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IN THIS ISSUE

CHANGES COMING FOR TRUST-OWNED FDIC-INSURED ACCOUNTS *by Linda A. Nelte, J.D.*

The Federal Deposit Insurance Corporation ("FDIC") recently approved a new rule changing the way insurance is calculated for irrevocable and revocable trust accounts held at FDIC-insured banks.

Brief History. Following the banking crisis of 1933, President F. Roosevelt signed the Banking Act of 1933 which created the FDIC. The FDIC's role is to provide federal deposit insurance to depositors, prevent bank failures, and achieve public confidence in U.S. banking systems. FDIC insurance is only available for funds held at a qualifying bank. Deposits held in credit unions may be insured by the National Credit Union Administration (NCUA) instead, which currently provides similar (but not identical) coverage for deposits.

Current FDIC Rules**.** Currently, at an FDIC-insured bank, a "single account" or an account owned by one person, without named beneficiaries, is insured up to $250,000. However, irrevocable and revocable trust accounts are insured differently than single accounts.

Irrevocable trust accounts qualify for deposit insurance of up to $250,000 per beneficiary, but only if all of the following criteria is met: (1) the trust is valid under state law; (2) the FDIC-insured bank account records show the existence of a trust relationship; (3) the beneficiaries and their interest in the trust can be identified in the bank's account records or the trustee's records; and (4) each beneficiary holds a "non-contingent" interest.[1] If all the criteria above are met, then each beneficiary's non-contingent interest is insured up to $250,000. For irrevocable trust accounts that contain beneficiaries with contingent interests, deposit insurance is capped at $250,000, per FDIC-insured bank, regardless of the number of named beneficiaries.

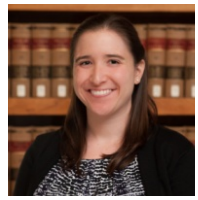
Revocable trust accounts held at FDIC-insured banks are insured up to $250,000 per beneficiary, if the trust owner names five or fewer beneficiaries. Thus, a revocable trust account with five beneficiaries is insured up to

[1] The FDIC rule defines an interest as non-contingent if it is "capable of determination without evaluation of any contingencies except those covered by present worth/life expectancy tables." *See* https://www.ecfr.gov/current/title-12/chapter-III/subchapter-B/part-330.

$1,250,000. When a revocable trust account owner names six or more beneficiaries, and all the beneficiaries have an equal interest in the trust, each beneficiary is covered up to $250,000. But when a revocable trust names six or more beneficiaries and the beneficiaries do not have an equal interest in the trust, the trust deposits are insured for the greater of either: (1) the sum of each beneficiary's actual trust interest, up to $250,000, or (2) a minimum coverage of $1,250,000.[2]

New FDIC Rule. The rules for deposit insurance relating to revocable and irrevocable trust accounts will be replaced by one uniform, simpler rule. Trust deposits will be insured up to $250,000 for each trust beneficiary, not to exceed five beneficiaries, regardless of whether the trust is revocable or irrevocable. This new rule will provide for a maximum coverage of $1,250,000 per owner, per FDIC-insured bank, for trust deposits. Under this rule, less overall insurance may be available. The new rule for deposit insurance for trust accounts will take effect on April 1, 2024.[3]

Conclusion. Trustees of irrevocable trusts have a duty to "administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument."[4] This includes protecting the assets from unnecessary risk. To minimize the risk of loss, Trustees should review bank account balances regularly to confirm they remain fully insured, and in general, should keep no more than $250,000 in any single bank. Seeking the help of a legal professional is advisable to ensure that your FDIC-insured accounts are fully covered. If you have any questions, our team would be happy to talk with you.



THE PERILS OF DIY ESTATE PLANNING

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

In today's environment, everyone is always looking for ways to save money and cut costs. That's a necessity for many, and just prudent practice for others. You may even equate your estate plan to be a similar task as doing your own taxes on TurboTax or similar software each year. But, many of the websites advertising free or low-cost estate plans are not customized for the client, do not take into account varying family dynamics, and do not provide advice beyond the document itself. Estate planning should not be one of these items where you try a "do it yourself" ("DIY") approach, as the downsides and risks of improperly executing or drafting documents can be dire, and are sometimes not noticeable until the person who has the power to change them has died.

We have seen many of these DIY mistakes create higher legal bills for our clients than if they had just come to us in the first place to draft or review the documents. Some stories of all-too-common mistakes are outlined below, as well as just a handful of reasons to hire an attorney for your planning. In some instances, the goal you were trying to accomplish is completely sidestepped by having improper planning.

