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WHAT'S NEW IN ESTATE PLANNING 2025

1. FEDERAL ESTATE TAX

A. **$13,990,000 Federal Estate Tax Exemption:** The amount that you can give during your lifetime or at your death and be exempt from federal estate tax has risen from $13,610,000 to $13,990,000. This is an increase over last year of $380,000 or 2.8%.

B. **Return of the $5,000,000 Estate Tax Exemption in 2026:** In 2026, the Exemption will return to $5,000,000, plus an amount indexed for inflation, unless the law is changed. Adjusted for inflation, the exemption will be about $7,000,000 in 2026.

Year of Death	Estate Exemption	Estate Tax
2025	$13,990,000	40% tax on amount over
2026	$5,000,000 + indexed for inflation (approx. $7 million)	40% tax on amount over

Example: $13,990,000 death in **2025** = $ 0 Federal Estate Tax
$13,990,000 death in **2026** = $2,760,000 Federal Estate Tax

C. **Sunset of Tax Cuts and Jobs Act of 2017 (TCJA)**: The 2017 TCJA was the crown jewel of the first Trump administration with a variety of temporary provisions.

1) **Will the TCJA Be Extended?** Because the Republican administration has control of the Presidency and the majority of Congress, many think the TCJA rules previously enacted will continue on.
2) **Effect if TCJA Extended**: If the entire 2017 TCJA is extended, then the current transfer tax exemptions (estate, gift and generation-skipping),

including scheduled inflation adjustments, will continue ($13,990,000 for 2025 per person, and increasing in 2026).

3) **Action During Uncertainty**: There are many demands for tax revenues, and we should NOT assume anything. Most people will wait and see what tax legislation is passed this year, however, individuals with high net worth estates (estates of $14m per person or $28 million for a couple), should consider moving forward with long-term multi-generational plans.

D. **Transfer Exemption to Spouse – Portability**: A married couple has two exemptions, for a total of $27,980,000 ($13,990,000 x 2) to their beneficiaries tax free.

1) **Oops – I had to do something?** The exemption of a deceased spouse does not automatically transfer to the surviving spouse. The executor/trustee needs to file a Federal Estate Tax Return (Form 706) within nine months of the death and elect portability of the deceased spouse's unused exemption (DSUE).

2) **Is it Too Late?** (IRS Rev Proc 2022-32) This revenue procedure provides a simplified method for certain taxpayers to obtain an extension of time to make a portability election. For a decedent dying after 12/31/2010 who was not required to file an estate tax return (gross estate within exemption) and was survived by a spouse, the period to elect portability is extended to the fifth (5th) anniversary of the decedent's date of death!

1) **Example:** Harry died June 20, 2020, and his gross estate was less than the estate tax exemption of $11,580,000 for 2020. Wanda, his wife, did not file a federal estate tax return since it was not required to be filed.

Wanda's estate is now $10,000,000, and she is worried that the federal estate tax exemption will only be $7,000,000 in 2026, only one year away. Wanda's federal estate tax would be $1,200,000. Is there a way for Wanda to get Harry's unused $11,580,000 exemption?

2) **Solution:** If Wanda files Harry's federal estate tax return before June 20, 2025 (the 5th anniversary of Harry's death), then she can elect portability of Harry's unused exemption! Wanda will have Harry's $11,580,000 plus her own exemption of about $7,000,000. This means that she could transfer $18,580,000 tax free. Wanda's federal estate tax would be zero.

3) **Action Item:** If a person died within the last five years survived by a spouse, consider filing a federal estate tax return to capture the exemption amount.

E. **Use it or lose it?** When the exemption automatically reduces from almost $14m to approx. $7m, the $7m reduction in exemption disappears. If your estate exceeds approx. $13,990,000 (or $27,980,000 for a married couple), what can you do to use up the extra exemption before it evaporates?

1) **The Good News - No Claw back** (REG-106706-18; §20.2010-1): The good news is that you can use up all or part of the disappearing $7m exemption before 2026 by making completed lifetime gifts. The IRS issued final regulations that avoid potential claw back of gifts made before 2026.

