

Michael Gilfix, Esq.

elling question. Should you implement planning steps now to avoid estate taxes or should you adopt a “wait and see” attitude? If you have a larger estate, we strongly believe that you should implement tax planning steps now.

We believe there will be an increase in the level of estate tax protection. This year, an individual can pass along up to \$675,000 upon death without ex-

### Should You Plan to Avoid Estate Taxes? Or Wait for Estate Tax Relief?

Tax relief is the subject of intense debate in Washington, DC, and across the nation. The current focus is on income tax rates and their probable reduction. Estate tax relief is on the agenda, but will apparently be addressed later.

This raises an interesting and com-



Francis A. La Poll, Esq.

posure to estate taxes. Everything above and beyond that limit is exposed to tax at the commencing rate of 37%. It can be as high as 55%. Current law also provides that the level of protection increases to \$1 million by the year 2006.

Notwithstanding our optimism about increasing levels of protection, we believe two things. First,

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### We Need to Say It Again: Do Your Tax Planning!



The value of your residence continues to increase. Just when you think it can't increase in value any more, it does.

This is reason enough to reexamine the status of your estate planning documents and be sure that you do not make a gift of \$200,000, \$500,000 or even more to the federal government.

We have stressed this issue in many past issues of the *ElderLaw Newsletter*. We stress it again because we take it personally if our clients unnecessarily lose money when good planning could have saved a small

fortune for the family or for their favorite charity.

Remember, this year and next year, an individual can only pass along \$675,000 to children or other relatives without exposure to estate tax. A couple can only pass along \$1.35 million and this assumes they have done an appropriate “AB” trust.

President Clinton vetoed the legislation that would have ended the estate tax. The House failed to override that veto, so estate taxes are a fact of life for the foreseeable future.

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## We Need to Say It Again: Do Your Tax Planning!

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Let us give you some examples of steps that can be taken and savings that can be achieved.

**Example 1:** Mrs. S. is a widow, 84 years of age, with a residence valued at \$1.2 million and other assets valued at \$500,000. Her tax exposure is in excess of \$400,000. We prepared an irrevocable trust for her house, and a family limited partnership. **Net result: elimination of estate tax exposure. Savings to the family: \$400,000+.**

**Example 2:** Mr. & Mrs. B. are in their late fifties and own a home valued at \$2.4 million. Investments are valued at a minimum of \$2 million. The present level of estate tax exposure is in the area of \$1,370,000. For this couple, we prepared an irrevocable life insurance trust, a family limited partnership, and a charitable remainder trust. **Net result: elimination of estate taxes (\$1,370,000 saved, at minimum) and a lifetime income from the charitable trust alone in the amount of \$3,400 per month.**

**Example 3:** Mrs. P., age 91, owns a house worth \$1.4 million. She likely has six months to live. Her estate faces taxes that approach \$300,000. The family lawyer told Mrs. P. and her children that nothing could be done other than \$10,000 “annual exclusion” gifts. We prepared an irrevocable trust and a partnership, all of which were signed within one week of a visit to our office. **Net result: elimination of estate taxes (\$290,000+ saved).**

We hope that this article serves as still another reminder. We can help you protect your estate, but you must acknowledge the value of your estate, understand the level of exposure, and then become protective and proactive. ■

## Should You Plan to Avoid Estate Taxes? Or Wait for Estate Tax Relief?

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estate taxes will not be eliminated. Larger estates will still be exposed to this extraordinarily high tax.

Secondly, it is probable that estate tax relief will be “phased in.” It will not happen overnight. While you wait for increasing levels of protection, your estate will grow, perhaps outstripping increased estate tax protection.

### The “Hot Issue” of Estate Tax Relief — A Crumbling Mandate

There is neither unanimous support among the wealthy for estate tax relief, nor is there a compelling mandate. Some of America’s wealthiest individuals, including Warren Buffet, the father of William Gates, and many members of the Rockefeller family, have drafted the “Responsible Americans Statement,” which first appeared as a full-page ad in *The New York Times*. In essence, it argued against the elimination of the estate tax and spoke of the societal and political-economic benefits of the estate tax. Warren Buffet speaks cogently in favor of America as the “Ameritocracy.” His point is that wealth should be earned, not acquired as an accident of birth. He certainly believes in increasing levels of tax protection, but is a powerful voice for the continuation of the estate tax at some level.

