

DROBNY LAW OFFICES, INC.

A Professional Corporation

November 19, 2009

Re: **Periodic Review of Estate Planning Documents**

Dear Valued Client:

As it has been some time since Drobny Law Offices, Inc. assisted you in preparing your estate planning documents, this letter is intended to assist you in reviewing and updating, if necessary, those estate planning documents.

Please visit our web page, www.drobnylaw.com, which has recently been redesigned. We will be updating it frequently with articles of interest concerning your estate planning and business planning. As issues arise, we try to add timely articles. Please visit it regularly.

I.

The major issues which should be addressed during this periodic review of your estate planning documents pertain to changes in your personal circumstances, your financial assets, or your relationship with persons named in your existing documents.

Durable Powers of Attorney. If you were to become incapacitated, and unable to make financial or medical decisions for yourself, the general rule is that the Court would step into your life and appoint a conservator of your person and estate to make medical and financial decisions for you. The need for a conservatorship is generally eliminated through the existence of a Durable Power of Attorney for Financial Management and Advance Health Care Directive. If you (or your parents, or your children who have recently turned 18) do not have these documents in place, you need to contact this office and we will assist you in preparing them at once. The HIPAA rules concerning access to your personal medical records do not require any revisions to your existing Advance Health Care Directive.

Change of Name or Address. If someone named in your documents has changed their name or address, you do not need to amend your estate planning documents. Please, just mail or e-mail that information to us so we can update our files.

Minor Children. If you have minor children, check your Will to see if the person(s) you have named as Guardian(s) and Alternate Guardian(s) are still the persons that you would want to take care of your children in the event of your death. If not, contact this office to assist you in preparing a Codicil to your existing Will. If your estate planning documents were prepared when your children were minors, they do not need to be revised after they turn 18. The provisions nominating guardians of minor children simply become moot.

Testamentary Intent. Review the dispositive provisions of your Living Trust (or your Will if you did not do a Living Trust). Are the persons you named as your heirs still the persons you wish to take your estate? Are the percentages for division of your estate among your heirs still the way you want them to be? Review the distribution timing. If the Trust (or Will) provides for "outright" distribution, that means that the heirs will inherit their share of your estate immediately after your estate is administered. Are they capable of handling the responsibility of inheriting that kind of money and property, or do they need some assistance in the management of those estate assets until they reach a designated age or upon the occurrence of a specific event (graduation from college, retirement, etc.)?

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Have there been any changes in family relations, such as a dissolution of a marriage, death of a family member, or the marriage of a family member that would require a review of the dispositive provisions of your estate plan? With respect to a child, grandchild, or other beneficiary, have there been any births, deaths, marriages, adoptions, illnesses, disabilities, changes in economic circumstances, or changes in his or her behavior, lifestyle, or attitude towards you that would give cause to increasing or decreasing their inheritance?

If you suspect or know that a certain heir may have problems that would prevent him or her from being capable of handling or managing their share of your estate upon inheritance, your estate plan may need to be revised to provide for special management of their share of your estate to insure that he or she is adequately protected and that the estate makes a positive impact on that heir's life, rather than a negative one.

If an heir has Special Needs, inheriting money may cause that heir to become ineligible for Government programs such as SSI, SDI, MediCare, etc. A Special Needs heir may not be capable of managing his or her inheritance. Accordingly, we strongly advise clients with Special Needs heirs to include a Special Needs Trust in their estate plan for these heirs.

Changes in Economic or Personal Conditions. The value of your estate or the nature of the assets in your estate may have changed since you signed your estate planning documents. Specifically, the value of your estate may have changed significantly. The nature of the assets may have changed, you may have retired, you may have bought or sold a business, or you may have acquired property in another state. If any of these events have occurred, you might want to rethink how your estate is to be administered and/or distributed.

Probate Avoidance. Under California law, if a person dies holding title to more than \$100,000.00 of assets, then those assets must be probated. The time and expense of probate is substantial and can be avoided through use of a Living Trust. If the value of your estate is significantly over \$100,000.00, and you have not already executed a Living Trust, you should call us to discuss the merits of doing one, and whether it makes sense in your circumstances.

