

# Estate Planning Matters

**Kramer Radin, LLP**  
Law Firm

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## Is It Time to Review Your Estate Plan?

It is time to schedule a “checkup” if you have not had your estate plan reviewed in three or more years and/or if any of the following has occurred:



- Change in your marital status
- Death of a parent
- Birth, adoption or death of a child
- Birth, adoption or death of a grandchild
- Marriage or divorce of a child
- Significant increase or decrease in wealth
- Receipt of substantial inheritance or gift
- Change in your relationship with or death of the individual you have named as Executor, Successor Trustee, Guardian, or Agent under the Powers of Attorney
- Change in state law
- Change in federal tax laws

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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, Medi-Cal planning, conservatorships, real estate, and employment law.

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Some of our most difficult and expensive litigation cases stem from people not keeping their estate plans current.

For example, imagine the reaction of a widow who learns that her husband of 15 years never changed the beneficiary designation on his \$1,000,000 life insurance policy. His ex-wife is that much richer and the widow is devastated.

Also, relationships and circumstances change over the years. Five years ago you knew your middle son was the most stable and responsible of your three children so you named him as Successor Trustee of your Trust and agent under your financial and health care powers of attorney. Now he, unfortunately, is going through a messy divorce and no longer seems so rock solid. On the other hand, your youngest son has really matured, married a wonderful woman and is a responsible father. It may be time to change your Successor Trustee and financial and health care agent.

If any one or more of the above strikes a chord with you, please call and schedule your trust review consultation with Deborah Radin or Linda Kramer.

The information provided herein is not meant to serve as a substitute for legal advice.

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## **Tax Update**

As we go to press, President Obama and most Republicans have reached an agreement to extend the existing income tax structure for another two years. However, it will need Democratic votes to become law and there is some pushback about compromise.

Under the same agreement, other taxes are set to be modified effective January 1, 2011.

It must be noted that the following information is based on what seems to be in the works but, at this point, **is speculative and subject to change.**

**Estate Tax:** Under the above agreement, the exemption level is set at \$5 million and the top tax rate is 35%. At this time it is presumed that the inherited assets will continue to receive a step up in basis to the value as of the date of death.

**Gift Tax:** For 2010, the federal gift tax hits cumulative lifetime gifts in excess of \$1 million at a flat 35% rate. The maximum rate for 2011 was scheduled to increase to the top estate tax rate of 55% but probably will be modified.

**Ordinary Income Tax Brackets:** The current tax rate brackets of 10, 15, 25, 28, 33, and 35% will be retained for 2011 and 2012.

**Long-Term Capital Gains and Dividends:** Under the proposal, the current 15% rates on most long-term gains will remain and not be subject to ordinary income rates.

**Child Tax Credit:** If the agreement is approved, the maximum credit will remain at \$1,000.

**Child Care Tax Credit:** Currently most parents of a child under the age of 13 can claim a credit of up to \$600 (\$1,200 for two or more children) in costs for the child's care while the parents work. Lower-income parents can claim larger credits of up to

\$1,050 and \$2,100, respectively. This will remain the same if the proposal is approved in its current form.

**Social Security Tax:** The employee payroll deductions for Social Security and Medicare will be reduced from the current 6.2% to 4.2%. A person earning \$75,000 per year will have an additional \$1,500 in his or her pocket as a result of this provision. This is projected to provide \$120 billion in economic stimulus in 2011. The Associated Press reported that more than three-fourths of all Americans pay more in these payroll taxes than in federal income taxes.

Employer contributions will remain at the 6.2% level.

**Unemployment Benefits:** Under the proposal, the option to file for federal unemployment benefits will be extended for 13 months.

**Alternative Minimum Tax:** As proposed, middle income filers will have relief from the alternative minimum tax. High income filers will still be faced with the alternative minimum tax.

We anticipate there will be additional modifications to this initial agreement. As always, we will continue to monitor the situation closely and keep you informed.

## **Thank You**

We receive many referrals from our clients. We are very pleased that our clients show this confidence in our abilities to work with their friends and family members.

Because of confidentiality issues, we cannot personally acknowledge the referrals but we sincerely thank each of you.

### Physician Orders for Life Sustaining Treatment ("POLST")

The primary purpose of the Physician Orders for Life Sustaining Treatment ("POLST") is to ensure the patient receives end-of-life care consistent with his or her preference. It is a form on which a patient indicates preferences for end-of-life care including resuscitative measures and other life-sustaining treatment.

The form is to be completed when a patient is frail and elderly or terminally ill and signed by the doctor. Some tout it as superior to an Advance Health Care Directive. In fact, they should work together.

The POLST form has some advantages. It is easy to complete, provides a formalized patient directive for care, may be signed by a third party if the patient is unable to sign, must be signed by a physician and is easily identifiable in a patient's chart because it is printed on #65 pink paper stock. And, because the POLST is standardized, health care workers presumably will be familiar with the form and have confidence in adhering to its directions.

However, the POLST form creates problems that outweigh the advantages.

A POLST may be signed by a third party—**any** third party. Presumably it would be signed by a person having personal knowledge of the patient's preferences. But the form does not set **any** limitation on who that party can be.

There is also a problem with the lack of clarity for end-of-life choices. The POLST format does not display the meanings of choices clearly and simply. Choices include (1) comfort measures, (2) limited additional interventions and (3) full treatment. Paramedics responding to an emergency call need to know whether "comfort measures" mean the patient should never be transported to the hospital or under what circumstances is it appropriate.

The POLST law itself has problems.

Even though the form is designed to ensure that end-of-life care is provided according to the patient's expressed wishes, the POLST law allows third parties to actually override those wishes, thereby completely negating the stated purpose.

Our clients have told us that they have been instructed by their health care provider organizations to complete a POLST often with no explanation of the ramifications of their choices. If you are asked to complete a POLST insist that your health care provider discuss each and every choice available.

If you find that that the choices you are making for the POLST are not exactly as you previously indicated in your Advance Health Care Directive, please contact us so that we can assist you in bringing them into agreement. It is necessary the two documents reflect the same choices in order to avoid conflict.



*We wish you and your family  
a Happy Holiday Season.*



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