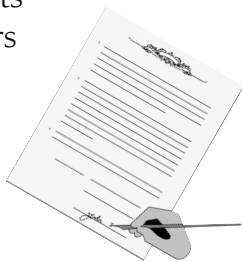
One of the more seemingly compelling arguments proffered in favor of the estate tax elimination is that estate taxes cause families to lose the family farm and the family business. In fact, the tax code already protects such family entities. An objective review of the “problem” reveals that this is a false issue. The number of farms and businesses jeopardized by the estate tax is minuscule. Some academics argue that it is virtually nonexistent. While many politicians will no doubt continue to rely on this argument (“Don’t bother me with the facts.”), facts and data are powerful. We believe they will erode the level of support needed in Congress to pass legislation that would end the estate tax.

### Lurking Capital Gains Tax

To offset the loss to the Treasury of the estate tax revenue, capital gains tax relief may be sacrificed. Under current law, assets in the estate of a deceased

## Should You Sign a New Advance Health Care Directive?

The vast majority of our clients have signed Durable Powers of Attorney for Health Care (DPAHCs). If signed after January 1, 1992, the documents are valid for life unless otherwise and expressly limited. We nevertheless believe that it is in your best interests to sign a new Directive to maximize the likelihood that your wishes will be respected.



We are concerned that there will be some confusion in the medical profession about the new Advance Health Care Directive. We are concerned that, upon learning that the new Directive reflects current law, there may be problems enforcing the terms of a DPAHC that was signed in 1994, for example.

If you would like to update your health care document, give us a call or send us a letter with your instructions.

While it is not a technical necessity that you do this, we recommend it because we believe that, as a practical matter, documents should comply with the current state of the law to maximize their worry-free implementation. ■

## Space Travel and Your Advance Health Care Directive

Your Advance Health Care Directive (previously known as the Durable Power of Attorney for Health Care) includes instructions about how decisions are to be made with regard to life-sustaining treatment. They can also be very creative and expansive.

Some individuals include instructions about the type of music that is to be played even if the individual is in a coma. Some are particularly creative with regard to the distribution of their ashes.

A recent GLA client believes strongly in space travel. Acknowledging how unlikely it is that he will achieve space travel during his lifetime, his Advance Health Care Directive provides specifically that a small portion of his ashes are to be placed in a spacecraft or other vehicle and sent out into space. In a separate writing, he will give additional instructions about which sector of space he prefers. He believes absolutely that there will be rockets or other such vehicles available to achieve this outcome.

Importantly, he also set aside a reasonable amount of money in his revocable trust to fund this effort.

Keep in mind that your estate planning documents are living and breathing. They should reflect your wishes and incorporate your dreams. They can be modified to reflect and respect your evolving sense of purpose in this life and beyond. ■

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individual receive a “stepped-up basis” at the time of the individual’s death. Regardless of what was paid for a stock, for example, the new basis is set at the fair market value on the date of an individual’s death. If the surviving spouse or children then sell that stock at or near the value on the date of death, capital gains taxes are all but eliminated. Tax relief legislation may compromise or end this highly beneficial step-up, or increase in the cost basis. If the stock worth \$100 on the date of death was purchased for \$10, the surviving spouse or children may inherit the \$10 cost basis and face a huge capital

gains tax if they sell that stock.

Our prognostications flow from a careful reading of the legislative scene in Washington, from articles and editorials by pundits and politicians, and on our own reading of the political climate. We acknowledge that ours is a conservative point of view. We think such a view is prudent in today’s economy and in light of current political realities. Our “bottom line” is that tax planning steps should do you no harm and will continue to offer powerful and protective tax benefits for your loved ones. ■

## Choosing Your Successor Trustee (One of the Most Important Decisions You Will Make)



Establishing a revocable living trust is an important, protective step forward. You, the creator of the trust, will be the initial trustee. This means that you will manage your assets just as you did before you established the trust. It is business as usual.

