



Michael Gilfix, Esq.

*A Personal Message from  
Michael Gilfix*

### **In the Face of Tragedy, What Do We Do? Have You Protected Your Assets, Your Family?**



Francis A. La Poll, Esq.

September 11, 2001 is a day that none of us will ever forget. We sense that life has changed in America.

What does this mean for us? Specifically, how does it relate to our tax and estate planning, and/or our efforts to protect and preserve our assets for our children and other family members?

These events underscore the need to be protective of our assets. Attacks by terrorists remind us of the fragility of life and of economic security. We must consider how to minimize our risks.

With regard to protecting our physical safety, we must be prudent, alert, and supportive of governmental authorities seeking to shield us. Many difficult questions will be raised and some answers will be uncomfortable for us.

#### **What steps should you take to protect your assets for your children and grandchildren?**

1. Be sure your estate planning is up to date. Have you signed the new Advance Health Care Directive? Are your Durable Powers of Attorney up to date, sophisticated, and appropriate for your circumstances? Does your Revocable

Trust provide the necessary level of protection?

2. If you have a potentially taxable estate, have you taken steps to reduce or eliminate that tax exposure?
3. If a family member is disabled or in need of long-term care, have steps been taken to protect the estate, maximize the use of public benefits, and plan for the long-term well-being of that family member? *This may be particularly important, as the cost of such care can wipe out an estate and leave family members highly vulnerable.*
4. Have you thought about charitable giving as a means of contributing to personal and national security?

We maintain a strong nation by building our communities, one family at a time. Estate planning achieves this goal for those closest to us.

We are eager to talk and work with you with these laudable, essential goals in mind. Give us a call if you have any questions or needs. ■

# *Holiday Greetings*



*We wish you, our clients and friends, a tremendous 2002.  
We hope that we were able to make 2001 a bit easier for many of you.  
We have ideas that may be even more helpful in the years ahead.  
Please call if you need our assistance.*



## **IF YOUR ESTATE IS \$2 MILLION TO \$10 MILLION**



If your estate is valued at between \$2 million and \$10 million (including life insurance), the new Tax Act directly affects you. If you have not yet reviewed your estate plan with us, you should do so now.

You know that the level of individual estate tax protection increases to \$1 million per person as of January 1, 2002. It goes up to \$1.5 million on January 1, 2004. There are two other increases and then the estate tax is eliminated in (and only for) the year 2010. As the law now stands, the new Tax Act then evaporates and the level of individual protection goes back to \$1 million per person as of January 1, 2011.

It is a virtual certainty that Congress will revisit

the estate tax rules before 2010. No one knows what will happen, although we are of the opinion that the estate tax will not be permanently eliminated.

If your estate is over \$2 million in value, it can still be prudent to take planning steps to ensure the elimination of estate tax. Although the rates are dropping in relatively modest ways, the estate tax does commence at 37% and it can be as high as 55%. This is serious money and it can threaten an inheritance.

If we have not yet reviewed your estate plan with you, now is the time to call and make an appointment to talk with us. ■

## YOUR LIVING TRUST AND MEDI-CAL

### Protecting Your Assets When Long-Term Care Becomes Necessary

Your revocable trust provides many benefits. It allows for the avoidance of probate and it ensures ongoing, efficient management of assets. *It does not, however, protect your assets if you ever need long-term care.*

It is frequently possible to protect and preserve your estate and to obtain assistance from the state Medi-Cal program to help pay the relentless, formidable cost of nursing home care. The monthly cost of such care is typically between \$4,000 and \$5,000 per month.

#### If You Are A Single Person

If you are single, the existence of your trust is neutral with regard to Medi-Cal eligibility. The question focuses on whether or not you are eligible. Are your countable assets down to \$2,000? In fact, there are many safe havens for your assets. These are known as “exempt resources” and simply do not count in determining eligibility. In most cases, 80-90% of your estate, at minimum, can be protected if nursing home care ever becomes necessary.

If you ever do qualify for Medi-Cal, it may make sense to transfer title of your residence from the trust and into a spe-

cially crafted irrevocable trust designed to protect the residence. This often makes sense so that a Medi-Cal “Estate Claim” can be avoided if you ever obtain Medi-Cal benefits. It also offers important tax benefits.

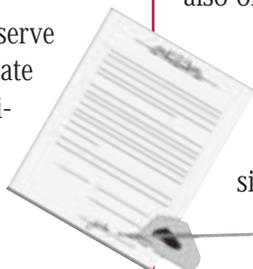
#### If You Are A Married Couple

Depending on the size and nature of your estate, you may have an “AB Trust” or your trust may be more simple and avoid the division of the estate into two or three trusts after the first death. Your trust does not protect your assets in the context of nursing home care in terms of qualifying for Medi-Cal. In this context, the trust is rather transparent.

