

# 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

## ESTATE PLANNING UNDER THE NEW TAX LAW (Time to review your Living Trust)

On December 22, 2017 the Tax Cuts and Jobs Act was signed into law to take effect January 1, 2018. Many tax provisions are discussed in the 494 page document but the changes for federal estate and gift tax law can be summarized succinctly. The federal estate and gift tax exemptions have doubled. Under the law, each individual can pass approximately \$11.2 million during life, at death or in some combination thereof, free of estate and gift tax. Married couples can transfer approximately \$22.4 million. These amounts will increase annually for inflation and any amount exceeding the exemption is taxed at a 40% rate. The increases in exemptions only last until December 31, 2025. After that, and barring future legislative action, exemption

amounts return to 2017 levels (about \$5.5 million).

### Rethinking Old Trusts

When reviewing old trusts, you may find that their original purpose no longer seems compelling. For married couples, at the first death your estate plan likely allocates the deceased spouse's assets into a "Family Trust" which typically pays income and principal to the surviving spouse for necessities of life. This Family Trust avoids wasting a deceased spouse's unused estate tax exemption. But now, with the increased exemption and with "portability" introduced several years ago, which allows a surviving spouse's estate to use any estate tax exemption amount that the first to die spouse did not use, a Family Trust may seem to be unnecessary. Another benefit of no Family Trust is that all of the assets at the second death receive a "step up" in basis to the market value on the day the

### IS YOUR ESTATE PLAN CURRENT?

(and other reasons to meet  
with Hales & George)

#### Avoid Probate with a Living Trust

A Living Trust is still absolutely necessary to avoid Probate in CA. Probate, triggered by Wills or no estate plan, is an expensive legal procedure which can take years to complete. Probate is a distinct problem and separate from the estate tax.

#### Update Provisions of Living Trust, Will, Durable Power of Attorney (DPA) and Advance Health Care Directive (AHCD)

As mentioned on page one, the new exemption of \$11.2 million per individual creates some options in the provisions

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Reassessment"....pg. 3

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information on .....pg. 3

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# IS YOUR ESTATE PLAN CURRENT?

(and other reasons to meet with Hales & George)

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for your Living Trust that we should discuss. For example, at the second death perhaps adult children can be added as Successor Trustees or receive the distribution of assets outright instead of when they attain some age, e.g. 1/3 at ages 25, 30 and 35. Additionally, maybe children can now act as your agents in the DPA's and AHCD's after your spouse. We should review the current provisions and confirm their viability.

## Update Exhibit A's

Your Exhibit A **should be kept current** because it lists the assets that are in your Living Trust. Remember, the original Exhibit A was returned to you with your other original estate planning documents. **You should add and delete assets** as appropriate, sign, and date it. If you own real property, you should add the real property on your Exhibit A and you should have a **Deed transferring the property into the Living Trust**. **Please call us for a meeting to review your assets and Exhibit A and ensure that all is current.**

## Review Beneficiary Designations

Assets like life insurance, 401k's, IRA's, etc. have beneficiary designations which you should complete. The beneficiary designation mandates who the beneficiary is when you die. If you want your Trust to be the beneficiary of these types of assets, the beneficiary designation should list the Trust. **The mere listing of these assets on the Exhibit A does not designate your Trust as the beneficiary.** The beneficiaries

you designate on your IRA's and retirement plans have very serious implications for income taxation and estate planning at your death. It is imperative that you understand the tax ramifications of who your beneficiary is. Please make an appointment to discuss this with us if you are unsure.

## Children Need Durable Powers of Attorney and Advance Health Care Directives

When children attain age eighteen (18), their parents no longer have any power to make decisions for them, even if the children are incapacitated. Therefore, if parents want to act on behalf of their adult children (yes, they are adults if they are 18), the children should execute a Durable Power of Attorney for legal decisions and an Advance Health Care Directive with HIPPA release for health care decisions, naming their parents as their agents. Of course, all adults should also have these documents to prevent a time consuming and expensive conservatorship proceeding. Please call us if you would like us to prepare these documents.

## Protect Investments with a Limited Liability Company (LLC)

Many of our clients are placing their businesses or rental properties into LLC's to shelter themselves from liability. For example, if a problem occurs in your business or rental property and you are sued and lose, all of your assets could be lost without the protection of a LLC. If your business or properties are in a LLC and you lose in a law

suit, the only assets subject to the lawsuit are the assets in the LLC, not your total estate.

## Changes Regarding Children and/or Grandchildren

Children born to you after the execution of your estate plan should be added to your documents. Also, if children are now adults, you may wish to change the distribution of your assets to the children or you may want to consider the children as Successor Trustees. Additionally, with the birth of new grandchildren, many of our clients consider a bequest of a percentage of their assets to their grandchildren, for example, for their education.

