

# Chris Jones Newsletter



Dear Friends:

With the new year, we often make resolutions to take action. If yours include creating or updating your estate plan, incorporating your business or hiring competent legal counsel, please call me.

My resolutions include simplifying my client's lives and providing prompt, personalized services in all of your legal needs.

This community is great to the extent that we all support one another. Let us know how we can support you.

Wishing you a happy new year,  
— Chris Jones



## PLANNING FOR THE NEW YEAR

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Everyone heaved a sigh of relief when, in late December, Congress quickly passed a two year extension of the Bush tax cuts through 2012. Once again, the federal estate tax exemption was changed from what it was the year before and what it was scheduled to become in 2011. The bill increased the estate tax exemption to \$5,000,000 per person or \$10,000,000 per couple. For most of us that means that our heirs will not have to pay any federal taxes on the transfer of any estate property.

However, sequential changes in estate tax exemptions over the last decade have also created some problems for pre-existing estate plans. The estate tax exemption has risen over time from \$600,000 to \$5,000,000. The exemption amount has increased each of the last five years. For couples who created A-B trusts, the terms of which provide that the trust assets be allocated to two shares when a spouse dies, the language in the trusts can have the effect of placing all trust assets in the "B" trust, or the decedent's share of the trust estate. This leaves the survivor without any assets of his or her own and could create a heavy dependence on the decedent's share of the trust estate. While the surviving spouse usually has the right to receive income from the decedent's share, there are restrictions on the survivor's ability to withdraw and use the assets assigned

to the decedent's share of the estate.

At the same time, real property values have declined. Assumptions about net worth made as recently as five years ago may no longer remain valid. Yet, couples made estate plans which, if anything, assumed that their net worth would rise, or at least maintain its current value. If your net worth has decreased in the last five years and you have not had your estate plan reviewed, there is a likelihood of the trust requiring that *(continued on reverse)*

## THE RISING COST OF PROBATE

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Our state Legislature is fond of telling us that it has not "raised taxes" for several years. What has happened, however, is that the state charges more for state services than it used to. That trend has been especially true for the probate court system.

In general, California law requires that all decedents' estates with a gross value (no deductions for debt) of over \$100,000 be administered through supervised court proceedings known as probate. Probate estates include all assets owned directly by the decedent at the time of death. This includes not only real property in California, but also all of the decedent's personal property, wherever located. *(Continued)*

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## PLANNING FOR THE NEW YEAR (continued)

more property be sheltered in a decedent's trust than might be necessary. Given these altered circumstances, by reorganizing your estate plan now, the survivor may find that he or she has ready access to sufficient resources needed in the future.

**ACTION ITEM:** Have your family trust documents reviewed by competent legal counsel to make sure your funding formulas are not too restrictive on the surviving spouse. Most estate plans these days no longer need to use the A-B trust structure to avoid estate taxes. Because most married couples do not want to interfere with the survivor's enjoyment of the trust estate assets during their lifetimes, the traditional structures used in the past may prove no longer as useful as they once were.

## THE RISING COST OF PROBATE CON'T

Both the executor's and attorney's fees are determined by the gross fair market value of the estate as of the date of death. With a gross value of \$100,000, your estate will pay the executor and attorney a total of \$8,000 (\$4,000 each). For a \$250,000 estate, the total probate fees are \$16,000 (\$8,000 each). If the estate is appraised at \$1,000,000, the fees total \$46,000 (\$23,000 each).

In addition, the estate pays other costs, such as filing and appraisal fees, publication of notice costs and bond premiums. In recent years, filing fees have increased dramatically, now approaching \$400 each. In the past, this fee was only paid once. Now the rules require that the fees be paid each time a petition is filed with the court. As most probate proceedings require several petitions, the costs of probate have become more expensive than ever. At a minimum, a probate requires

## BENEFICIARIES: HAVE YOU BEEN TOLD THAT . . .

. . . You are not allowed to know what is in the estate?

. . . You are not entitled to a copy of the trust?

. . . You must sign a waiver of your rights to an accounting?

. . . Your questions will delay distribution?

. . . Your share has been spent?

**KNOW YOUR RIGHTS!**

**CALL US:**

**805 963-2014**

## THE RISING COST OF PROBATE CON'T

a "Petition for Probate" and an "Account and Petition" to conclude it, thus costing approximately \$800 in filing fees. When taken together with an average \$200 in newspaper notice publication, initial costs start at \$1,000 and move upwards from there, depending on bond requirements and costs. Should a real property sale be required, at least one other petition to the court is also involved.

Participation in court proceedings is never a happy occasion. With probate, this is especially true. It is time consuming compared to trust administration, and each step of the way is subject to court scrutiny. Constant court appearances are required every six to eight weeks. Because probate is required in all California estates of a value above \$100,000, unless the assets already belong to a trust, have a trust prepared. Even the smallest probate administra-

tion will cost a minimum of \$9,000 (unless the executor/administrator waives his/her fee, and that still leaves \$5,000 in fees and costs to be paid), far more than the cost of having a trust prepared.

Lastly, probate costs the surviving heirs time. Santa Barbara County's court system works remarkably well, given the constraints of severe budget cuts which have occurred in recent times. Other locales have not fared nearly as well and our experience has been that probate processing time has lengthened dramatically in some venues. Despite our good fortune in our community, a probate matter must nevertheless follow statutory requirements and even when careful attention is paid to deadlines and procedure, there is no way to avoid waiting out the required time periods for giving notice to creditors and publishing notice. When hearings before a judge are needed as probate frequently requires, there are notice requirements to be met as well, which cause

long stretches of time between when we want things to be done and when they may actually be permitted to occur by the court. As a result, transferring title to assets through probate takes considerably longer than doing so through the vehicle of a trust.

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### Fixed Rate Trust Review

**Are you certain your trust meets current legal requirements?**