False Sense of Security. One of the most severe issues with DIY estate planning is a false sense of security. Most commonly, people have a misunderstanding that if they have a Will in place, their estate planning is complete. In fact, most people confuse a Will and trust and think they are interchangeable. In some states, a Will alone may be sufficient, but in California, that very rarely is the case. The vast majority of

[2] *See* https://www.fdic.gov/regulations/resources/brochures/your_insured_deposits-english.html.

[3] *See* https://www.fdic.gov/news/fact-sheets/final-rule-trust-mortgage-accounts-01-21-22.pdf.

[4] California Probate Code Section 16040.

decedents in California who die with only a Will in place will have their estates subject to probate, which can be costly, time-consuming, and a huge hassle for their heirs.

Lack of Direction. In addition to DIY website programs typically failing to take into account the true needs of any person, there generally is a lack of direction about what to do *after* the estate plan is executed. Forming a trust is half the battle; funding the trust is just as important. Unless a trust has assets transferred to it, the trust serves no purpose and its terms do not govern anything. An attorney can provide direction of what do with your assets after signing the trust, and the different tax consequences depending on the type of asset. Failing to transfer assets to the trust can cause an easily avoidable probate proceeding.

Failure to Execute Properly. Another downside with an online company is the lack of a human being in front of you to assist with ensuring the documents are executed properly. Many documents may require notarization, and Wills are notoriously the most technical portion of the estate planning execution process. Early on in the pandemic, more clients than usual preferred to execute their draft documents on their own instead of making a trip to our office. There were far too many documents that were returned with improper execution, such as a lack of witnesses (or the wrong type of witnesses) to a Will signing, and that even is *after* we had prepared instructions for execution. Such missteps could render a document completely invalid, and if you do not have a person in front of you to oversee execution of the documents, your planning may be moot.

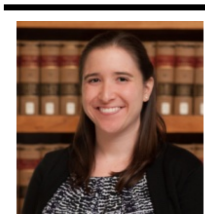
Lack of Tax Advice. Tax is a central element to preparing a personalized estate plan. Different trust structures have different tax effects on the client, both during life and after death. Detailed line items within the trust can have drastic tax consequences as well. For example, trusts often grant powers of appointment to trustors or beneficiaries. There are two classes of powers of appointment, and they create drastically different tax effects. If you were an unknowing person drafting your own estate plan and were given an option to appoint assets to a limited class, such as only within your bloodline, versus to anyone desired, you may choose your preference without knowing that such a choice can result in a significantly higher tax bill or even trigger immediate (and unnecessary) tax upon death.

Handwritten Changes. We often see clients make handwritten changes to their existing documents instead of paying for an attorney to formally amend their documents. Sometimes it is a fairly simple change like updating the last name of a daughter who was recently married, or sometimes it is intended to make a change to the actual trust like switching successor trustees or changing beneficiaries. Clients may not realize that handwritten changes have the possibility to render your documents invalid.

Client Story 1: Real Property. In a client situation that is all too familiar, the parents tried to transfer some portions of rental real estate to their son in order to provide him cash flow from rental property and start teaching him how to manage rentals and take over the family business. However, the DIY deeds to transfer such interests to their son granted title and ownership in a capacity for which title was not currently held, rendering the deeds essentially ineffective. Beyond that, they formed an LLC and then transferred ownership to their son of a portion of the LLC, not realizing that doing so triggered a property tax reassessment. In their case, they paid thousands of dollars to correct the title defects, as well as larger property tax bills each year, and for every year to come.

Client Story 2: Gifting. In another similar client situation, mother and son were jointly on title as to real property. Mom was struggling to pay bills in her later years and son offered to refinance the mortgage in his own name, but the title company required title to be in his sole name since he was the primary name on the loan. Thus, his mother temporarily came off title to reflect 100% in son's name. As the title company drafted the deed, the language indicated that the transfer was a gift from mother to son, causing major gift tax implications, when really it was a temporary accommodation for financing purposes only. It also created a rush project to correct such wrongs within the same tax year to essentially reverse the errors committed. A genuine desire to help a family member turned into a several thousand-dollar project, especially given that property tax, income tax, and gift tax all needed to be taken into account, and there was a concern that mother had unnecessarily used some of her parent-child exclusion from reassessment.

