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501 WEST BROADWAY, SUITE 700
SAN DIEGO, CALIFORNIA 92101-3563
TELEPHONE: (619) 239-7777
FAX NUMBER: (619) 238-8808

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SERVING AS A TRUSTEE: PART I
By Mary J. Peshel, J.D.

SERVING AS A TRUSTEE

The following information may be helpful when serving as a Trustee. It is designed merely to serve as a guide to those dealing with the administration of a trust and is not intended to be all inclusive or to provide legal advice of any sort.

SERVING AS A TRUSTEE: PART I
INITIAL TRUSTEE DUTIES

Stepping in to serve as Trustee (the person in charge of administering and managing a trust) can be one of the most important things you do for a loved one or friend. Complying with the many rules and obligations can also be time consuming and confusing. Remember that a host of professionals, including your attorney and accountant, as well as tax return preparers, financial planners, real estate brokers, and property managers, can help you with this grand and rewarding responsibility. The following paragraphs primarily discuss serving as Trustee after the death of a Trustor, but also apply to Trustees who step in while the Trustor is still living.

THE FIRST YEAR

The first year after the death of a Trustor (the creator of the trust) is the busiest for the Trustee. During the first year, the Trustee must collect information regarding the Trustor, his or her assets, debts, and the trust beneficiaries, file tax returns with federal, state, and county taxing authorities, and make payments to creditors and distributions to beneficiaries.

FIRST STEPS

The first thing the Trustee should do is get copies of the Trustor's estate planning documents and READ them carefully. More specifically, you should become familiar with the provisions in the Trust(s) and any amendments thereto, the Will and any codicils (amendments) thereto, and, if the Trustor is still living, any Powers of Attorney. These documents will help you identify the following: (1) the scope of your duties and powers as Trustee; (2) the identity of the beneficiaries; (3) the nature and value of assets of the Trustor's estate; and (4) the identity of any other co-trustees, executors, or fiduciaries. You should also obtain certified copies of the death certificate; typically five to ten copies are sufficient.

You should notify certain agencies of the death of the Trustor. Typically, this would include the Social Security Administration and the agencies administering the decedent's pension(s), if any. If the decedent (or his predeceased spouse) ever received Medi-Cal benefits, that agency must be notified. If any heirs or beneficiaries are in prison, you must notify the state Victim Compensation Board. You should also advise certain entities that you are now acting as Trustee. You should send IRS Form 56 to both the IRS and the California Franchise Tax Board (FTB) to let them know you are responsible for filing the various returns and payment of taxes that will be due. By alerting these agencies, you also ensure that you will receive the correspondence and information necessary to do your job as Trustee, possibly including information about outstanding taxes and/or liens. Finally, you should record an affidavit regarding the change of Trustee with the County Recorder in each county in which the Trustor owned real property.

California law requires a Trustee to notify the trust beneficiaries and the decedent's heirs at law (generally, the spouse, children and grandchildren) following the death of the Trustor. This notification must be made in a specific format within 60 days of the Trustor's death, so you should locate contact information for all of the beneficiaries and heirs as soon as possible. A failure to comply with the notification requirement could make you liable for any resulting damages.

You will need to gather information including the Trustor's Social Security number, the taxpayer identification numbers for related partnerships, trusts, etc., information about the Trustor's marriages (there may be outstanding obligations from a marital settlement agreement), the citizenship of the Trustor and his or her surviving spouse, and the rights of his or her surviving spouse in employee benefits.

To determine the value of the gross estate, and whether an estate tax return (IRS Form 706) will be required, you will need to determine if the Trustor made gifts during life, when he or she made them, and to whom they were made. This will help determine how much estate tax and/or generation skipping tax, if any, is due and payable.

SUMMARY

A Trustee's initial steps require him or her to gather information and give notice.

SERVING AS A TRUSTEE: PART II

By Mary J. Peshel, J.D.

DEALING WITH ASSETS AND EXPENSES

Trustees are responsible for managing trust assets and paying trust (and possibly Trustor) liabilities. This article discusses these responsibilities.

ASSETS

Compiling a complete list of all of the decedent's assets and their values is important for a number of reasons, including determining whether an estate tax return will be required, determining the new income tax basis of assets and, ultimately, to facilitate distribution of assets among the beneficiaries. It is also important to collect information regarding any taxable lifetime gifts made by the Trustor, as well as debts and creditors of the decedent.

For federal estate tax purposes, you will need to compile information regarding all assets the decedent owned at death, including any assets not held in the trust. Assets held outside the trust may include assets titled in joint tenancy, pay on death accounts, life insurance, pensions, and annuities. Other types of assets to consider include: real estate, insurance policies, retirement plans, mutual funds, stocks, bonds, bank accounts, cash, interests in closely-held businesses and partnerships, patents, copyrights, leases, automobiles, boats, jewelry, art, etc. All of these assets are typically part of the overall taxable estate and will be included on the estate tax return, if one is required.

