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NOVEMBER 2020 NEWSLETTER

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

Year-End Planning Announcement: The end of year is quickly approaching, and that is often our busiest time of the year. If you anticipate wanting to complete estate plan updates, make a taxable gift, or finalize a tax transaction before December 31, 2020, we encourage you to reach out to us ASAP to ensure we are able to accommodate you. Depending on the election results in the coming days, we anticipate year-end to be busier than usual this year.

Firm News: Katie Lepore will be speaking at the SD Impact Real Estate Investors Network on November 18, 2020. The topic of the presentation will be potential tax law changes in light of election results. SD Impact welcomes new real estate investors as members; meetings typically take place the third Wednesday of each month from 5:30-9, and currently are being held virtually. A networking session begins at 5:30, followed by a presentation about the current state of the real estate market, and then the keynote presentation. More information can be found at: www.sdimpactrein.com.

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ESTATE PLANNING LESSONS FROM CELEBRITIES: WHAT WE CAN LEARN FROM PRINCE, CHADWICK BOSEMAN, AND KOBE BRYANT

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

Without a doubt, 2020 has been a rough year. The deaths of celebrities are well known, and we are saddened that so many others have died due to the coronavirus pandemic.

While the hearts of fans around the world break at the news of the deaths of some of our favorite celebrities, there are several lessons we can learn from their estate planning (or lack

thereof) to better our own estate plans. This article attempts to outline some of these pitfalls, focused mostly on California laws.

The Importance of Having an Estate Plan: Prince

Prince famously died somewhat suddenly in 2016, without a spouse or children, leaving us all a little *Delirious*. His death created contests between his step-siblings over his assets and large estate. Years later, the estate remains unsettled, and is subject to audits for disagreements with taxing authorities as to the value of certain assets. We can all learn from this the importance of having a clear and concise estate plan and accurately valuing our assets like a *Little Red Corvette*.

Without an estate plan, death can bring a long drawn out court process called probate. Fees for probate are levied based on the size of the estate, and to administer a fairly modest sized estate of \$1 million, costs can be close to \$50,000. This would even make *Doves Cry*. Estate plans provide benefits such as creating peace of mind; allowing the decedent's wishes to be carried out rather than pursuant to a predetermined formula the state provides; significantly reducing the costs of administration after death; and reducing the risk of infighting among children, step-children, or grandchildren - saving tears that can otherwise flow like *Purple Rain*. Proper planning can have major tax benefits as well, and can be particularly important for families with minor children.

Major goals of estate planning involve the creation of a definite plan for managing your wealth while you are alive and for distributing it after your death.

Probate

Probate is a court supervised process which includes collecting and valuing your assets, paying your debts and taxes, and distributing your assets to your named beneficiaries and/or heirs. As part of this process, a notice of your death is published in a newspaper in order to allow your creditors to make claims against your estate. Probate proceedings are open to the public and anyone can review the court file and examine the details of your financial life. Probate is expensive, with fees and costs in the range of perhaps 2-10% of the value of your estate. Probate is also a lengthy process that normally takes at least a year to complete, but can take several years for a complicated estate. During this process, your assets are often tied up, delaying distribution to your named beneficiaries and/or heirs.

Estates of California decedents who have less than \$166,250 in assets subject to probate can avoid a formal probate by means of a "small estate" procedure so long as there are no Will contests or creditors choosing to open a probate. In California, a \$166,250 net worth

accumulates very quickly, subjecting many decedents without a trust to a full probate.

Probate can usually be avoided if the decedent held the assets in a trust, as community property with right of survivorship, in joint tenancy, or in pay-on-death accounts. A Will, alone, is not sufficient to avoid probate. Administering a probate can be a huge burden for the decedent's family, even for families without strife or disagreement.

The estates of decedents who die without a Will are distributed according to a pre-determined formula called "intestate succession," as determined by state law. It will not matter if one child was closer to the decedent or is more financially sound; the distribution of assets will follow state rules without regard to family dynamics or the decedent's wishes. Assets left to a minor may also be held in blocked accounts until the minor attains the age of 18, even if the funds are needed.

Having an estate plan, and most notably, a funded trust, can ensure your assets pass as you wish, arrange for management of trust assets by the trustee you select, save your heirs tens of thousands of dollars in probate fees, save the stress and hassle of going through probate, and allow your heirs to receive assets as quickly and cleanly as possible. Furthermore, for those who have beneficiaries who are minors, a trust allows you to choose when and how they are to receive the assets instead of receiving them automatically upon reaching age 18.