2) The Bad News - Exemption Spent from the Bottom Up: Although you want to apply the disappearing $7m exemption to your lifetime gifts, you do not eat into the top $7m until you have consumed the bottom $7m exemption first. You cannot have dessert until you eat a full meal. For example, if you give away $5m, you have not even touched your $7m exemption. If you give away $9m, then you use up the bottom $7m plus $2m of your $14m exemption. This means you must make an exceptionally large gift to use your disappearing $7m exemption.

3) **Is it Worth It?** You be the judge. Using the $7m exemption saves 40% in federal estate tax, which is a tax savings of $2,800,000.

4) **The Hidden Cost of Gifts: No Stepped-Up Income Tax Basis**: Most assets which you own at death receive a new income tax basis equal to the date of death value. This means that your lifetime gain and loss is eliminated. If you gift assets in your lifetime, those assets will not receive a new income tax basis. You give your income tax basis along with the gift. NOTE: Certain assets do not receive a new income tax basis at all, such as retirement plans, IRAs, annuities, and installment sale notes.

2. GIFT TAXES

A. **$13,990,000 Gift Tax Exemption:** Lifetime Gift Amount without paying taxes.

B. **No Claw back** (REG-106706-18; §20.2010-1): You can use up all or part of the disappearing $7m exemption before 2026 by making completed lifetime gifts.

C. **$19,000 Annual Gift Tax Exclusion ($38,000 per couple):** Last year's exemption of $18,000 increased by $1,000 to $19,000.

D. **Unlimited Medical and Educational Expenses:** You can pay anyone's medical care and educational expenses if you make your payment directly to the provider of services. These transfers do not count against your Gift Tax Exemption.

E. **Carryover Income Tax Basis**: When you make a gift, you give your income tax basis (cost, plus improvements, less depreciation) to the recipient. In general, this means that your donee will continue to hold your capital gain or loss.

3. GENERATION SKIPPING TRANSFER TAX (GST)

A. **Direct and Indirect GST Transfers:** A direct GST transfer occurs when there is a transfer to a grandchild. An indirect GST transfer happens when there is transfer to a trust for child's lifetime which later passes to grandchildren.

B. **$13,990,000 Generation-Skipping Tax (GST) Exemption – Not Portable:** This exemption is not "portable" to the surviving spouse. You can leave this amount "in trust" for your spouse to preserve the exemption.

C. **No Claw back** (REG-106706-18; §20.2010-1): You can use up all or part of the disappearing $7m exemption before 2026 by making completed lifetime gifts.

D. **$19,000 Annual GST Tax Exclusion ($38,000 per couple):** Last year's exemption of $18,000 increased by $1,000 to $19,000.

4. INCOME TAXES

A. **Basis Step Up Planning**

1) **New Income Tax Basis at Death (IRC 1014):** Assets owned by a decedent receive a new income tax basis at death equal to the date of death value. This means that the decedent's lifetime capital gain or loss is eliminated at death. However, retirement plans and annuities do not receive a new income tax basis.

2) **No Basis Step-Up: Irrevocable Trusts:** Assets owned by an "irrevocable trust" do not receive a new income tax basis at death since they are not "included" in the decedent's estate.

3) **Modification of AB Trust After First Death:**

Henry and Wendy had an AB Trust. When Henry died, his portion of the trust was transferred to Trust B, an irrevocable trust for the benefit of Wendy during her lifetime. His assets received a stepped-up basis to fair market value. However, when Wendy dies Trust B assets will not receive another step-up.

Wendy has outlived Henry by 25 years. Trust B has tripled in value and has substantial capital gain. The children will inherit low basis assets and will pay a lot of capital gain taxes when they sell the assets after Wendy's death. What can Wendy do?

a. **Petition for Modification** (Prob. Code §15403, §17200(b)(13)): During Wendy's lifetime, the Trustee of Trust B can petition the Court to request a "modification" of Trust B. If the Court modifies Trust B to give Wendy a "general power of appointment," then the Trust B assets will be included in Wendy's estate and receive a stepped-up basis when she dies.

b. **General Power of Appointment:** The "general power of appointment" can be a broad power that allows Trust B assets to be transferred to Wendy or a narrow power so that Trust B stays intact and must pass to the children at Wendy's death. Importantly, the power can be limited to that amount which will not cause a federal estate tax in Wendy's estate.

c. **Consent of All Beneficiaries**: Wendy and all the children need to sign Consents to the Petition.