If you have already executed a Living Trust, that by itself does nothing to avoid probate. The key to avoiding probate is properly funding the Living Trust. In other words:

- All real property that you own must be deeded to the Trust and titled in the name of the Trust at the time of your death. If you have purchased property or refinanced property, please make sure that title of the property is in the name of the Trust.
- All stocks, bonds, mutual funds, and other securities (other than those held in retirement accounts, 401(k)s or IRAs) must be titled in the name of the Trust. If you have opened up any new investment accounts since the execution of your documents, please make sure they are properly titled in the name of your Trust.
- Savings accounts, certificates of deposit, and other investments must have ownership changed to the Trust prior to your death. If you have changed banks, check to make sure the accounts are titled in the name of your Trust.
- Retirement accounts, such as IRAs, 401(k)s, Deferred Comp., 457, 403(b), Profit Sharing Plans, etc., require that the spouse (if any) be named as the primary beneficiary and the Living Trust named as the alternate or contingent beneficiary. If you are unmarried, the Trust should be the primary beneficiary. For an explanation of why we recommend this, go to our web page www.drobnylaw.com and click articles and then click the article "Designating a Trust as Beneficiary of Individual Retirement Account Benefits."

If you have any questions with respect to the funding of your Trust, we have a full-time Transfer Specialist, Janeé Davis, who handles these matters daily. Please call her to discuss any questions with respect to properly funding your Trust. If this office helped you create your Trust, there is no charge for her services with respect to keeping it properly funded.

Federal Estate Taxes. If you are unmarried and your estate exceeds \$3.5 million, or if you are married with a living trust and your estate exceeds \$7.0 million there will be Federal estate taxes after your death under current law. If you have an estate tax issue today, you still will in 2010 and thereafter. Significant tax planning strategies are available to minimize or eliminate these Federal estate taxes. Techniques include:

- You can gift up to \$13,000.00 per year, per donee, and such gifts below \$13,000.00 per year per donee are not used to reduce the \$3.5 million that you can give away at death. If you can afford to make these kinds of gifts without impacting your future income or standard of living, we urge you to consider making these gifts before December 31st, and then as early as possible in each calendar year thereafter. However, gifts of cash are not generally

recommended. Gifts of appreciated assets might make more sense, especially ones that suffered a steep decline in value with the downturn in the real estate and stock market, because then any future growth will take place outside of your Estate.

- If your estate is substantially over \$1 million (unmarried) or \$2 million (married), using up all or part of the \$1 million exemption against gift taxes might make sense. Keeping the \$1 million in your estate until death causes lifetime appreciation in value to be taxed in your estate. Gifting all or part of the \$1 million now gets the appreciation out of your taxable estate, passing more value to your heirs. The silver lining in the recent economic decline is that it is a more opportune time to shift assets to the next generation at lower value, allowing all future growth to take place outside of your Estate.
- **Charitable Remainder Trusts** allow you to liquidate any appreciated assets without paying any capital gains taxes, retain the income for life and retain control of the asset management decisions for life.
- **Family Limited Partnerships** have allowed you to pass a significant portion of a closely held business, farm, ranch or commercial real estate out of your taxable estate while allowing you to retain control of income during your life. Reported changes to Tax Law would eliminate the use of discounting principals retroactive to January 1, 2010, so this might not apply to your Estate, provided your Family Limited Partnership has already been established and utilized. Please contact me or Colin T. Smith immediately if you would like to establish a Family Limited Partnership prior to 2010.

If we have not discussed the above techniques with you previously, or if you wish to discuss them in further detail, please call. These are significant estate tax planning techniques that were not available in part in the past and could be legislated out of existence in the future. If such techniques might make sense for you, let's discuss them now.

Non-Citizen Spouses. If either you and/or your spouse is not a U.S. citizen, there may be some significant estate tax problems with the way your Trust is written, which may be avoided by amending your Trust and creating a Qualified Domestic Trust (QDOT). If either you and/or your spouse is not a U.S. citizen, and your Living Trust does not contain QDOT provisions, please contact Colin T. Smith to discuss this issue.

Professional Corporations or Subchapter S Corporations. If you are a physician, dentist, attorney, or other licensed professional and hold your business in a Professional Corporation, or if you own stock in a Subchapter S Corporation, your Trust may need to be amended to provide for how those shares of stock are to be held after your death. Please call Colin T. Smith to discuss this issue.

Conclusion. If any of the issues listed above are a concern to you, please contact our office and schedule a telephone conference with me, Colin, Jenna or David. Drobný Law Offices, Inc. has four (4) attorneys (soon to be five [5]) and five (5) paralegals who practice exclusively in the areas of estate planning, estate administration, business transactions, and taxation. I am most pleased with our attorneys and support staff and can assure you that if I am unavailable, any one of them is most capable and competent in assisting you.