Conclusion. The bottom line is that estate planning is just too important to attempt to complete on your own. Estate planning is intended to provide protection and security for yourself and your loved ones, and if done improperly can fail to provide either. Former Supreme Court Chief Justice Warren Burger even failed to properly execute an estate plan, causing his estate to end up in probate after his death, resulting in his family losing tens of thousands of dollars. If one of the highest legal authorities and brightest minds in the country fails to properly draft and execute a DIY estate plan, chances are most people will find it a difficult task as well.



FEDERAL TAX NEWS

By Katie A. Lepore, CPA, J.D., LLM., Taxation

Estate Tax Closing Letter Fee. Effective October 28, 2021, taxpayers or tax practitioners looking to receive a closing letter for an estate tax return can now expect to pay a $67 user fee for such IRS Letter 627. The letter remains available only upon request.

2022 Inflation-Adjusted Amounts. The IRS has announced the 2022 increases to inflation-adjusted amounts, including 401(k) plan contributions increasing to $20,500; traditional and Roth IRA contribution amounts remain unchanged at $6,000. The standard deduction for married couples filing jointly increased to $25,900, up $800 from 2021; the standard deduction for single taxpayers is $12,950, up $400 from 2021. The top individual marginal rate remains at 37%. The estate and gift tax exemption increased to $12,060,000 per person and the annual gift tax exclusion amount is $16,000, increasing from the $15,000 amount it had been since 2018.

Infrastructure Bill. The *Infrastructure Investment and Jobs Act* was signed into law November 15, 2021. It contains harsher requirements for cryptocurrency reporting and expands the definition of who may be considered a broker for cryptocurrency. Additionally, it curtails the Employee Retention Credit under the *American Rescue Plan Act of 2021*, and allows pension smoothing for employers with pensions.

Build Back Better Act. Currently, the *Build Back Better Act* is stalled in the Senate; it passed the House on November 19, 2021. If passed, it would institute a high-income surcharge for individuals and trusts/estates, as well as curtail retirement contributions for high-income earners or those with high balances in such retirement accounts. The *Act* would increase the SALT cap from $10,000 to $80,000 for a married couple. It also would expand the electric vehicle tax credits and remove the 200,000 per manufacturer vehicle cap.

IRS Mileage Rate Released. The IRS released in Notice 2022-03 that the mileage rate for standard/business mileage is 58.5 cents per mile, 18 cents per mile for medical usage, and 14 cents per mile for usage in servicing charitable organizations.

IRS Releases New Online Identity Verification. The IRS unveiled a new online identity verification process for accessing certain self-help tools on its website. Such features available under the new system include Child Tax Credit information, Online Account, Get Transcript, Online Payment Agreement, and Get an Identity

Protection Pin. Such software is similar to the identity verification process used by tax practitioners to submit Powers of Attorney or Tax Information Authorizations. Additionally, the IRS began using company ID.me with facial recognition software to screen taxpayers before accessing certain features online. However, after members of Congress raised privacy concerns, the IRS has now moved away from usage of such facial recognition software.

SALT Cap Held Constitutional. In *NY v. Yellen, No. 19-3962-cv*, the Second Circuit Court of Appeals upheld the dismissal of a lawsuit filed by New York, New Jersey, Maryland, and Connecticut regarding the constitutionality of the $10,000 state and local tax cap instituted under the *2017 Tax Cuts and Jobs Act*. The Attorneys General of these states have appealed to the U.S. Supreme Court.

IRS Releases Priority Guidance. In the IRS's 2021-2022 Priority Guidance Plan, the IRS outlined several items of importance to the agency, including many of which impact estate planners. These items include: regulations under Section 72(t) relating to an additional 10% tax on early distributions from an IRA; final regulations under Section 1014(f) and 6035 regarding basis consistency between an estate and its beneficiaries; and regulations under Section 20.2010-1(c) about exclusion amounts where there may be a different basic exclusion amount applicable to a lifetime gift than at date of death.

Estate Planning Matters Added to IRS No-Rulings List. The IRS added several items of interest to estate planners to the list of items for which it will not grant a private ruling through Rev. Proc. 2022-3. Such items include rulings on whether self-dealing occurs in a private foundation when it owns an LLC interest with a related-party note; whether a charitable remainder unitrust interest qualifies for an estate tax marital deduction; whether a charitable remainder unitrust interest qualifies for gift tax marital deduction; and distributions from donor advised funds under Sections 4966 and 4967.

CALIFORNIA TAX UPDATE

By Katie A. Lepore, CPA, J.D., LLM., Taxation

CA COVID Sick Pay and NOL Suspension Shortened. *SB 114,* signed into law February 9, 2022, requires sick time wages to be paid to employees impacted by COVID-19, for all businesses with over 25 employees. The law is retroactive to January 1, 2022 and is in effect through September 30, 2022. Full-time employees can take up to 80 hours of supplemental paid sick leave, with the second 40 hours requiring a positive test. A companion bill, *SB 113*, shortens the suspension time for businesses to use net operating losses and other limits on certain business tax credits.