Nevertheless, many powerful planning opportunities exist, and your estate can be protected from the enormous monthly cost of nursing home care. Changes have to be made, and your trust typically has to be defunded and/or revoked.

Notwithstanding these comments, it makes sense to maintain your trust in light of its myriad benefits. At the same time, our eyes must be open and we must adapt.

When new issues arise, such as the need for long-term care, we must respond with creativity and good planning. ■



## Bequests to Caregivers May Be Void



A relatively new provision in the California Probate Code provides that a gift set forth in a will or trust in favor of an unrelated caregiver may be invalid unless certain protective steps are taken. For the vast majority of elders and dependent adults, this is an appropriate and protective statutory development. It will make it easier to set aside gifts that are the result of “undue influence” or that otherwise evolve because a caregiver has somehow taken advantage of a person who is receiving care at a fragile time in an elder’s life.

#### If You Want to Leave Money to a Caregiver

The fact is that many elders develop honest relationships with caregivers over a number of years. Some are so grateful that they do leave money or items to their favorite caregivers in their wills or trusts. This new code provision provides that special steps must be taken to protect these bequests from attacks by family members who would otherwise receive the money or property that would go to the caregiver.

Required is a “Certificate of Independent Review” signed by an attorney who only meets with and counsels the elder about this particular bequest. This is an attorney that would have to be involved in addition to the attorney who drafted the original document. The language of this “Certificate” is set forth in the statute itself.

If you or a loved one provide for a housekeeper or caregiver in your estate planning document, be aware that you might need to take this special step. Give us a call to see if it will apply to you.

#### Family Members Should Focus on the Beneficial, Protective Message

While many elders want to leave gifts to caregivers with whom they have established legitimate relationships, others are clearly manipulated and directly or indirectly coerced into giving money to their caregivers or leaving money to caregivers in their wills or trusts. Family members concerned about such transfers will be comforted by this new statute. ■



## Elder Scams and Rapacious Bank Loans

A constant threat to elders is the proliferation of scams and fraudulent schemes that target the elderly. The media often reports about lotteries, contests, and other telephone announcements that promise riches if the elderly person will send money to the caller. While these scams seem transparent, many elders are gullible, lonely, or simply susceptible to smooth-talking solicitors.

We are aware of a recent case in San Jose, California. A 90-year old woman was living alone. Her name somehow made it to the wrong list. She sent tens of thousands of dollars to a Canadian company that promised her awards and rewards if she sent them payments. Worse, she thrice refinanced her home loan to raise money to make these payments. One of her home loans was from a mainstream bank which charged her a \$15,000 refinancing fee. Her last refinancing fee was with a "second level" lender which charged her a \$30,000 closing fee as a cost of the loan. The loan rate is 11%.

This lady's mortgage payment is now triple her monthly Social Security check, which is her only source of income. Because the loan was for over 90% of the value of her house, she is unable to make the payments and, **by the time you read this article, she will have lost her home.**

What lessons can we learn? Perhaps most importantly, these stories underscore the delicate balance we seek in terms of respecting our elders' autonomy while simultaneously trying to protect a person who has become susceptible to con artists and others who would take economic advantage. The fact is that there comes a time when younger family members may have to intervene to protect their elders.

Knowing when to do so is an acknowledged challenge.

### What steps can be taken?

1. **Durable Power of Attorney.** At minimum, every older individual (every individual) should sign a Durable Power of Attorney authorizing a trusted family member, friend, or professional to act on her behalf when and if she becomes unable to do so. Note, however, that signing a Durable Power of Attorney does not deprive the elder of

the power to enter into contracts, be they reasonable or entirely inappropriate, or to sign checks on her own behalf.

2. **Revocable Living Trust.** If an older person establishes a living trust, she may serve as the initial trustee. Some protection is captured if a younger person in the family is also named as a trustee so that two signatures are needed before any checks can be signed or funds transferred. Alternatively, the trusted family member can serve as the sole trustee and have complete control of the person's assets. While the elder can still enter into contracts and sign inappropriate commitments, this would be a level of protection.

3. **Establish a Conservatorship of the Estate.** This is a court procedure that must be viewed as a last resort. The establishment of a conservatorship typically deprives the elder of the right to enter into a contract. Even if she signs an inappropriate contract or other agreement, it is void or

voidable. A conservatorship is not a simple process. It requires a finding that the individual is unable to manage her affairs. However, there are cases when a conservatorship simply must be established.