If you become ill and cannot manage your trust, or upon your death, another person will take over as your trustee. This person, your “successor trustee,” steps into your shoes and will manage your trust for your benefit and/or for the benefit of your beneficiaries. What factors should be considered when you choose the person to be named as your successor trustee?

**Choose a responsible person.** A trustee is a “fiduciary.” This means that your trustee has responsibility to protect and preserve your assets. This includes making investment decisions and paying taxes. Depending on the nature of the trust and the needs of the beneficiary, many additional responsibilities may be involved as well.

Above all, the person you choose as your successor trustee must be reliable and competent. This individual must understand the responsibilities of a trustee and be certain that all of those responsibilities are properly discharged. While your successor trustee need not have experience or expertise in all areas (such as investments, tax, protective planning, etc.), this individual must be aware of the needs and seek professional assistance whenever necessary.

**Your best friend or your first-born child?** Choice of your successor trustee is not a popularity contest. As indicated above, you must be certain that the individual will take the job seriously and do whatever is necessary to carry out the terms of the trust. Your best friend, perhaps the person you trust the most in the world, may be personally trustworthy and devoted to you, but you must think about whether that individual is truly able to serve as a trustee.

**Should you choose a professional trustee?** Professional trustees can be in either of two categories. One is institutional — a bank or trust company. The other is the individual professional trustee. An entity offers the benefit of stability. Although many banks and trust departments have come and gone, most will exist into the foreseeable future. There must, however, be no illusion: the trust officer you may interview, more likely than not, will play no role whatsoever in the future administration of your trust.

A diversity of individuals offer themselves as professional, private fiduciaries. Such individuals should be carefully screened and interviewed before you choose to name them. Some are ex-bank trust officers. Some are ex-social workers. Some are primarily financial planners. You must be certain that the person you choose is a “fit.”

*Choice of your  
successor  
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**Compensation for your successor trustee.** California law, as well as virtually all trust documents, provides that trustees are to receive reasonable compensation for their

services. Whether your successor trustee is a friend, a family member, or a professional, assume that they will take compensation. They will earn it.

**Changing your existing or successor trustee: Remember our POM Program.** Changing the identity of a successor trustee is perhaps the most typical trust amendment we prepare for our clients. Your successor trustee may become ill, move out of the area, or lose favor with you.

Remember that participants in our “Peace of Mind” (POM) Program will have an amendment prepared for them on a no-fee basis. Changing your trustee also requires the preparation of a new Certification of Trust, also prepared for POM members for no additional fee.

If you are not yet a POM member and we prepared your revocable trust, note that membership is

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## Cost of Nursing Home Care Increases, Says DHS

*Possible Planning Implications for Nursing Home Residents*



For the year 2001, the California Department of Health Services (DHS) announced that the “average private pay rate” (APPR) is \$4,163 per month. This is a substantial increase over the year 2000 rate of \$3,836 per month.

This announcement is no news to individuals who pay privately for the cost of nursing home care. The cost has gone up, and it will continue to rise.

The significance of this announcement is in the context of Medi-Cal eligibility when an individual pre-

### Deduct the Cost of Assisted Living Facilities

In some circumstances, it is legitimate to deduct the entire cost of an assisted living facility as a medical expense. This may be appropriate when a physician or other medical professional or licensed social worker certifies that the primary reason for being in the assisted living facility is for medical care. In such events, the cost of meals and lodging can also be viewed as an essential part of that care. Under these circumstances, we believe that the deduction is legitimate. Be sure to check with your income tax preparer and refer that individual to Treasury Regulation 1.213-1(e)(1)(v)(a).