## Death of a Spouse, Trustee or Beneficiary

If your spouse has died since you both created your Living Trust, you should contact our office. At the death of a spouse, a process called Trust Administration is necessary to administer your Living Trust and take full tax advantage of the laws. Please call us if a death has occurred because we initially planned your estate and we are best prepared to administer it after a death. Additionally, if a Trustee or a beneficiary of your trust is deceased, we should discuss replacements and the distribution of your estate.

## Other Considerations Requiring a Meeting with Hales & George

- Death of a Spouse, Trustee or Beneficiary
- Marriage or Remarriage
- New Children/Grandchildren
- Separated/Divorce
- Purchase of new real property
- Children with special need issues
- Changes in financial net worth
- Executed a Living Trust before 1982
- Lost Original Documents

## TIPS TO QUALIFY FOR NO REASSESSMENT

In our meetings with many of you, we have discussed how to file forms to avoid reassessment and higher property tax on transfers of real property between spouses or transfers of real property between parents and children. However, at death, reassessment problems sometimes arise. For instance, when one child wants the residence and not enough other assets exist to distribute equal shares to the other siblings, a

buyout is required, triggering a reassessment. For example, in an estate with a residence worth one million dollars (\$1,000,000) and other assets in the estate worth five hundred thousand dollars (\$500,000) and three (3) children beneficiaries, each beneficiary's equal share is five hundred thousand dollars (\$500,000) from the total estate worth one million, five hundred thousand dollars (\$1,500,000). If one of the children wants the

residence, they would typically need to buy out their siblings' share. This buyout is between siblings and not a parent to child transfer and therefore would be subject to reassessment. However, new approved language now exists that can be added to your trust, referred to as "a right of first refusal" that allows techniques to be used to avoid the reassessment. Please call our office if you would like to meet to discuss this.

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owner died thus dramatically eliminating or reducing capital gains tax when an asset is sold.

However, before you scrap these Family Trusts, consider that they serve many purposes beyond avoiding federal estate tax. Remember, the Family Trust becomes irrevocable at the first death thereby providing creditor protection. Perhaps more importantly, the surviving spouse cannot change the distribution of the Family Trust, must spend their own principal before the principal in the Family Trust and the ultimate distribution desired by the first-to-die spouse at the

second death is guaranteed.

If "Family Trusts" are utilized, the provisions need to be reviewed. When the exemption amount was lower, some clients at the first death allocate the exemption amount to the children and the balance of the deceased spouse's estate to the surviving spouse. Now with the exemption at \$11.2 million, this type of planning could unintentionally disinherit your spouse.

If you have any uncertainty about the provisions or efficacy of your Living Trust, please contact Hales & George to schedule a meeting.

## CAN WE TALK?

Do you have a business, club or group who would like to hear a presentation on estate and business planning? Bill George and Jan Marie Hales give interesting and humorous seminars to audiences of 10 to 500 or more. Please call or write our main office for further information or to schedule a seminar.

## HALES & GEORGE

Newsletter

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## HALES & GEORGE WEBSITE AND E-MAIL ADDRESS

Hales & George Website is at [www.halesgeorge.com](http://www.halesgeorge.com)

Please visit our site for interesting articles and more information about our law firm.

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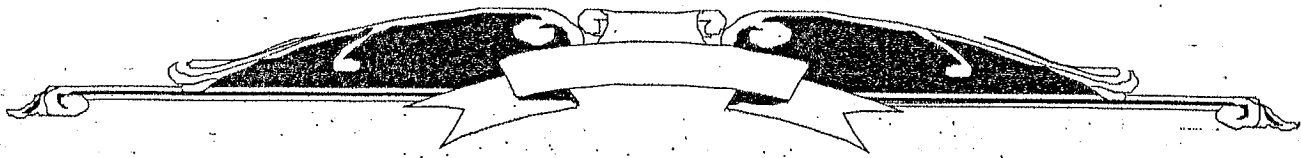
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HALES & GEORGE, a family-owned law firm with offices in Saratoga and San Francisco, California, specializes in Estate and Business Planning as well as Probate and Trust Administration. Each partner of Hales & George is a member of the State Bar of California, the Santa Clara Bar Association, and the Silicon Valley Bar Association. This issue of the Hales & George Newsletter was written & edited by attorneys William P. George and Jan Marie Hales. 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: H&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: reception@hales-george.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 & GEORGE to review your estate plan and the impact of current tax laws for a fee of \$300. 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 \$300 payable to HALES & GEORGE. Upon receipt, we will contact you to arrange a convenient time to meet with you or please feel free to call us at (408) 255-6292 to schedule an appointment.

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

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

DAYTIME OR CELL PHONE: \_\_\_\_\_

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

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