B. **Income Taxation of Irrevocable Trusts**

The trustee of an irrevocable trust must file "fiduciary" income tax returns annually.

1) **Tax Rate:** The highest federal income tax rate is 37% for 2025 on taxable income over $15,650.

2) **Who is Taxed**? Accumulated income is taxed to the trust or estate. Distributed income is taxed to the beneficiary.

5. ELECTRONIC SIGNATURES

A. **No Electronic Signatures for Wills/Trusts in California**: A valid testamentary document in California must be signed in physical ink. There are online services purporting to create estate plans with electronic signatures and remote online notarizing, however, they may not be valid in California.

B. **Recording Documents Signed/Notarized Online (AB 2004, Government Code 27201.1)**: In 2004, California began to authorize electronic recording of documents which were physically signed and notarized ("wet signatures"), such as real estate

deeds. However, what if the original documents were signed and notarized electronically, and there are no wet signatures? Under a new law, a copy of the electronic documents can be submitted on paper and then recorded. Now, buyers and sellers of real property can use online signatures and notarization to close their property.

1) **How Does it Work?** An individual (termed a "disinterested custodian") presents a tangible copy of the original electronic document to a notary, and swears an oath or affirmation that the tangible copy is a true and accurate reproduction. The notary completes a jurat which will then accompany the tangible documents to be physically recorded with the county.

2) **Online Notarization is a Reality**. Now, buyers and sellers across California can use online notarization to close their property. Regardless of whether the county in which the property is located e-records or not.

3) **Certification (Government Code 27201.1)**: The certification shall be subscribed and sworn to, or affirmed, by the disinterested custodian before a notary public and accompanied by a jurat attached thereto pursuant to Section 8202. The certification shall be in substantially the following form:

   Certification of a Printed Copy of an Electronic Record

   I hereby certify that the attached instrument entitled document title, if applicable, dated document date, and containing page count pages is an accurate reproduction of an electronic record printed by me or under my supervision. At the time of printing, I had access to the electronic record displaying intact tamper-evident security procedures. No security procedures used on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the completion of the electronic record's creation, execution, or notarization.

   I am not a grantee, beneficiary, or otherwise a person who directly benefits from the attached instrument or electronic record.

   I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraphs are true and correct.

   Dated: _____
   Name: _____
   Signature: _____ (disinterested custodian)

4) **Who is a "Disinterested Custodian"? (Government Code 27201(d))** A "disinterested custodian" means a person who has access to an electronic record displaying intact tamper-evident security procedures and who is not the

grantee, beneficiary, or otherwise a person who directly benefits from the electronic record. Can the "disinterested person" work in the same office as the notary?

5) **Who is the Sponsor of this Legislation?** The California Land Title Association. The bill intended to help implement the remote online notarization (RON) law enacted in 2024 by SB 695. This change enables the use of RON in counties where electronic recording is not yet implemented by providing that a certified paper copy of a remotely notarized document can be recorded.

C. **Revised Uniform Fiduciary Access to Digital Assets Act** (SB 1458 – Probate Code 871)**:** This law (RUFADAA) authorizes a fiduciary to access and manage digital assets and electronic communications.

1) **What are Digital Assets?** Digital assets are broadly defined as electronic records in which an individual has a right or interest. This includes a wide range of intangible assets that exist online or in electronic form. Digital assets include things such as emails, texts, messages, social media accounts, photos, online bank accounts, cryptocurrency, and online-stored intellectual property.

2) **Existing law – Fiduciaries Acting After Death.** California's RUFADAA, enacted in 2015, provides a framework for custodians and fiduciaries acting after the death of the person to work out digital asset access issues on their own and limits court involvement to an option of last resort. RUFADAA establishes a three-tiered system for determining the user's intent for disclosure of his or her electronic communications, with first priority given to the user's designation through an online tool, followed in second priority by any directions specified by the user in an estate plan for the disposition of his or her digital assets. Finally, if the user did not provide any direction regarding disclosure of digital assets, the terms-of-service governing the account apply.

3) **New Law – Expands to Lifetime Fiduciaries:** California was the only state of forty-five states that adopted RUFADAA to limit the law to fiduciaries acting after death**.** Eight years after RUFADAA became law in California, this law expands RUFADAA's scope to agents acting under a power of attorney or conservators of the estate. These are known as "lifetime fiduciaries."