Some individuals report that they have also deducted the cost of a residential care facility on the same grounds. In either event, an assessment of a person’s “activities of daily living” (ADLs) is helpful to demonstrate that medical care is truly needed. ■

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only available if and after we receive an up-to-date Schedule A, which is a complete listing of all assets held in your trust.

If you are interested in this program, give us a call or send us a letter and we will send you the two-page letter describing the list of services provided on a no-fee basis. Participation in the POM Program costs \$325 for two years. ■

viously made a gift.

Many individuals have cash when they enter a nursing home and are interested in preserving some portion of it. They may have made a gift, an action that results in a period of Medi-Cal ineligibility. For example, assume that an individual made a gift of \$80,000 early in the year 2000. Given last year’s “APPR,” that gift would have generated a 20-month period of ineligibility. If the gift was made in January, 2000, they would be ineligible until September, 2001.

Given the new, increased APPR, a recalculation suggests that the same gift only generates a 19-month period of ineligibility. The calculation is done at the time the Medi-Cal application is submitted. This means that the Medi-Cal application should be successfully submitted one month earlier, in the month of August, 2001. This can save over \$4,000 for an individual, assuming that she is otherwise eligible for Medi-Cal at the time of application.

This is a complicated area of law and you are encouraged to call our office to speak with an attorney if you have any questions. ■

## Trust, Tax, and Medi-Cal Seminar

Presented by  
**Gilfix & La Poll Associates**

Palo Alto  
Hyatt Rickey’s  
Edwards Room

Wednesday, May 9, 2001

2-4 & 7-9

For reservations, please call:  
Joy Porcalla at (650) 493-8070



## What Our “Peace of Mind” (POM) Program Means, and What It Does Not Mean

by Michael Gilfix

This Gilfix & La Poll Associates program is available to clients for whom we have created a living “revocable” trust. Some 90% of our trust clients choose to become members.

Approximately two weeks ago, a client of our office called with a question about funding his trust. A major brokerage firm asked that a number of questions be answered before they would allow his account to be titled in the name of his revocable trust.

Because this client is a member of our Peace of Mind (POM) program, we reviewed his paperwork, talked with him, and charged no fees whatsoever. This is because he asked about the operation of his trust and the process of funding the trust.

### Non-POM Advice

Perhaps a week earlier, another client, who happens to be a POM member, called and asked a number of questions regarding estate tax planning. He understood that his trust did not provide complete protection from estate taxes and asked about family limited partnerships (FLPs) and other options that might be pursued. Because these issues are complicated, sophisticated, and important, he and I agreed that I would explain the issues in writing so he and his wife could consider them and decide if they want to take tax-protective steps.

The work done for this second client was not covered by the POM Agreement. This is because the questions and issues went well beyond the revocable trust we prepared for him.

### Review POM Agreement

For POM members, always review the terms of your Agreement as you think about what is and is not covered by this program, which only costs \$325 for two years. There are many services we provide on a no-fee basis, but POM membership does not give unlimited access to our attorneys for any issue. As I explained to one POM member, doing so would put us out of business in no time!

POM members enjoy many special services and no-fee access to our legal staff for matters directly pertaining to revocable trusts.

Be sure to let us know if you have any questions about the POM program. If you are not yet a member of the program and if we prepared your trust, note that a prerequisite is that we have an up-to-date list of all assets currently titled in the name of your trust. ■

## We’ve Saved Them Two Million Dollars “So Far”

Let this short, true story serve as a reminder of the power of protective tax planning for individuals with larger estates.

Commencing in December 1998, attorney Francis A. La Poll began working with clients who have an estate of approximately \$7million. This means that, even with an “AB Trust,” their estate exposure was over \$4 million. This is not an outcome that most of us would choose.

Over the past 18 months, Mr. La Poll developed a tax plan, most of which has since been implemented. Over \$2 million worth of their estate has since been shifted to following generations in such a way as to save over \$2 million in estate taxes.

Mr. La Poll is quick to point out that we have saved them \$2 million “so far.” He has indeed, over the past couple of weeks, developed another planning recommendation that will save the family approximately \$400,000 “overnight.”