4. **Contact Adult Protective Services (APS).** APS is the county office that has responsibility for protecting elders who are the victims of abuse. They will sometimes go to court to establish a conservatorship. In extreme cases, they can refer matters to the District Attorney for criminal elder abuse charges. APS will investigate appropriate matters and can be a key player.

These matters are complicated and troubling. Ideally they would be addressed protectively and proactively. Unfortunately a crisis may arise before preventative steps have been taken. Regardless of the stage, contact us if you have any concerns about yourself, a family member, or a friend. We can typically put together a plan that will provide insulation and protection while simultaneously respecting the rights of an older individual. ■

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## When There is a Death in the Family



In 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.



### OLD AGE?

The daughter of one of our dear clients was having a supportive argument with her mother. Our client, Mrs. P, was having a difficult time living on her own and her daughter was trying to talk her into using her money to hire caregivers and other forms of assistance so that she could safely continue to live in her own home. Her daughter wanted her to stay out of a nursing home.

Mrs. P did not want to spend the money on home care since it is very expensive.

Her daughters asks, "What are you saving your money for?" "For my old age," Mrs. P responded. Mrs. P is 91 years of age. ■

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. ■



### MUSIC AS MEDICINE



**A** GLA client understands the power of music in a hospital setting.

Her young daughter was in the hospital for an operation. She was understandably frightened. Her mother equipped her with earphones and her favorite music. Our client urged her daughter to wear the earphones whenever there was distracting noise in her room and whenever she became worried.

Alex Comfort is among the many authors and researchers who have demonstrated the healing power of "good vibes." These good vibes can flow from comedy—the healing power of laughter—or from music.

Many of our clients have incorporated instructions about music into their Advanced Health Care Directives. Some indicate that they want classical music played if they are ever unable to communicate. Some indicate that they want country western or "new age" music played. One directed that, under no circumstances, should rap music be played in his room!

We view these issues as part of the legal planning process. They are important to your health and general well-being. Think creatively about them and let us know if you would like to incorporate any of these thoughts or directions into your planning documents. ■

#### Seen in a Counselor's Office:

*"Growing Old is Mandatory, Growing Wise is Optional"*



## Estate Planning for Your Pets



**P**ets are a remarkably important part of our lives. They provide emotional support, unconditional love, companionship, and security. Most pet owners view their animals as part of the family.

Given these realities, you may want to provide for your pets in your estate planning documents. What steps might you take?

- **Prepare a “Care of My Pet” letter.**

If a pet owner becomes unable to provide care for her pet, she wants to be certain that the pet’s routine is maintained and that any special care needs are addressed. Writing and maintaining a letter that describes such needs is in the best interests of pets and of the individual or individuals who will take responsibility for the care of the pet. It can identify the type of food the pet is fed, the name of the veterinarian and any special health needs, a favorite exercise area, and any other points that are deemed important. This document would be attached to one’s living trust or General Durable Power of Attorney. It would also be given to the person who would take responsibility for the care of the pet when the need arises.

- **Carry a “Pet Card.”**

If you become incapacitated or meet an accidental death, who will know you have a pet at home and who will take care of your pet? We suggest you carry a Pet Card (“Cat Card” or “Canine Card”) that identifies your pet and provides the name and phone number for the individual who is to take responsibility for your pet if you are unable to do so. This would be kept in one’s wallet, ideally attached to proof of health insurance.

- **Address Pet Care Needs in Your General Durable Power of Attorney.**

If you become incapacitated, you will not be able to care for your pet. Your General Durable Power of Attorney can include a specific provision authorizing your “attorney in fact” (your named agent) to take all necessary steps to ensure the care and well being of your pet. This provision might authorize your attorney in fact to seek funds from your trustee to provide for your pet’s needs. If this approach is to be effective, your trust should include a provision authorizing distributions for pet care needs, including to the person named as attorney in fact under the General Durable Power of Attorney.

- **Provide for the Care of Your Pet in Your Will or Trust.**

While it is inappropriate to leave money directly to a pet (although this has been attempted by many), it is appropriate to leave money to the person who will have responsibility for the care of your pet. This provision can include directions and conditions. It can provide that some funds will be held in trust and paid to the care giver for services provided. If this approach is taken, however, note that payments would be income and subject to income tax. Another approach envisions a gift to the individual who takes ownership and/or responsibility for your pet. In this event, there would be no income tax liability.