Due to the overwhelming response we receive to these annual letters, we have to request that you begin this review process with a letter or e-mail to me at msd@drobnylaw.com. In my 29 years of practice, I can say that at least 9 out of 10 review and update appointments can be taken care of by letter or e-mail. If an amendment or codicil is required in response to that letter or e-mail, it can usually go out to you in the mail within 10-14 days for you to sign and return. Obviously, if we conclude from your letter or email that a face-to-face meeting is required, we will schedule it at that time. By following this procedure, we can insure that every client's concerns are addressed in a timely manner. We do not charge for routine amendments handled by mail, email or phone. We do charge for in office appointments.

II.

Congress allegedly repealed Federal estate taxes in 2001. This is a gross over-simplification of the situation. Congress only repealed the Federal estate taxes for persons dying between January 1, 2010 and December 31, 2010. The Internal Revenue Code was changed in 1997 to increase the Federal estate taxes exemption to \$1,000,000.00 by 2006. That exemption from Federal estate taxes was further increased dramatically over the next several years by the 2001 Tax Act that increased the exemption to \$2,000,000.00 in 2008 and \$3,500,000.00 in 2009. In addition, the top tax estate tax bracket of 55% will be gradually reduced to 45%.

However, due to a Sunset Provision in the law, the gradual increase in the amount that can pass free from Federal estate taxes, the reduction of the bracket from 55% to 45%, and the repeal of estate taxes for persons dying in 2010, is repealed in its entirety as of

December 31, 2010. At that time, we will return to the provisions of the 1997 Act, which provided that persons dying after December 31, 2005, would be entitled to a \$1,000,000 exemption from Federal estate taxes and the top tax bracket would be 55%.

The above law was passed in June of 2001 when there was a large government surplus. Since then, we have seen September 11, the war on terrorism, a protracted war in Iraq and Afghanistan, the rebuilding of the Gulf after Katrina, prescription drug coverage under Medicare, bailout of banks, a significant drop in the real estate market and collapse of our financial institutions. Now, universal health care is being proposed, but how are we going to pay for that? It all adds up to the largest government deficit spending in the history of our nation. There is no way Congress will let such huge amounts pass free from federal estate taxes in 2010, let alone ever vote to extend the repeal of estate taxes beyond 2010. Five times they have voted to make the repeal permanent and all five times it failed to get the required 60 votes in the Senate. Perhaps we will see meaningful change, but the prospects for that remain slim. The government needs to generate revenue somewhere. It is my professional opinion that Congress and the President will take action before December 31, 2009 to prevent the "No Estate Taxes" provision for 2010, extending the \$3.5 million exemption through December 31, 2010. It is highly likely that the \$3.5 million will be reduced to \$2 million or less by the end of 2010. We will advise of any significant changes as they occur.

As virtually all of us intend to live beyond the year 2010, what does this really mean? It means that the need for estate planning is real and current, just as it always has been. The Trusts that we have drafted for our clients for the last several years remain the type of Trust that we need to do.

III.

Each year since 1996, Drobny Law Offices, Inc. has received Martindale-Hubbell Law Directory's highest accolade: an AV rating. This is the result of an extensive, confidential review conducted among the legal profession in Northern California by the leading national attorney rating service. An AV Rating confirms that our legal abilities are of the highest standard and that our professional ethics and conduct are above question. We are honored and proud to join a small and select group of attorneys who have been recognized by their peers for their legal expertise and professional reputation.

IV

While we have advised our clients on numerous occasions, some are still unaware that we moved in March of 2005 to a new and permanent location at the corner of Truxel Road and Arena Boulevard in North Natomas. We are just a few blocks off the Arena Boulevard exit on I-5 and the Truxel Boulevard exit off I-80. **Our address is 4180 Truxel Road, Sacramento, California. Our telephone number and fax number both changed in March, 2005. Please note our phone number is (916) 419-2100 and our fax is (916) 419-1222.**

We are most appreciative of the opportunity to have assisted you in properly planning your estate and assure you of our ongoing commitment to keep those estate planning documents current to insure that your wishes are adequately protected. If we can be of any assistance in updating your documents, answering any questions, or assisting you in any of your other legal needs, please ask. And please visit our web page at www.drobnylaw.com regularly.

This letter is going out to over 7,500 Drobny Law Offices' clients. In order to save us printing and postage fees for future client updates, which will allow us to communicate with our clients more often, we are asking for your assistance. If you would prefer to have us e-mail you future client updates such as this letter, please e-mail me at msd@drobnylaw.com and all future client communications will be e-mailed to you.

Let me be one of the first to wish you and your family a happy holiday season and a healthy and prosperous New Year.

Very truly yours,

DROBNY LAW OFFICES, INC.
A Professional Corporation

/s/

MARK S. DROBNY
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