

# Estate Planning Matters

**Kramer Radin, LLP**  
Law Firm

Summer 2010

Volume #XV, Issue #2



## **Estate Tax Update**

We continue to closely follow events in Washington, D.C. with particular attention to the Estate Tax situation. Unfortunately, as of the date we go to press, no changes to the current law are anticipated.

We do know some things about estate taxes. We believe that the issue is going to be avoided by both parties until after the November elections. Candidates will focus on the economy, jobs, wars in Iraq and Afghanistan, as well as the economic and environmental concerns about the Gulf of Mexico but will not touch the hot-button topic of estate tax. We also know there will be blame laid by each party against the other for the lack of action.

As for the future, if the last 34 years can be used as a guide to the next 34 years, there will be many and frequent changes to the estate tax. We have had close to 20 changes in federal tax rates and exemptions since the Tax Relief Act was passed in 1976. We believe this will continue into the future and that the issue will not be settled once and for all time.

Currently, 20 states and the District of Columbia levy an estate tax or inheritance tax in addition to the federal tax. Each sets its own tax rate (1% - 20%) and exemption amount (\$338,333 in Ohio - \$3,600,000 in Hawaii).

California does not have a state estate tax at this time. At least two thirds of California voters would have to approve of the measure to enact a state estate tax which, we believe, is not likely to happen.

If you own property in a state that has either an estate or inheritance tax, that portion of your estate will be subject to the state's tax laws.

## **Income Tax for California Domestic Partners**

California registered domestic partners are now subject to community property laws for federal tax purposes according to a recent Private Ruling Letter from the Internal Revenue Service. Registered domestic partners must continue to file separate federal income tax returns, but the combined income and credits will now be attributed

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

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

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equally between both partners. Please contact our office for any estate planning questions and your tax advisor for the effect this Ruling has on your particular family's tax planning.

### **When a Conservatorship Becomes Necessary**

Elder abuse is evil and it comes in many forms. It is not always due to someone being abused by another; one form of elder abuse is actually due to self-neglect.

Charlotte is 80 years old and lives in Palo Alto. She is divorced and has two children, from whom she is estranged. She retired as a physician about 5 years ago so that she could enjoy traveling, her favorite activity. She and her friends loved to go white water rafting and to hike through Yosemite. However, during the past year, her friends noticed Charlotte's memory was failing. She actually forgot to meet them last September for their annual hiking trip. She told them she realized at the last minute that she didn't really want to go on the trip but they knew she was covering up her increasing forgetfulness.

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During the last 6 months Charlotte refused all outings with her friends. Finally, one friend made an unannounced visit to Charlotte and was shocked to see that Charlotte, a 5'6" woman, was nearly skin and bones. She was always a healthy 135 lbs. and now she looked to weigh about 95 lbs.

In addition, Charlotte smelled as if she hadn't bathed in weeks. The house was filled with garbage and stacks of unopened mail, old newspapers and magazines. The refrigerator was filled with moldy food and sour milk. When asked when she had last eaten, Charlotte replied that she had just eaten a meal she had cooked for herself a few minutes ago but there was no evidence that anyone had recently cooked a meal.

The friend contacted Charlotte's cousin, who lived in Marin County. The cousin had not contacted Charlotte for over a year but after visiting Charlotte, the cousin contacted our office to see what should be done because Charlotte was refusing to acknowledge she needed any help.

Although Conservatorships are one of the last tools we like to use to help people, there was no other choice for Charlotte. We searched for her estate planning documents and found she had signed a Will and a Financial Power of Attorney that she had apparently downloaded from the internet. Although Charlotte had substantial assets, her estate plan was inadequate; it did not provide for someone to step in to pay her bills, hire someone to physically help her, or to determine if her medical or homeowner's insurance had been paid.

Charlotte's life was clearly in danger. She was starving herself and her home could be destroyed by fire. Something had to be done quickly. Jerome Galli, one of the partners in our firm, and our paralegals got to work and within 48 hours put the paperwork together to appoint Charlotte's cousin as Conservator of the Estate and of the Person.

With the Conservatorship of the Estate in place, the cousin now has access to Charlotte's finances. He now has the legal authority to pay her bills, to manage her investments, to deal with her insurance carriers and to have a Trust prepared for Charlotte's benefit, so as to avoid probate upon her death.

As Conservator of the Person, he has hired caregivers to be with Charlotte on a 24 hour basis. The caregivers assist Charlotte with bathing; they clean the house and prepare nutritious meals. In addition, Charlotte is now receiving adequate medical care.

If you have a loved one in danger, whether it's due to self-neglect or becoming more vulnerable to undue influence, contact our office. We are here to help.

### **Alzheimer's Association Memory Walk San Jose September 25<sup>th</sup>**

Some of our staff members will be participating in the Alzheimer's Association's Memory Walk on Saturday, September 25<sup>th</sup>. The Memory Walk is the nation's largest event to raise awareness and funds for Alzheimer's Disease care, support and research - and it calls on people of all ages to take action in the fight.

The San Jose Memory Walk will begin at 10:00 AM at the Arena Green (across from the HP Pavilion). You may select either a one or three mile walk along the Guadalupe River Trail. The path is relatively level and is suitable for both strollers and walkers. Friendly, well behaved pets are welcome.

We invite you to join us (a couple of hours with attorneys can be fun!) or gather your family and friends to start your own team. We hope to see you there to join the effort to eliminate Alzheimer's Disease..



"A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken." -  
James Dent



### **What Do You Think? Responses**

More than half of the responders to our survey in the Spring edition requested additional information concerning estate planning and the status of estate tax reform. Also, there were requests for recommended reading pertaining to Alzheimer's Disease.

The Alzheimer's Association has much practical information on its Web site, alz.org. The Alzheimer's Association (650-962-8111) can also provide information and support for caregivers.

Several of us have read the novel "Still Alice" by Lisa Genova, about a 50 year old cognitive psychology professor at Harvard who is diagnosed with early-onset Alzheimer's Disease. We found it to be informative, inspirational and heartbreaking.

The Web site elderlawanswers.com provides information concerning Medicare, Medi-Cal, retirement planning and gifting to grandchildren, among many other elder law matters.

We thank each of you who took the time and made the effort to respond to our "What Do You Think?" survey in the Spring edition. The results will help guide us as we put together each issue. We welcome your thoughts at all times. We may be reached by phone, fax, US Postal Service or email (responses@kramerradin.com).

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Estate Planning Matters  
Newsletter  
Summer 2010

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