Pass-Through Entity Laws Expanded. In addition to the NOL and tax credits included in *SB 113*, mentioned above, the bill also expands the rules allowable for the pass-through entity credit as a workaround on the SALT cap. The definition of qualified entities is expanded to include a partnership as an eligible partner, shareholder, or member in the pass-through entity. Additionally, LLCs that are disregarded entities, if meeting certain requirements, can also be considered a pass-through entity.

Entity Statement of Information Forms Updated. Beginning January 1, 2022, the Secretary of State has revised its entity Statement of Information forms to comply with *AB 3075*, which requires all LLC and corporations filing Statements of Information to answer a Labor Judgment question. Please be sure entities file a new Statement of Information form when the next one is due prior to submitting a "No Change" Statement of Information.

California 2022 Housing Laws. Several housing bills were passed for California, effective in 2022. *SB 9* was passed on September 16, 2021 and allows conversion of owner-occupied homes into duplexes upon the meeting of certain requirements. *SB 10* allows an owner to avoid an environmental review to allow up to 10 dwelling units on any parcel in a transit-rich area, if a local agency grants permission. *AB 345* allows accessory dwelling units (ADUs) to be separately conveyed apart from the primary residence to a qualified buyer, traditionally low-income. *AB 721, AB 1584,* and *AB 1466* take aim at HOA CC&R regulations that restrict building for affordable housing or limiting the size or location of residences that can be built on a piece of property, or ADUs, or racially restrictive language.

<u>San Francisco Housing Laws</u>. The San Francisco Board of Supervisors passed an ordinance on January 25 that residential tenants must be provided a 10-day notice period and opportunity to cure prior to beginning an eviction proceeding for just cause. Current state law requires only a 3-day period. The mayor needs to sign the bill into law and legal challenges are expected. Additionally, San Francisco supervisor Dean Preston has introduced an initiative which would tax landlords with vacant housing units in an effort to create more housing. The tax rate would be dependent on the property's size and how long it has been vacant. Signatures are being gathered to qualify it for the ballot.

<u>San Diego Rejects Mileage Tax</u>. Late last year, SANDAG released a transportation plan to fund a free public transit system and improvements to infrastructure, which also may include a high-speed train. To fund the plan, SANDAG proposed a per-mile road tax, as well as minor increases to sales taxes. The plan proposed a 3.3 cent per mile tax beginning in 2030. In December 2021, many San Diego County and San Diego City leaders voiced concerns over SANDAG's proposed mileage tax. In response, the SANDAG Board of Directors voted to enact the 2021 Regional Plan which does not include the mileage tax.

<u>FTB Digital Signature Acceptance Extended</u>. The FTB's temporary acceptance of digital signatures on certain tax documents has been extended from December 31, 2021 to June 30, 2022. For paper returns or certain other documents which generally require an original signature, digital signatures will be allowable, though they will not be allowed for Powers of Attorney.

<u>FTB Assigns Identification Numbers</u>. The Franchise Tax Board has been automatically assigning any entities without a Secretary of State number on file a California identification number, even if an EIN was on file. Most commonly affected were general partnerships. Close to 300,000 entities were issued letters with new Secretary of State numbers.

<u>Business Filers Must Report Unclaimed Property</u>**.** Beginning January 1, 2022, California business taxpayers must report whether they claimed any state unclaimed property in the tax year. The FTB may also share information with the California State Controller's Office, which manages the unclaimed property.

<u>California Weighs Free Health Care</u>. The proposed Assembly Constitutional Amendment *ACA 11* would establish a universal health care system called CalCare. All California residents would be eligible for coverage at no cost. In order to pay for such system, tax increases would be instituted. If passed into law, *ACA 11* would implement a 2.3% excise tax on businesses earning over $2 million, a 1.25% payroll tax for employers with over 50 California residents as employees, a 1.0% payroll tax on residents earning wages above $49,000, and higher personal income taxes for anyone earning over $149,509. It would require taxpayer approval before it becomes effective.

be used as a substitute for legal advice and does not create an attorney-client relationship between the reader and Miller, Monson, Peshel, Polacek and Hoshaw. Legal advice depends on the specific facts and circumstances of each individual's situation. You should not rely on this newsletter without first consulting with a qualified, licensed attorney.

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