



KRAMER RADIN, LLP

LAW FIRM

ESTATE PLANNING MATTERS

FALL/WINTER 2015

PORTABILITY

Whenever there is a death, with or without a Trust, there must be an administration of the decedent's estate. During the administration process many decisions must be made, not the least of which has to do with taxes. But there is a tax rule that is in our favor!

This year each of us has a \$5.43 million federal estate tax exemption (the "exemption"). That exemption is indexed for inflation. This means that in 2016, the exemption is projected to rise to \$5.45 million. Thus, upon our death, if what we leave to our loved ones is worth more than the exemption amount, the excess will be subject to a 40% federal estate tax. However, when working with a surviving spouse, even if a decedent's estate is worth less than the exemption, we are strongly suggesting that the surviving spouse file a federal estate tax return in order to preserve the survivor's right to "portability." According to relatively new IRS regulations, when a spouse dies, any unused estate and gift tax exemption passes to the survivor **only if a federal estate tax return has been filed and only if the surviving spouse elects "portability" on the return.**

For instance, Wilma and Harold, a married couple, had two children, Donna and Stephen. During their marriage they acquired a home, a brokerage account, numerous bank accounts and two automobiles, for a total value of \$6.85 million. Harold's share is worth \$3.425 million, or ½ of the total estate value.

Harold died on February 26, 2015, leaving the entire estate to Wilma. When we file Harold's federal estate tax return on November 26, 2015, we will inform the IRS that Harold's exemption was \$5.43 million and that Harold did not use all of it. The IRS will then transport Harold's unused exemption to Wilma and at her death, that unused exemption will be added to her own exemption.

This means that if Wilma dies in 2016, her estate tax exemption will be about \$10.88 million. The result is an estate tax savings of about \$560,000 for Donna and Stephen. This decision is only one of many which must be addressed during the administration process after a death.

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The legal services of Kramer Radin, LLP include estate planning, trusts, probate and trust administration, related tax matters, litigation and dispute resolution, elder law, and conservatorships.

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JEROME GALLI—COMMUNITY VOLUNTEER

Jerome Galli, a partner in our Firm, is a member of the City of Mountain View Senior Advisory Committee. This volunteer committee was established in June 2009 to serve in an advisory capacity to the City Council regarding matters pertaining to broader senior issues as well as the operation of the Mountain View Senior Center.

The general functions of the Committee include:

- Supporting the Senior Center through the sharing of resources and new program ideas;
- Offering clinics, educational workshops, programs and training targeted to the senior community; and
- Encouraging ADA compliance and access to public transportation throughout the City.

Kudos to Jerome for his service to our community.

CALIFORNIA END OF LIFE OPTION ACT PASSED

The California End of Life Option Act has been labeled as the Right-to-Die Act. Right-to-die, however, could include issues of allowing a person to die by refusal or withdrawal of medical intervention (passive euthanasia), providing a person the means of committing suicide (assisted suicide), and providing comfort care which accelerates the death process (palliative care).

The Act was signed into law on October 6th by Governor Brown. During emotion-filled debate, lawmakers drew on personal experience to explain their decisions to support or reject this legislation making California the fifth state in the nation to allow terminally ill patients to use doctor-prescribed drugs to end their lives.

The Act applies only to mentally sound people who are not depressed or impaired. The Act includes requirements that patients be physically capable of taking the medication themselves, that two doctors approve it, that the patients submit several written requests for the medications and that there be two witnesses to the request, one of whom is not a family member.

Proponents were pleased that this law passed but it cannot take effect until the legislative session formally ends. Opponents were, obviously, disappointed and are considering options to stop it before it becomes effective.

So, although the measure has passed, it does not mean that we have final resolution of the issue. There has been little litigation of constitutional issues surrounding suicide generally but this enactment is sure to raise constitutional challenges as well as moral dilemmas.

Nevertheless, although under the law you must take these actions yourself and cannot delegate the task to anyone else, make sure your Advance Health Care Directive is up to date and reflects your wishes.

Siblings Argue Over Parent's Care

Pam told us her nightmare began in 2010 when her widowed mother was diagnosed with dementia. Her mother resigned as trustee of the family Trust and Pam and her two sisters became co-trustees, which meant each sister had an equal vote in decisions having to do with their mother's care. In this case it was a perfect example of too many cooks spoiling the broth.

The sisters' first major disagreement occurred when Pam and her one sister wanted to sell their mother's home in order to pay for their mother's care. At this point their mother was living with Pam but the third sister, who lived in the mother's home, opposed that plan. A lawsuit ended with that sister's eviction.

The sisters also disagreed over taking their mother to visit out-of-state relatives. Pam and one sister thought the trip would be too hard on their mother, who had developed Alzheimer's Disease. The other sister took mother anyway. The trip was difficult and when mother returned home, she did not remember any part of the visit.

Middle-aged siblings often fight over questions including: Who will do the caregiving? Where should Mom live? Who handles Dad's finances? Should Dad's life be prolonged no matter what? These issues are often complicated because of long-standing sibling rivalries and/or grievances, which go back to childhood, such as: who was Mom or Dad's favorite?

The best way to prevent many of these conflicts is for parents to plan ahead and talk frankly with their adult children. Have a family conference where the parents can express their wishes for their future care and write down those wishes so they are clear in the future when emotions are high. Do not avoid difficult topics such as death and incompetence.

Parents should discuss the obvious:-we will all die someday. But in the event incompetence or physical disability occurs prior to death, they should discuss their housing preferences if they cannot stay at home. They should clearly discuss what measures should or should not be taken to extend life. And, in order to avoid a lot of logistical and management issues, consider appointing only one successor trustee or agent at a time if you foresee potential conflicts or discord among your children.

**WE WISH YOU HAPPY HOLIDAYS
AND A HEALTHY AND PROSPEROUS 2016**

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