The Importance of Funding Your Trust: Chadwick Boseman

Chadwick Boseman, most notably the star of *Black Panther*, died in August 2020 at the young age of 43. It seemed sudden to the public, but privately, he had been battling colon cancer for years. Despite this terminal condition, he appears to have died without a full estate plan in place. Boseman's wife recently filed in Probate Court in Los Angeles to

administer assets valued just under \$1 million. Doing so will likely cost close to \$50,000 in attorney, administrator, and court fees.

While most of us place estate planning on the back burner, as we have 42 other things on our mind at one time, we should all *Get On Up* to complete our estate plans, even if just to avoid the hassle of probate. Since only about \$1 million of Mr. Boseman's estate is subject to probate, it is likely that he did have an estate plan in place, probably in a living trust or irrevocable trusts, as his estate is estimated to be worth far more than \$1 million.

The biggest lesson then for us to learn from Mr. Boseman is to act as *Avengers*, ensuring that once trusts are created, our assets are actually transferred and titled in our trusts. Trusts take effort to create, and need to be funded to achieve their full benefit. We need to *Marshall* all our assets and take tally of our worth. Estate planners *Marvel* at the too common error when clients fail to take the extra steps to actually fund their trusts once they are created, including transferring title to real estate, LLCs, bank accounts, brokerage accounts, etc. to the trust. A common error happens during a refinance when the lender may require title to be held in the borrower's individual name for financing, so the real property is transferred out of the trust. But, after the loan closes, title may not be put back into the trust. Assets titled in your individual name are likely to be subject to probate at your death, as discussed above.

The Importance of Maintaining Your Plan: Kobe Bryant

The death of NBA legend Kobe Bryant in January 2020 was also sudden and shocking. While the *Black Mamba* did have an estate plan in place, and did fund his trusts, he failed to keep his plan updated with his current situation. While his death was unforeseen, as tragedy often can be, the 18-time *All Star* failed to amend his plan to name his youngest daughter, Capri, as a beneficiary. She was just nine months old at the time of his death.

The Co-Trustees of the Kobe Bryant Trust petitioned the Los Angeles Probate Court in March 2020 to amend the Trust to add Capri as a beneficiary. If the Court finds that it was a material purpose of the one-time *MVP's* trust to provide for all of his children, Capri may be added as a beneficiary.

The lesson here is simple: be careful in drafting your trust to provide for after-born children (or grandchildren if you wish), and more broadly and more importantly, keep your estate planning documents up-to-date. Tax laws change over the years, family situations change, and your wealth situation changes, as do your desires. It is recommended, at a minimum, to have your plan reviewed at least every 5 years, even if there are no known changes. You should also contact your estate attorney any time there is a material change in any situation in your life.

Additional Benefits to Proper Estate Planning

A trust also allows you to identify which assets should go to which person, and in what percentages. Additionally, a trust allows for specific bequests for those prized possessions that you want to pass to a person who has a special connection to the item.

In addition, a trust allows restrictions to be placed on a beneficiary who receives assets, such as young children or grandchildren inheriting large sums of money or wealth before they are financially independent and able to handle such assets. A trust can also provide for the care, support, and education of children or other young beneficiaries by providing management of the assets by the trustee. The assets can be distributed to the children at an age or ages chosen by the trustor. This also avoids the costs and burdens, and loss of privacy, associated with a court supervised guardianship for minor beneficiaries.

A continuing trust can also be helpful if a beneficiary is or becomes disabled and/or

receives government benefits. Life insurance proceeds can be paid to the trust so your successor trustee can manage the proceeds for the benefit of your heirs.

Conclusion

With a living trust, upon death, trust assets pass directly to the beneficiaries named in the trust, according to the terms set forth in the trust instrument. There are generally no court costs associated with assets held in trust, and there are no court-ordered executor or attorney's fees. The trustee is, however, generally entitled to compensation for services rendered, unless waived. Usually, there are fewer delays in distributing the assets following the payment of estate debts and expenses, and the terms of your estate plan remain private.

If you do not yet have an estate plan in place, or changes have occurred since you last amended it, we encourage you to *Just Do It* - contact your estate attorney today.



A REMINDER ABOUT ADVANCE HEALTH CARE DIRECTIVES

By Mary J. Peshel, J.D.

When preparing estate planning documents for our clients, we typically include an Advance Health Care Directive (AHCD). This document names an agent, or a succession of agents, to make health care decisions for an individual who is unable to make such decisions personally. The document specifies the type of care desired by the individual, particularly in an end-of-life situation. The AHCD can also authorize the agent to make decisions regarding funeral and burial.

Our clients are advised to provide copies of the AHCD to their named agent(s) and to their physicians. Many clients put copies of the AHCD in a place where they can be found by paramedics in the event of an emergency.

