# Life Planning Newsletter
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Sometimes in this business one hears of cases that demonstrate (1) why a Will or Trust is important and (2) why prompt attention to probate matters are important when a loved one dies. The following two cases demonstrate what can happen when things are not addressed.

Simon was an immigrant to the United States from Canada in the late 1800's. At least the family thought he was an immigrant because he might have been born in northern Montana or southern Alberta. His parents roamed a bit and his mother was Blackfoot and did not really notice boarders. Simon's father was a Canadian drifter, working here and there. Simon had no birth record but did have a social Security number because he applied in the 30's.

Simon moved to the San Pedro area and worked on the docks. He bought a house in the 1930's west of Point Ferman. The properties there were really cheap then because they were so far from anywhere. During WWII, Simon and his wife bought a couple of other properties in the area and were able to pay them off because of the rental income and the low cost of the properties to begin with. Simon's wife died in 1960 and Simon in 1975. Simon left 8 kids who were alive when he died. Three of Simon's kids lived in the properties. The other five had moved away. Two to Texas, one to New York, and the last to Montana. They all married and had kids. Some grand kids. Heirs who die after the death of there ancestor still inherit. If they have will the will controls who gets the inheritance. If they do not have a will the intestacy laws in effect on the date they died will control. In Simon's case these laws changed in 1982 which means Simon's case is brought under the 1975 law and the kid's cases under the post 1982 law. I can only say that a root canal without anesthetic approximates the pain of the SIMON FAMILY ESTATES MATTER.

Now, when one of the three kids here in San Pedro died one of their kids would simply keep living in the home. However, when the last of the three died some of the other grand kids started wondering just who owns the property? You see, the title to the property was still in Simon and his wife's name as Joint Tenants. Now Simon's $25,000 investment holds ocean view properties in the new city of Rancho Palos Verdes worth about $800,000 in 1975, and worth over $3 million now even after the September 07 crash. Who gets what? You see, the Probate must use the 1975 intestacy law to distribute Simon's assets. The Estate might be due rent from the persons using the homes, and because all of Simon's kids are now deceased, Each of them must open a probate to distribute the funds. So now we have 9 simultaneous probates, each worth about $375,000 before tax which is each child's before tax inheritance based on only the real property value. Some of the kids had wills, some did not. Some had kids, some did not. Some had deceased children with kids, some had adopted kids, four had divorced and one divorced three times. Distributing Simon's assets might take a couple years if there are no snags and if there are any assets left after tax. Also Simon may or may not have been a U.S. citizen. That is quite important because while Estate tax starts at about $450,000 (1975) for US citizens, it starts at $30,000 for non-citizens. Moreover, the Estate tax in 1975, which is the required law to be used was 80% plus interest and penalties of about 6% per year from 1975 until the return is filed. Also in 1975 there was CALIFORNIA ESTATE TAX. So if Simon is not a citizen his Estate may be on the hook for about $3.75 million in Estate tax, interest and penalties, which is more than the entire value of the estate. If he was a U.S. Citizen his estate would still owe about $1.5 million in Estate tax. The Estate will also owe capital gains tax on the growth in the property value from 1975 to the present. Now that is around 12% but under the new administration's proposal it will be 33%.

Proper estate planning using creative gifting to charities, generation skipping gifting, or other tax avoidance tools may save that person a lot of money. As it is now, it looks like the Uncle Sam will eat up most of Simon's estate leaving little for his heirs. Had Simon used a little foresight, his entire estate could have passed tax free to his kids and grand kids.

If you know someone in this situation you may want to have them consult with our office or other competent estate planning attorney.

Using your IRA effectively.

One problem with an IRA is that the taxpayer never paid tax on the money invested in the IRA to begin with. Therefore, the amount you see is not really what is there at all. It is before-tax money. The idea is to have little or no income when you retire and the IRA will be taxed at your lower rate. But really, except for post Reagan in 1981 and post George Bush in 2000 the tax rates have increased over time. That means you get caught in two traps with your IRA. the first being, inflation, the money is not worth as much as when you put it in.. The second is the inflationary progressive tax that, contrary to what you hear takes more from you each year no matter where you land on the income scale. We in California are the most taxed people in the USA regardless of our income. And it looks like it will get worse on both fronts with the current borrowing and printing money without anything to back those actions up. We all can expect a bleak tax picture in the near future. And if you die with IRA funds they go into your estate at the before tax amount, then estate tax is taken out then the capital gains are taken out. With the Pelosi tax plan one could easily find your IRA funds taxed at 75% or for funds worth over $1,000,000 left in your estate.

One way to reduce your tax bite might be to use a charitable IRA LLC. IN this way a Taxpayer creates a single member LLC. He then funds the LLC with his IRA, paying some capital gains. The LLC then loans the money to a charity that repays the LLC and buys an insurance policy on the Taxpayer payable to the individual's beneficiaries.

The Insurance policy proceeds come to the beneficiaries tax free, the Taxpayer gets loan income thru the LLC, which is taxable in the same way IRA funds are taxable but without the need for mandatory withdraws (because you no longer have an IRA but a simple loan repayment). This way the future growth of one's IRA comes back tax free and the entire principal goes to the beneficiaries outside of the estate. You also get a chance to help your charity. It is a win win for some taxpayers. You need to consult with a competent financial planner and Estate Planning Attorney to see if this strategy will benefit you. Our office can provide such assistance and recommend competent financial planners if yours is not familiar with this particular approach. When you do consult your financial planner and are told this is illegal, just point them to IRA Private Letter Ruling PLR200741016, where the IRS approved such a strategy.

+++ALWAYS BORROW MONEY FROM A Pessimist. HE'LL NEVER EXPECT TO BE REPAID.

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