6. TRANSFERS WITHOUT PROBATE

Certain assets of the decedent can be transferred without starting a probate court proceeding.

A. Transfer of Personal Property – Affidavit of Small Estate - Probate Code 13100 - 13117

For deaths after 4/1/2025, the successor of the decedent can collect **personal property** using an affidavit signed at least 40 days after death if the **current gross fair market value** of decedent's real and personal California property does not exceed $184,500, adjusted for inflation.

This applies to assets that are not in a trust, not held jointly, and have no designated beneficiary, and it excludes the **date of death value** of a primary residence that does not exceed $750,000.

The new law makes it easier primary residences of limited value to avoid large probate expenses.

B. Transfer of Primary Residence– Petition to Determine Succession – Probate Code 13151, 13152, 13154

For deaths after 4/1/2025, the successor of the decedent can transfer the decedent's **primary residence** by filing a court petition at least 40 days after death if the **date of death value** of the decedent's primary residence in California does not exceed $750,000.

This procedure can avoid the expenses of probating a primary residence, even if there is a Probate of other assets.

C. Transfer of Real Property - Affidavit of Real Property of Small Value – Probate Code 13200-13210

For deaths after 4/1/2025, the successor of the decedent can transfer real property using an affidavit signed at least 6 months after death if the current gross value of California real property does not exceed $61,500, adjusted for inflation.

This applies to real property assets that are not in a trust, not held jointly, and have no designated beneficiary, and it excludes the **date of death value** of a primary residence that does not exceed $750,000.

D. What is Decedent's Primary Residence?

What if a person is transferred to nursing home, a hospital, the home of a relative?

7. TRUST ADMINISTRATION

Notice and Accounting to Beneficiaries on Incompetency of Trustor (Probate Code 15800(b)(1)): If a successor trustee receives information that the Trustor is incompetent, the successor trustee has a duty to send a written notice to all remainder beneficiaries (beneficiaries who would inherit) within 60 days with a copy of the signed trust and all amendments. Additionally, the successor trustee must account, at least annually, as if the settlor has died.

If the acting trustee resigns, there is no duty to send a notice to the remainder beneficiaries. The successor trustee does not have a duty to establish incompetence. This notice does not start a 120-day period to contest the trust.

Takeaways: if you are the successor trustee of a trust, you may have to start administering the trust before the trustor's death if they become incompetent. In this case, you have a duty to send a Notification to beneficiaries and furnish an annual accounting. Reach out to your estate planning attorney for assistance.

8. PROPERTY TAXES – PROP 19 AND THE PARENT CHILD EXCLUSION

If you transfer California real estate to a child during your lifetime or at death, can the child continue to pay the same property taxes? Or will the property be reassessed at its current value and the property tax bill will increase?

A. Gifts or Deaths before February 16, 2021: The old Parent-Child Exclusion applied to all transfers. These transfers would NOT be reassessed:

1) The property is the parent's primary residence regardless of use by child.
2) Other (non-residence) property with assessed value up to $1 million.

B. Gifts or Deaths starting February 16, 2021: California real estate passing from Parents to Children IS reassessed, unless:

1) The property is the **parent's primary residence**; and
2) The child makes the property the **child's primary residence.**
3) **Partial Reassessment**: If the fair market value of the residence is $1 million or more above the assessed value, then the excess amount will be partially reassessed.

C. Homeowner's Exemption:

1) **One Year Filing Deadline:** The child must file the homeowner's exemption form within one year of death of death or lifetime transfer.

2) **Homeowner in Hospital or Healthcare Facility:** SB 520 (Seyarto), If the

homeowner is not occupying the dwelling because they are confined to a hospital or other care facility, the homeowner is deemed to occupy that dwelling as their principal place of residence, provided that (1) the person would occupy the dwelling if they were not confined to the hospital or other care facility, (2) the person intends to return to the dwelling when possible to do so, and (3) the dwelling is not rented to other than a related person.