Often a copy of the AHCD is attached to the side of the refrigerator, along with other important medical information such as a current list of medications and contact information for all physicians.

I subscribe to two daily newspapers. One of my favorite parts is the advice columns. Recently, within three days, both *Dear Abby* and *Ask Amy* addressed the issue of Advance Directives. One reader wrote about his experience as a teacher and volunteer, and concluded that only about 10% of the people he spoke with had an end-of-life plan documented in an AHCD.

In the other column, the reader described a situation where a patient had an Advance Directive, but the medical staff concluded that the patient's wish was "DNR - do not resuscitate", thus the individual was not put on a ventilator. When the patient's spouse later read her Directive, he found that the DNR only applied if the patient was "terminally ill or permanently unconscious." The spouse believed that if he had brought a copy of the AHCD with him to the hospital, he could have advocated for his wife to be put on a ventilator, and she may have survived.

What these columns teach us is: (1) sign an AHCD so your end-of-life desires will be documented, (2) give a copy of your AHCD to your medical providers, and (3) be sure the agent under your AHCD has a copy of the document and an understanding of your end-of-life desires so they can be carried out as you wish.



FEDERAL TAX NEWS

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

Social Security Wage Base Increases. The Social Security Administration has increased the wage base for the Social Security tax

(OASDI) to \$142,800 for 2021, up from \$137,700 for 2020. A 6.2% tax is levied on wages up to \$142,800 (OASDI), and a 1.45% Medicare tax is levied on the first \$200,000 of wages (\$250,000 for joint filers). Wages above \$200,000 (\$250,000 for joint filers) are subject to a 0.9% additional Medicare tax.

PTIN Renewal. All Preparer Tax Identification Numbers (PTINs) should be renewed by tax preparers by December 31, 2020. The fee to do so is \$35.95. When renewing, the preparer will need to certify that the company has a current information security plan in place to protect sensitive client data.

IRS Lowers Photocopy Fee. The IRS has lowered the fee for obtaining a photocopy of a tax return to \$43, from \$50. Taxpayers must pay this fee in advance when requesting returns.



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

California Conforms to Federal PPP Treatment. *AB 1577*, signed into law September 9, 2020 provides for California to conform to the federal income tax treatment of PPP Loan Forgiveness. The amount of covered loans forgiven is excluded from gross income. *AB 1577* also disallows deductions for any business expenses if paid with PPP funds, in congruence with federal tax laws.

New Changes to Independent Contractor Laws. On September 4, 2020, Governor Newsom signed *AB 2257*, which changes the rules defining independent contractors which are set forth in recently passed *AB 5*. The “ABC Test” is retained but a limited business-to-business exception is instituted and broadened. Additional provisions are outlined for referral agencies which connect clients and service

providers. Plus, specific service lines were given broader exemptions, including photographers and musicians.

California Homestead Exemption Increases. Governor Newsom signed *AB 1885* on September 15, 2020 which increases the homestead exemption on primary residences. The homestead exemption is the amount of equity protected from unsecured creditors. The exemption will now be the greater of: a) \$300,000, or b) the county-wide median sales price, up to \$600,000. These amounts are adjusted for inflation and previously were as low as \$50,000 for a single taxpayer. The increased exemption may be helpful to taxpayers in the event of a bankruptcy.

Corporate Tax Disclosure Bill Vetoed. Governor Newsom vetoed *SB 972* on September 29, 2020. The bill would have required the Franchise Tax Board (FTB) to provide the names, tax liabilities, and tax credits of corporate taxpayers with over \$5 billion in gross receipts. The Governor cited that the Legislature can request taxpayer information from the FTB under current law, making the automatic disclosure unnecessary.

Los Angeles Amnesty Tax Program. From October 1, 2020 to December 17, 2020, businesses can come into compliance with Los Angeles’ city business taxes without penalty, including those businesses which erroneously never applied for a business license. Amnesty can be given for taxes including the commercial tenant occupancy tax, communications users’ tax, and business license tax, among others.

Nonresident Aliens Can File Group Returns. On September 18, Governor Newsom signed into law *AB 2660*, which allows nonresident aliens who are not eligible or have not been issued SSNs or ITINs to file a group return instead of an individual income tax return for income received in California. Such taxpayers will be subject to the highest marginal rate and will not be granted any deductions. Proponents of the bill state that it will allow international

companies to report wages for all foreign employees who travel to California for work on one group return.

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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- †OF COUNSEL

RALPH GANO MILLER
1926 – 2016

<https://www.mmpph.com>

DeEtte L. Loeffler, Esq., Newsletter Editor

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