DETERMINE HOW ASSETS ARE HELD

After identifying the assets owned by the Trustor, you should determine how these assets are held. Assets can be held as community property, separate property, in joint tenancy, or some other form. Assets may be held in the name of the trust or in another manner. If the Trustor owned assets in his or her name outside of the trust, then a probate proceeding of some type is usually required to transfer those assets. Most people who have trusts also have what are known as “pour-over” Wills. The Wills provide that any assets left outside the trust at the Trustor’s death will be distributed to the trust. If the value of the assets owned by the Trustor outside of the trust is less than $150,000, California allows these assets to be transferred by affidavit, without a formal probate. If the value exceeds $150,000, a formal probate will likely be required.

If real property is owned outside the trust and located in a state other than California, you should investigate the laws of that state to determine whether an ancillary probate will be needed in that other state with respect to that property. A state estate or inheritance tax return may also be required if the decedent owned assets outside of California.

SECURE THE ASSETS

In addition to determining which assets are included in the Trustor’s estate, you should take steps to secure this property. Cash should be placed in an appropriate bank account or accounts. Securities, jewelry and other valuables should be secured in safes or safe deposit boxes. Automobiles, art and other personal property should likewise be secured. Credit card companies should be notified of the Trustor’s death, and all credit cards should be destroyed or returned to the issuer promptly. Real property and other valuables should be properly insured, or if already insured, the adequacy of insurance should be confirmed. Real property should be occupied if possible, otherwise vandalism coverage may not be available.

VALUATION OF ASSETS

The Trustee must determine the value of the assets as of the date of death. For some assets (i.e., bank accounts, insurance policies, retirement plans, automobiles, etc.), valuation will be accomplished fairly easily. However, typically you will need a professional appraisal for many types of assets, including: real property, partnership interests, stock of closely held businesses, and unique art and jewelry. The date of death value of real property, partnership interests, and the stock of closely held businesses may also be subject to discounts or premiums, which must be documented properly. Hard-to-value assets should be appraised by professional appraisers.

EXPENSES

In some cases, the trust may have very little cash or other liquid assets with which to pay taxes and the expenses incurred in administering the trust or estate. You must be careful in deciding which assets to sell and/or whether to borrow money in order to pay expenses. In addition, you must be careful in making distributions to the beneficiaries. For example, the son who was supposed to inherit Dad’s ‘65 Mustang may not appreciate your selling it to make the mortgage payments on the house going to his sister. Seeking the assistance of an attorney or accountant can help you avoid making decisions that will have adverse liability and tax consequences.

DUTY TO KEEP DETAILED ACCOUNTING

Under California law, Trustees have a duty to account regularly for every penny that comes into, or goes out of, the trust. California law requires formal accountings to be provided to the beneficiaries. Getting into careful and detailed accounting habits early will help satisfy this duty and will help to stave off disgruntled beneficiaries.

TRUSTOR’S DEBTS

As with assets, you should make a list of all debts owed by the Trustor and the names of the creditors to whom these debts are owed. Many of the payments in satisfaction of these debts will be deductible on either the estate tax return and/or another tax return. Additionally, deductions are available for funeral bills, last illness expenses, attorney and accountant fees, appraisal fees, insurance premiums, mortgage payments, broker fees, real property maintenance, and any normal household bills incurred prior to but paid after death. The availability of these tax deductions reinforces the need to keep accurate and complete records of payments made from the trust/estate.

SUMMARY
Determining and gathering the assets, and paying the trust (and possibly the Trustor's) just debts are a very important part of a Trustee's duties.

*Ms. Peshel will be publishing additional chapters to this Trustee's Handbook in our January and February Newsletters.

FEDERAL TAX UPDATE
By Katie Lepore, CPA, J.D., LL.M., Taxation

Increase in Contribution Limits to Retirement Plans. On November 1, 2018, the IRS announced an increase to the contribution limit for retirement plans in Notice 2018-83. Beginning in 2019, participants can contribute up to $19,000 to a 401(k) or 403(b) plan, up from $18,500 in 2018. Also, participants can contribute up to $6,000 to an IRA, up from $5,500 in 2018. The additional catch-up contribution limit for individuals aged 50 and over remains at $6,000 for 401(k) and 403(b) plans and $1,000 for IRAs. Additionally, the income ranges for determining eligibility to make deductible contributions also increased. The ability to contribute to a Roth IRA is phased out at income of $137,000 for single filers and $203,000 for married couples.

Bills Introduced in Response to *Wayfair*. Representative Bob Gibbs (R-OH) introduced HR 6724 called "Protecting Businesses from Burdensome Compliance Cost Act of 2018" on September 6, 2018. It would prohibit states from requiring out of state retailers to collect sales taxes and fees for sales made before January 1, 2019. The bill, if passed, would allow states, starting in 2019, to collect tax from out of state sellers without a physical presence in the state so long as the tax is payable at a uniform rate not greater than that imposed on in-state sellers and the state law does not require an out of state seller to remit tax to more than a single location or require more than a zip code to determine residency of the buyer.