D. Planning Opportunities

1) Residence: Methods to qualify for the Parent-Child Exclusion:

   a. **Include Right of First Refusal (Option to Purchase):** Parent includes language in trust to allow a child to buy the residence from trust with their own funds.

   b. **Non-Pro Rata Distribution**: If trust has enough assets to distribute among the children, one child can take the residence as part of their share of the trust without triggering reassessment.

   c. **Parent-Child Equalization Loan**: If the trust does not have enough assets to make a non-pro rata distribution, the trustee can obtain a loan from third party secured by the residence and distribute encumbered residence to child and cash to others.

   Beware! If child "buys" out their siblings, the property will be reassessed (Bohnett v. County of Santa Barbara).

2) **Rental/Commercial Property**: Recalculate cash flow with increased property taxes. Sell property, which now has a new income tax basis?

3) **Entity Rules:** Creation of LLC so that "entity rules" apply vs. parent/child exclusion.

4) **Original Transferor Rule**: Purchase property or receive trust distribution as co-owners and then put property in joint tenancy. If a joint tenant dies and property passes to an "original transferor," the property will not be reassessed.

9. RETIREMENT PLANS

A. Secure Act 2.0: Distributions During Lifetime: SECURE 2.0 impacts withdrawals from retirement plan. The beginning date for required minimum distributions (RMD) is pushed back. Taxpayers are required to start taking the required minimum distributions from retirement plans at age 73, and in 2033, the age will increase to 75.

B. **Secure Act of 2019: Distributions After Death:** The rules for required minimum distributions following a death occurring 1/1/2020 or after, fall into three (3) different categories.

1) **Inherited Ira - 10 Years Vs. Life Expectancy**

a. **Designated Beneficiary (DB):** 10-year payout, not RMD, not life expectancy.

i. **IRS Notice 2022-53 (released Feb. 2022):** Under the proposed regulations, if an account owner dies on or after their required beginning date, beneficiaries who are subject to the 10-year rule must take annual life expectancy payments during the first nine years.

ii. **Make up Distribution:** RMD's were suspended in 2020, but not 2021-2024. If the RMD was not made in 2021-2024, the distribution may still have to be made but there will be no penalty. (Notice 2023-54)

b. **Eligible Designated Beneficiary (EDB):** Life Expectancy Payout.

i. Spouse
ii. Minor Child of Participant (until majority, then 10-year payout)
iii. Disabled Person
iv. Chronically Ill Person
v. Person not more than 10 years younger

c. **Non-Designated Beneficiary (Non-DB):** 5-year payout.

i. Not naming a beneficiary
ii. A named beneficiary does not survive.
iii. Naming the Estate as a beneficiary
iv. Naming a trust as beneficiary that does not qualify for "see-through treatment."

2) **What Should I Do? Review Your IRA Beneficiaries**

a. **Beneficiary Designation Form:** Obtain a copy of your Beneficiary Designation form from each institution that holds your IRA or retirement plan (e.g., Schwab, Fidelity, Vanguard). For corporate pension plans, contact your plan administrator.

b. **Professional Review**: Bring the beneficiary designation form to meet with your estate planning attorney.

10. CASES

A. What Must the Omitted Child Prove to Inherit? (Estate of Williams – Probate Code 21622)

1) **The Facts:** Annie gave birth to Carla following a brief relationship with Benjamin. In total, Benjamin fathered seven children from various women, two of which were born during marriage. He was aware of the existence of all children, except Carla.

2) **The Trust**: Benjamin's trust stated the only named beneficiaries were "his children, Benita and Ben", who were the two born during marriage. The Trust did not have a general disinheritance clause.

3) **The DNA Match**: After a DNA match, Carla's daughter (Benjamin's biological grandchild) contacted Benita (Benjamin's child) on a genealogy website. They arranged a "family get together", where Carla met several half-siblings and learned of Benjamin's recent passing.

4) **The Law:** If, at the time of the execution of all of decedent's testamentary instruments effective at the time of decedent's death, the decedent failed to provide for a living child solely because the decedent was unaware of the birth of the child, the child shall receive a share in the estate equal in value to that which the child would have received if the decedent had died without having executed any testamentary instruments.

5) **Notification by Trustee**: Subsequently, Carla received the notice from the trustee of the existence and administration of Benjamin's trust. She petitioned to receive a share of the estate under Probate Section 21622.

