



# Dramatic Changes and Opportunities In Tax and Asset Protection Planning

## Updates on Estate Tax, Your Trust, And Protective Planning for Your Children

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## Still Need Your AB Trust?

If you are a couple and your estate is valued in excess of \$1 million we no doubt prepared an AB Trust for you. We did this because, under previous estate tax rules, hundreds of thousands of dollars or even millions of dollars were exposed to estate tax unless we took that approach. The AB Trust may now be unnecessary.

### Why Your AB Trust Was Created

If your estate is valued at \$2 million and the level of estate tax protection is only \$1 million, the AB Trust eliminates estate tax exposure. It would protect \$1 million for each of you for a total of \$2 million worth of protection. The tax is eliminated.

A second and very important rationale for an AB Trust is that the first decedent's half of the

estate, which goes into the B trust, becomes irrevocable. If it provides that the estate is to be divided among the children, the surviving spouse cannot change that. This can be very comforting. The fact is that surviving spouses very often change terms of the Survivor's Trust – the half of the estate under the survivor's control. The survivor may remarry, want to leave something to a favorite charity or a cherished caregiver, become upset with one or more of the children, or because of irrational thinking.

\*Importantly, tax planning is not the only reason to do an AB Trust.

### Rationale for Simplifying Your Trust

The current level of estate tax protection is over \$5 million per person. If a married couple has a \$4 million estate, there will be no estate tax exposure regardless of whether or not you have an AB Trust. If you have a simpler trust where the entire estate remains in one trust after the first death, there is no estate tax because the level of protection (\$5 million) is larger than the total value of the estate (\$4 million). If estate tax planning is your sole motivation for the AB Trust, you may want to eliminate the AB Trust approach, which is more complicated after the first death. A benefit is that the survivor then controls the entire estate and has simplified income tax reporting.

### Rationale for Maintaining the AB Trust

If your estate is larger – in excess of \$5 million – the AB Trust is still essential from an estate tax planning perspective.



If your estate is well under \$5 million, there will be no estate tax *unless* Congress changes the tax laws. The conservative course is to maintain the AB Trust if your estate significantly exceeds \$1 million because we never know what Congress will do next. We do not expect a significant change in the estate tax rules, but no one knows what the future holds.

You may view the irrevocability of the B Trust as a significant benefit.

Bottom line: Consider the simplification of your trust although it is not a “no brainer.” Talk with us about the best approach for you.



## **Prepare Family Protection Trusts® to Protect Assets for Children, Grandchildren, and Beyond**

These trusts are more generically known as dynasty trusts. If we have not yet prepared such trusts for the benefit and protection of your children, we should do so now.

### Protection in the Event of Divorce

If you leave assets in this trust for the benefit of your children, inherited assets are segregated and will remain with your child or children in the event that they ever face a divorce. Because

these trusts remain intact for your grandchildren, the assets are also protected in the event that a grandchild ever gets married and endures a divorce. These trusts keep your hard earned assets in your “bloodline.”

### Protection from Litigation

Assets inherited in these trusts do not belong to your children. Your children may control trust assets and decide how to enjoy them. Because of their structure, these trusts offer a very high level of protection in the event that a child (or grandchild) is some day sued.

### The Big One: Estate Tax Protection for Future Generations

In most cases, everything you leave your children in these trusts will be passed along intact to your grandchildren, regardless of how large these trusts become. If you leave \$1 million in a trust for your daughter and those assets grow to be valued at \$8 million at the time of your daughter’s passing, the full \$8 million goes to her children in these trusts. If those assets were not held in the Family Protection Trust, they would be exposed to estate tax. Forty percent could be lost. When your grandchildren die, the value of assets in these trusts, including growth, again passes intact for the next generation without exposure to estate tax. This can save millions of dollars for your family members.

If you have not yet integrated these trusts into your estate plan, now is the time.



# The Cost of Nursing Home Care and Medi-Cal – Protecting Your Assets

California continues to be the only state in the country that has not implemented the Deficit Reduction Act of 2005 (DRA). If you have a loved one in a nursing home or who has a diagnosis (such as dementia, recurring strokes, etc.) that raises concerns about the future need for nursing home care. This is critically important. *It means that you have opportunities that will soon disappear.*

To qualify for Medi-Cal, an individual can have no more than \$2,000 in his or her name. If the individual is married, the other spouse can have at least \$115,920 in her name while the other spouse qualifies for Medi-Cal. Very importantly, many assets are “exempt,” which means that they do not count when determining eligibility for Medi-Cal. The residence is exempt, regardless of its value. Money held in IRAs or other retirement accounts does not count either. This means that most of your assets are not barriers to eligibility for Medi-Cal.

## Protecting the Residence

While a residence is not a barrier to eligibility, it is exposed. Upon the death of a Medi-Cal recipient, the state asserts a claim against the residence to recover Medi-Cal benefits if the individual still owns it – outright or in a revocable trust. There are many approaches that can be taken to protect the residence from the Medi-Cal reimbursement claim and to be certain that there are no capital gains taxes when the residence is later sold. This is an opportunity that could disappear when the DRA is implemented.

## Protect Cash and Other Assts

Current law allows an individual to carefully structure asset transfers so that all or most assets can be protected. Once the DRA is implemented, this opportunity will no doubt disappear.

If you face this issue, consult with us immediately so that we can develop a plan to protect the assets and create the opportunity for Medi-Cal eligibility if nursing home care is a reality or becomes a necessity. We do not know when California will implement the new law, thereby restricting planning options, but we know it will happen.

# The Gilfix and La Poll “Peace of Mind” Program

Over 400 Gilfix and La Poll clients are members of our Peace of Mind program. It is available to clients for whom we have prepared revocable trusts. It is immensely popular. We keep the cost at a very modest level – \$575 for two years. Members enjoy a special series of small seminars on carefully selected topics and a special newsletter that is published three or four times each year. Members enjoy a free annual consultation and unlimited access by telephone to answer questions about their trusts. There are many other benefits, as well.

If we have prepared your trust and you are not current members of the Peace of Mind program, contact us for more information about its benefits and how you might join.





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