Robert E. Hales

I have often been asked over the past 25 years, what was the biggest problem that clients face in my area of law. I am sure that most people would think it was the federal estate tax laws, which indeed are a big problem. Other people would think about the horrors of taking an estate to the probate courts, which again is a serious and expensive obstacle. But what I would have to list as the biggest difficulty in estate planning is the vast amount of misinformation that is in the market place consistently being fed to you.

Part of this misinformation only involves minor problems, such as people being told at cocktail parties and by other attorneys that if you do not title everything in your name, as Trustee of your revocable trust, that the asset isn't in the trust. As all of you know, that is not legally correct. As long as your assets are listed on your Exhibit A, signed and dated by you, the law of California clearly

states that your assets are in your trust.

Other misinformation creates big problems. One bad idea, and it is still in the marketplace, is the concept that you can somehow create an irrevocable trust and place all of your assets in that trust. The trust alleviates the need to pay any income taxes during your life or federal estate taxes at your death. Additionally, you will be able to continue to use all of your assets for the rest of your life. If that type of irrevocable trust exists, I can assure you that we all would have one and there would never be any taxes paid by anyone in the United States.

Another major piece of misinformation that my colleagues in the legal profession profess loudly and clearly, is the theory that you should give away everything you own, before you die, so that you do not have to pay any death taxes. How many of you have heard that you should set up a charitable remainder trust, just so that you can avoid the unnecessary capital gains taxes? How many of you are being advised to set up family limited partnerships, as a means of avoiding taxes? You know, I spent a lifetime accumulating my wealth, and saving up for a rainy day. I would hate to be told at age sixty-

three, now that it's starting to sprinkle, that I should start giving away my umbrella. Many of you have heard me say in my seminars, that the person who owns your wealth will pick your nursing home. I am not too sure that my children haven't picked out a one-room apartment on Mission Street in San Francisco. All of you who know me are aware that I have picked out a pent-

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### PERIODIC REVIEW OF LIVING TRUST IS NECESSARY

A periodic review of your estate plan with an attorney in our office is necessary especially when major changes occur in your life. Of course, regardless of whether any of the below changes have happened, you should still make an appointment to visit our offices if a substantial amount of time has elapsed since our last meeting, or

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#### HERE'S MORE INSIDE

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## IS YOUR LIVING TRUST CURRENT?

### Estate Planning Highlights of the Taxpayer Relief Act of 1997

by William P. George

In 1997, substantial changes were enacted in the tax code which are summarized below:

#### I. Increase in Estate Tax Exemption

The estate tax exemption, which is currently \$625,000, is increased gradually until the year 2006 as follows:

Year	Equivalent
1998	\$625,000
1999	\$650,000
2000	\$675,000
2001	\$675,000
2002	\$700,000
2003	\$700,000
2004	\$850,000
2005	\$950,000
2006 and thereafter	\$1,000,000

#### II. Capital Gains Tax Changes on Sales of Principal Residence

The new law drastically changes the laws relating to the sale of a principal residence.

##### GONE:

1. Tax-free rollover of gain into new residence
2. 55 years or older one-time exclusion of \$125,000

##### REPLACED BY:

1. Capital gain is excluded for sales or exchanges on principal residence after May 7, 1997 on gains up to \$500,000 for married couples or \$250,000 for single individuals.
  - Can't be used more frequently than every two years.
  - Individual must have owned and occupied principal residence for at least 2 of the 5 years prior to the sale or exchange.

#### III. Family Owned Business Exclusion

A new estate tax exclusion exists for the value of a qualified family-owned business interest. The exclusion is effective for estates of decedents dying after 1997 and is equal to \$1.3 million reduced by the exemption equivalent in the year of the decedent's death. The exclusion is available only if certain requirements are met. The most significant are:

1. The business interest must be 50% or more of the estate.
2. Decedent must be a U.S. citizen or resident.
3. The decedent (or family members) must have materially participated in the operation of the business for 5 of the 8 years preceding decedent's death.
4. Business must pass to "qualified heir" i.e., family or certain key employees.

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## PERIODIC REVIEW OF LIVING TRUST IS NECESSARY

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if you have any questions about your estate plan. We have detailed some of the examples of occurrences that necessitate a review of your estate plan below.

- Divorce
- Remarriage
- New Children/Grandchildren Born
  - Children have attained adulthood
  - Children have drug/alcohol problems
  - You desire Generation Skip advantages
- Durable Powers of Attorney Executed Before 1989 Must be Re-executed
- Death of a Settlor, Trustee, and/or Beneficiary
- Changes in Financial Net Worth
- Purchase of New Real Property
- Execution of Living Trust Prior to 1982
- Purchase of Life Insurance

### PLEASE WRITE US...

If you have a friend, relative or associate who would like to receive a copy of the HALES, HALES & GEORGE newsletter, please let us know by writing us with their name and address.

Additionally, if you have any questions you would like answered in our next HALES, HALES & GEORGE newsletter, please write us.