6) **Court**: The Court held that although Benjamin was Carla's father and he was unaware of her birth, Carla failed to prove that the "sole reason" she was not provided for in the trust was Benjamin's unawareness of her birth. The Court reasoned that since Benjamin failed to provide for other known heirs he showed his intent to only provide for the two he expressly named in his trust.

B. Was the Estate Planning Attorney Liable to Beneficiaries? (Grossman v. Wakeman)

1) **The Facts:** Richard had two sons, and was married to Elizabeth, his fourth wife, who was independently wealthy. Richard's estate was about $18 million.

Richard, age 78, met with his attorney and told the attorney he wanted half of his estate to go to one disabled son and the other half to go to the children of his other son (he omitted the other son). Three months later, Richard and Elizabeth met with the attorney and Richard told the attorney he wanted 100% to go to Elizabeth because she would make sure his son and grandchildren would be taken care of. He essentially disinherited his children and grandchildren. Richard died three years later.

2) **Suit Against Attorney:** Richard's son and grandchildren sued the estate planning attorney for negligently leaving out decedent's "intended beneficiaries".

3) **Court**: The estate planning attorney is not liable. The son and grandchild were not the clients, and the attorney owed them no duty. The issue is not what the decedent told his relatives, but what he told his attorney.

C. **Did the Sisters Have Standing to Sue? (Hamlin v. Jendayi -Prob. Code 17200; 16061.7)**

1) **The Facts:** Dr. Head was very ill and was hospitalized. Dr. Head gave a durable power of attorney for finances and an advance health care directive to her former student. After discharge, Dr. Head went to live with the former student. Two weeks prior to death, Dr. Head executed a trust naming the former student as trustee and sole beneficiary.

2) **Suit to Invalidate Trust:**. Decedent's sisters sued to invalidate the trust due to undue influence, lact of capacity, and forgery. Did the sisters have standing to sue?

3) **Court**: The sisters were the intestate heirs and had standing to sue.

D. **Presumption of Fraud and Undue Influence - Financial Elder Abuse - Care Custodian Presumption**. (**Robinson v. Gutierrez**)

1) **The Facts**: The decedent gave caregiver free room and board in exchange for care services. The decedent signed an estate plan making the caregiver the sole beneficiary and the trustee. The decedent died 10 days later.

2) **Care Custodian**: There are special procedure to include a "care custodian" in your estate plan to overcome a presumption of undue influence. There is an exception to this rule if the "care custodian" receives no payment. The caregiver argued that the free room and board was not "remuneration" since the room and board are not "taxable income". For that reason, the caregiver was not a "care custodian".

3) **Court**: There was remuneration even though it was not taxable income. Therefore the caregiver qualified as a care custodian, and there was a presumption of fraud or undue influence regarding decedent's gift.

E. **Unreasonable Restraint on Alienation of Real Property (Godoy v. Linzner – Civil Code 711)**

1) **The Facts:** Mother named her three children as beneficiaries of her trust. The trust provided that each child was to receive a one-third interest in the long-time family residence. In a later handwritten amendment, Mother provided that the children could sell their respective shares only to each other, and for no more than $100,000, which was well below the market value. Mother wanted to keep the home in the family.

2) **Was the Amendment Void?** After Mother died, two of the children petitioned the court for an order declaring the amendment void for imposing an unreasonable restraint on alienation.

3) **Court**: Civil Code Section 711 invalidates unreasonable restraints on alienation. The Court concluded that Mother's imposed restriction that a child may only sell their respective share to the other children and for well under fair market value would be considered unreasonable.

4) **A Better Way to Plan:** In the trust, provide that a child has an option to buy the residence from the trust for fair market value within a certain period of time.

F. **Trustee Breach of Fiduciary Duty – Double Damages (Asara v. Maniscalco – Prob. C 859**)

1) **The Facts:** The former trustee committed financial elder abuse against the decedent in their lifetime. The trustee was also a beneficiary of the trust upon death.

2) **Court:** The Court ordered the trustee to pay back the original amount of property taken PLUS a penalty of twice the value as damages for culpable conduct, in addition to the Petitioner's attorney fees. Further, the damages were awarded to the Petitioner individually, and are not part of the trust/estate, which would be shared with the bad trustee/beneficiary.

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