Never done, Mr. La Poll is confident that estate tax exposure can be completely eliminated for this family.

Such planning typically involved the use of family limited partnerships, carefully crafted irrevocable trusts, charitable remainder trusts, and numerous other planning tools.

If you live in our community, your estate is worth much more than you think. This means that estate tax exposure, which can be as high as 55%, sits, specter-like, in waiting. You can do something about this. ■

## A Visit with Grandpa



by *Jamie Arielle Gerson Gilfix*  
Age 12

**M**y grandpa is 89 years old. His name is Joe B. Gerson. I love him and love to visit him as much as I can. He immigrated from Poland to Texas a very long time ago. Since my grandma died two years ago when they lived in Florida, he has lived near us. He is full of wisdom and knows some very wise sayings. One is in Yiddish. I don't know how to say it yet but I'm sure he will be more than happy to teach it to me. In English it means, "Once it's funny, twice it's a slap in the face." This means that if you say something that's funny once, people will laugh. If you keep saying it, they'll get annoyed.

He lives in a residential care home in a pretty Palo Alto neighborhood. When we visit him he greets us with a warm smile. We say hello with hugs and kisses and he welcomes them with gratitude. He tells us what he's been up to and always asks about us.

It is wonderful just to be in his presence. He always makes me feel better when I'm sad or sick, and he puts a smile on my face. He has a very interesting history and often shares stories of his experiences. He is always understanding when things are complicated, and he tries to make it easier for everyone around him. I understand why everyone loves him so much.

I think visiting the elderly is a nice experience for us to see what interests older people and to make them feel better about themselves. You could put a smile on their faces and help them remember the days when they were younger. You might be surprised about how much fun it can be.

I think whoever doesn't visit their grandparents is missing out on something great. It would even be nice to visit people in a nursing home just to make them feel happier. It makes you feel happier too, knowing that someone is happy because of you. ■

## When There is a Death in the Family

**I**n the best of circumstances, death is traumatic for family members. Questions about the estate usually come to mind. These questions should be answered so they do not lead to worry and distress. We offer the following abbreviated checklist:

1. Pay no bills that arrive in the name of the decedent. Scam artists often send fake bills with the expectation that they will not be reviewed.
2. Cancel all credit cards held in the name of the decedent.
3. Locate all estate planning documents and keep them in a safe, centralized place.
4. **Call Gilfix & La Poll Associates to have immediate questions answered and to schedule an appointment.**
  - ➔ If the decedent had a revocable trust, the trust must be administered; many formal steps must be taken.
  - ➔ If the decedent had only a Will, the probate process must be commenced in a timely manner.
5. In your meeting at Gilfix & La Poll Associates, we shall give you a very extensive checklist that adds almost 20 new points that need attention.

Remember, it is an unfortunate myth that nothing has to be done after death if an individual had a trust. Tax and other advantages must be secured in the trust administration process. The rights of beneficiaries have to be protected. The trustee has a high level of fiduciary responsibility. ■

## Watching Michael Gilfix

Michael Gilfix accepts a limited number of speaking engagements each year that require travel. He likes *being* at home.

We thought you would be interested in some of the speaking engagements accepted recently or currently. They include:

- (1) New York University Tax Institute . . . . . San Francisco
- (2) National Academy of Elder Law Attorneys . . Vancouver
- (3) American Institute for Philanthropic Studies Long Beach
- (4) Financial Women’s Association . . . . . Palo Alto

## Gilfix & La Poll Associates Services:

### *Asset Preservation and Peace of Mind Through Estate Planning*

Gilfix & La Poll Associates’ attorneys specialize in legal planning that is highly sophisticated and sensitive to the needs of older Californians.

Recommended services include:

- Living Trusts That Avoid Probate
- Wills and Probate Management
- Estate (“Death”) Tax Avoidance
- Durable Powers of Attorney for Health Care
- Tax and Estate Planning for Owners of Family Businesses and Larger Estates
- Medi-Cal Planning
- Elder Abuse Actions, Trust Disputes, Will Contests