California has a statute in effect that specifically permits the funding of trusts for the care and benefit of pets. This is California Probate Code 15212. It provides, in effect, that funds can be set aside for the care of a pet and that, if such funds are reasonable, they are not subject to challenge by family members or other beneficiaries.

- **Conclusion.**

We view the care of your pets as a very serious issue. We believe it should not be left to chance.

You can prepare the “Letter of Instruction” and fashion your own “Animal Card,” although the office of Gilfix & La Poll Associates will be pleased to provide you with models and forms.

If you are concerned about the care of your pets, consult with us so that we can address these issues by a trust amendment and by including pet care provisions in your General Durable Power of Attorney. ■

## More Ashes, Ashes

**I**n prior *Newsletters*, we have related stories of our clients who have done creative things with their ashes after cremation. A recent client came up with a unique approach.

She is an avid shopper. Indeed, it is one of the great pleasures of her life.

Her Advance Health Care Directive provides that her ashes are to be scattered in an attractive place. The term “at-

*continued on page 7*



## Values and Incentives in Your Living Trusts

Your Living Trust can be a vehicle for conveying your personal and family values, as well as your assets. While doing so can take many forms, one approach involves the use of “Incentive Trusts.”

Remember one thing: It is your money and you have the right to put restrictions, bells, and whistles on the distribution plan. In the event your death occurs and all or some portion of your estate will be held in trust for a child or children, you can be creative and convey your values in the process.

Consider the following examples:

**1. Education Incentive.** If the trust is established before a child attains age 25, for example, the trust could provide for significant distributions to or for the benefit of a child in the context of education. Trust funds may be approved for the following purposes:

- Full-time attendance at an accredited college or university
- Distributions if a minimum grade point is achieved
- Distributions upon attaining a bachelors, masters, or advanced degree
- Distributions to reward extra-curricular community service activities (if the minimum grade is also maintained).

**2. Obtaining a First Home.** The cost of real property in California is a problem for any young person. If trust funds are sufficient, the trust could allow for a distribution, perhaps up to a fixed maximum, to help with a down payment for a first home. In a limited or liberal manner, it could also authorize the use of trust funds for mortgage payments, insurance, and/or taxes.

*continued from page 6*

tractive place” is defined as follows: “. . . such as a shopping center that I have frequented during my lifetime.”

Our client understands that there may be some practical difficulties in carrying out these wishes. Indeed, her wish was described with “tongue in cheek” and with good humor.

Again, the message is that we can be very creative in doing our planning. We need not be constrained by what is typically done or by “what most people do.” ■

**3. In Support of Families.** A fixed figure, such as \$25,000, might be distributed when a child gets married. The trust could also provide for this distribution only once, and then only if it is a first marriage.

**4. Children.** A distribution may be made when a child is born or adopted, perhaps only in the context of a marriage. Additional distributions may be authorized when the beneficiary's child attains a certain age.

**5. Supporting Employment.** Many parents are concerned that large inheritances strip their children of the incentive to work. At least as long as assets are held in trust, this can be directly combated.

- Distributions might be completely withheld unless the beneficiary is working. Additional distributions may be made, perhaps only after the beneficiary attains a certain age, to acknowledge and reward employment.
- If the beneficiary is self-employed, trust distributions based on the gross or net income of the beneficiary may be made.
- Additional distributions may be made if certain achievements are obtained in the context of the beneficiary's employment (obtaining employment related educational credits, receiving acknowledgment from a pleased employer, etc.).

**6. Community Service and Involvement.** Many parents feel a responsibility to their community and want their children to help satisfy that responsibility.

- Distributions may be made to acknowledge certain types or quantities (hours) of involvement in community service.
- Distributions may be made to acknowledge leadership roles in community based, non-profit organizations.
- Distributions may be made to acknowledge involvement in one's church or synagogue.

We are aware of one trust that built in so many incentives that the distribution language consumed over 20 pages.

While you need not go to such lengths, thinking about these issues can be very helpful in the context of your estate planning. Feel free and encouraged to be creative.

We are eager to work with you and to support you in this effort. ■

## 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 Mike has accepted recently. They include:

- (1) National Academy of Elder Law Attorneys ..... Vancouver
- (2) Financial Women's Association ..... Palo Alto
- (3) Last Act Writer's Program ..... Beverly Hills
- (4) American Institute for Philanthropic Studies ..... Long Beach
- (5) New York University Tax Institute ..... San Francisco
- (6) American Institute of Certified Public Accountants ..... Portland



ELDERLAW™ Newsletter - Winter 2001  
Published by Gilfix & La Poll Associates  
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## 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