All correspondence can be sent to our main office:

### HALES, HALES & GEORGE

Newsletter  
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Saratoga, CA95070

## LOOKING BACK ON MY SILVER ANNIVERSARY AS AN ATTORNEY

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house suite on the Crystal Symphony. As long as Joan and I keep our estates, we get to pick our nursing home.

There is nothing wrong in having wealth. What's wrong is having wealth that isn't protected. There is nothing wrong in owning a million dollar building as long as you have fire insurance to protect it if it burns down. There is nothing wrong in having a beautiful automobile, as

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**"There is nothing wrong in having wealth. What's wrong is having wealth that isn't protected."**

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long as you have automobile insurance to protect it if you are in an accident. I make a gift every year for my children, but it isn't hundreds of thousands of dollars, or millions of dollars to avoid death taxes. It is a few thousand dollars of premiums into my irrevocable life insurance trust, which has enough life insurance to pay all of my death taxes when I die. That money is given to my children, by the way, on a tax-free basis. How easy it has been for Joan and me, all of our life, to give away those life insurance premiums and keep all of the rest of the wealth, and know that it will be in our checkbook until the day we die.

Finally, the biggest mistake that people make is that by becoming so preoccupied with taxes and probate, they lose track of the fact that the primary reason they do estate planning, is not to avoid taxes and probate, but to guarantee that the estate went to the persons they choose. If my estate winds up with Joan's third husband, then what good did it do me to avoid taxes and probate. In a

divorce, if my son's wife gets half of everything I left him, what good did it do me to avoid taxes and probate. Finally, if my daughter's third husband gets my estate, when it should have gone to my grandchildren, what good did it do me to avoid taxes and probate. I believe that this is the essence of the estate planning process. The preservation of the family wealth, within the family unit, for as long as is possible, under existing law. To make the saving of taxes and the avoidance of probate the primary thrust of estate planning at the cost of having it go to people you never met, is the biggest mistake that I have seen in the estate planning process.

Knowing that the clients of this firm, for the last twenty-five years,

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**"Have all of my clients' parents done the proper estate plan? Have their brothers and sisters? Have their own children?"**

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have had this big picture concept of estate planning presented to them, I now begin to think of the other family members. Have all of my clients' parents done the proper estate plan? Have their brothers and sisters? Have their own children? The day that I dictated this letter to you, I was able to sit down and do an estate plan for the son and wife of one of the clients that I have known for more than twenty years. It is very rewarding to know that it isn't just my clients who know about the true value of estate planning, but also their friends, relatives and their children. ✦

## IS YOUR LIVING TRUST CURRENT?

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5. Heirs must own and stay actively involved in business for required portion of 10 years following death.

### IV. Indexing of Gift Tax Annual Exclusion and Other Provisions

Beginning in 1999, the following provisions will be indexed for inflation:

1. \$10,000 annual gift tax exclusion
2. \$750,000 maximum reduction in value under the special use valuation under IRC Section 2032A
3. \$1,000,000 generation-skipping transfer tax exemption
4. \$1,000,000 ceiling on the value of a closely-held business eligible for the special 2% interest rate under IRC Section 6166 ✦

## CAN WE TALK?

Do you have a business, club or group who would like to hear a presentation on estate and business planning? All three of the attorneys at our office give interesting and humorous seminars to audiences of 10 to 500. Please call our main office for further information or to schedule a seminar.

**HALES, HALES & GEORGE**

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HALES, HALES & GEORGE, a family-owned law firm with offices in Saratoga and San Francisco, California, specializes in Estate and Business Planning as well as Probate and Trust Administration. Each partner of Hales, Hales & George is a member of the State Bar of California, the Santa Clara Bar Association, and the Santa Clara County Estate Planning Council. This issue of the Hales, Hales & George Newsletter was designed by Lynn Anne Heil and written & edited by attorneys Robert E. Hales, Jan Marie Hales and William P. George. Any questions raised by these articles can be addressed by simply writing the law firm at 19040 Cox Avenue, Suite 3, Saratoga, CA 95070 attention: HH&G Newsletter. This newsletter is intended to be a source of information for our clients and associates and should not be considered personal legal advice. Laws can change frequently and rapidly. Please consult your attorney before relying on any information contained in this publication. (408) 255-6292, Fax - (408) 865-1904, e-mail: hhginc@aol.com.

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*Estate Plan Up-Date Certificate*

As a service to our existing clients who have received this NEWSLETTER, this certificate entitles you to a meeting with an attorney from HALES, HALES & GEORGE to review your estate plan and the impact of current tax laws for a fee of \$100 per year. This meeting will be a review of all your estate planning documents including your Exhibit "A". If any additional documents or changes to existing documents are required, an additional fee will be quoted during your scheduled appointment.

Please complete the information below and return this certificate with a check for \$100 payable to HALES, HALES & GEORGE. Upon receipt, we will call you to arrange a convenient time to meet with us or please feel free to call us at (408) 255-6292 to schedule an appointment.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

DAYTIME PHONE: \_\_\_\_\_

HOME PHONE: \_\_\_\_\_