Similarly, Representative Jim Sensenbrenner, (R-WI) introduced HR 6824 on September 13, 2018 dubbed the "Online Sales Simplicity and Small Business Relief Act of 2018." The bill would prohibit states from collecting sales taxes on out of state sellers for sales that occurred prior to June 21, 2018. It would allow states to collect sales taxes on sales from out of state retailers after January 1, 2019, but would establish a small business exception. Out of state "small business" retailers with gross receipts under $10 million would be exempt from remitting the tax until 30 days after Congress approves an interstate agreement governing out of state retailers, in an effort to have a uniform test to establish nexus or physical presence in a state.

Both bills were introduced in the House but have not been assigned to committee.

IRS Launches Website for TCJA. The IRS recently launched a user-friendly webpage summarizing major provisions of the Tax Cuts and Jobs Act (TCJA) at IRS.gov/tax-reform. It has three main starting points for users to choose before supplying information: individuals, businesses, and tax-exempt entities. It also contains a chart that is particularly useful comparing various tax attributes of entities with a side-by-side comparison of 2017 law versus the law under TCJA. The chart can be found at: https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses.

IRS Proposes New Regs Helping Estates. On November 23, 2018, the IRS published draft regulations to address the fear that large gifts made between January 1, 2018 and December

31, 2025 would be "clawed back" into the donor's estate at death. (In 2025, the basic exclusion amount is scheduled to be reduced to $5 million from $11 million.) These proposed regulations include a special rule to allow estates to compute the estate tax after 2025 using the higher basic exclusion amount that applied when the gift was made.

Tax Relief Due to Fires. The Federal Government declared Ventura, Los Angeles, and Butte Counties in California to be disaster areas due to the recent November 2018 wildfires. Therefore, taxpayers in those areas affected by these fires may enjoy extensions of time for filing and payment of taxes. The EDD, CDTFA, and IRS have all issued notifications about extended deadlines. It is expected the FTB will issue a similar notice soon. Individual and business taxpayers located within these counties will have until April 30, 2019 to file and make payment of their 2018 taxes with the IRS and also will enjoy the same extended time period to make any estimated payments ordinarily due by January 15, 2019.

STATE TAX NEWS

By Katie Lepore, CPA, J.D., LL.M., Taxation

California Likely to Implement *Wayfair* in 2019. According to the California Department of Tax and Fee Administration (CDTFA), California is likely to begin requiring out of state sellers to remit sales tax to California in early 2019. A U.S. Supreme Court ruling earlier this year, *South Dakota v. Wayfair*, allowed states to collect sales tax for sales made to persons in the state despite the seller being out of state. Currently, California is discussing using similar thresholds as South Dakota to establish "nexus" before requiring a retailer to remit tax (i.e., 200 or more annual sales into California or over $100,000 in annual sales to California residents). The CDTFA is currently soliciting public feedback on how best to implement the *Wayfair* ruling, particularly whether these thresholds need to be increased due to California's size in relation to other states (a $500,000 threshold was released erroneously earlier this year).

Administrative Dissolution of Corporations and LLCs. Governor Brown signed AB 2503 on September 22, 2018, which allows certain eligible domestic corporations and limited liability companies to apply for an administrative dissolution. The bill was enacted because sometimes businesses would cease operations but never formally dissolve with the Secretary of State. Such entities would continue to be liable for the $800 minimum tax and consequently interest, without owners' knowledge since the entity had ceased operations. Under prior law, in order to dissolve, companies would need to be current in their taxes owed, or apply for an offer in compromise. Now, entities which have no assets may apply for administrative dissolution or cancellation. To be eligible, the entity needs to have been compliant with all filings and taxes during the time it was doing business. The new law is effective beginning January 1, 2019.

FTB Provides Tax Summary. Beginning in early 2019, the Franchise Tax Board will begin providing business entities that have taxable income a summary of their 2018 tax year estimated payments on Form FTB 3713. It is reportedly part of a pilot project to proactively cut down on the number of tax professionals who contact the FTB to verify payments, the most common reason for communication. Taxpayers can expect the summary to be mailed in early 2019.

Ballot Measures Rejected. California voters in November rejected Proposition 5 which would have allowed property owners age 55 and older to transfer the assessed value of their home to a newly purchased home, which could be a more expensive home than the one sold. Currently, only certain counties follow such a rule, one of which is San Diego County, but only if the new home is less expensive. California voters also rejected Proposition 6 which would have repealed the so-called "gas tax" enacted in 2017 imposing an excise tax of 12 cents per gallon. Additionally, voters rejected Proposition 10, which would have expanded rent control measures throughout the county.

Business License Using Driver's License. AB 2184, signed by Governor Brown on September 14, 2018, requires cities to accept a California driver's license or identification number, individual tax identification number, or municipal identification number in lieu of a social security number, in combination with other information as specified, for the issuance of a city or county business license.

Disclaimer: This newsletter is provided to share knowledge and expertise with our colleagues with the goal that all may benefit. The content of this newsletter is for general information purposes only.

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THOMAS M. MONSON
MARY J. PESHEL
TIMOTHY C. POLACEK
WILLIAM D. HOSHAW†
SUSAN L. HORNER
DeETTE L. LOEFFLER
BRADFORD N. DEWAN
JUDY S. BAE
KATHLEEN A. LEPORE
CHRISTOPHER R. WIECHERT
PHILIP R. FREDRICKSEN†
†OF COUNSEL

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