

Portability Explained Preserving Estate Tax Exemptions for Married Couples

The tax bill passed in January 2013 introduced a technique that allows married couples to reduce their potential Estate Tax liability while keeping legal and accounting costs low. Prior to the bill's passage, a married couple had to set up an "A-B" Trust if they wished to utilize *both* of their exemptions from Federal Estate Tax. This approach required work to be done by CPAs, lawyers, and appraisers upon the death of one spouse to divide the estate into two separate Trusts—creating additional expenses for the estate and the surviving spouse. Congress had been considering simplifying planning for couples over the course of the decade, and the concept of Estate Tax Exemption "portability" was their solution, codified in the bill passed in 2013.

In general terms, portability enables a surviving spouse to "inherit," fully or partially, their deceased spouse's Federal Estate Tax Exemption without having to set up an A-B Trust. The inherited exemption amount can be used to protect the value of the estate which exceeds the survivor's estate tax exemption (currently, \$5,340,000.00) without having to set up the B Trust.

This is a significant choice, because if the B Trust is used, it has to be funded (resulting in attorney costs), has to be maintained (incurring CPA fees for the yearly tax return) and, eventually, the B Trust will not receive a capital gains step-up at the death of the surviving spouse (thus injuring the beneficiaries through capital gains tax). There are certainly situations where clients will want to create and fund the B Trust, but many families can realize a savings with greater planning flexibility by taking advantage of portability.

Utilizing portability is a relatively simple process—the surviving spouse must file a timely Estate Tax Return with the IRS opting into this plan. Because of the higher Federal Estate Tax Exemption, our firm has been advising some clients to consider setting up a "Disclaimer" A-B Trust—now fewer clients need to divide assets to avoid Estate Taxes as a result of the portability concept described above.

If you have any questions about Disclaimer Trusts or Portability, or wish to convert your trust, please call our office at (310) 316-2400.

It is better to have options at the most difficult time of your life, rather than being forced to set up a B trust that may not save you any tax dollars and exposes you and your family to attorney fees, CPA fees, and capital gains tax. Now is the time to become informed. Please call our office to set up a free meeting. This is a big law change that you need to know about.

COME AND SEE OUR NEW WEBSITE!

The Law Firm of Bezaire, Ledwitz & Borncamp is excited to announce the launch of our new website—www.SmartEstatePlans.com!

We would like to invite all of you to visit our website and take a look at what our firm can do for you. On the website, you will find a wealth of knowledge about all aspects of Estate Planning, Estate Administration, Probate, and Litigation.



Our site has information about Our Firm, including locations, contact information, attorney bios, a blog discussing news in the law, and even a series of helpful videos starring our Managing Partner, Samuel Ledwitz, addressing commonly raised questions about our practice areas.

You've Been Named Successor Trustee – What Does That Mean?

Frequently, we receive calls from people named as Successor Trustees by our clients asking what they need to do when the Settlor (person who created the trust) has become incapacitated or has passed away. The Successor Trustees are often close friends or family members of the Settlor, distraught in the midst of unfortunate circumstances. It can be an overwhelming situation, especially if the duties to be performed are unfamiliar, unclear, or unknown. This piece is designed to help someone named Successor Trustee navigate the difficult waters of their duty—but it is important to note that every Estate Plan is different, and **the first step every Successor Trustee should take is placing a call to a qualified Estate Planning Attorney, like those at Bezaire, Ledwitz & Borncamp.**

Taking inventory of a Successor Trustee's duties can be a difficult task, so we have compiled a helpful chart to briefly state some of the major ones.

Duties of a Successor Trustee

AT INCAPACITY OF SETTLOR

- Oversees care of ill person
- Manages insurance
- Directs care of minors or other dependents
- Applies for disability benefits
- Notifies banks and financial institutions about circumstances
- Transacts important business of Settlor
- Diligently handles accounting tasks

AT DEATH OF SETTLOR

- Openly communicate with beneficiaries
- Create detailed inventories of trust assets
- Manage partial distributions
- File Trust taxes
- Remit payment of Estate bills
- Create final accounting
- Distribute assets to beneficiaries according to the Trust document.

This list might look intimidating, but keep in mind that you don't have to do this alone. As Trustee, you can employ teams of professionals to help with accounting, management, and other tasks. It is your job to make sure that the Trust is managed well—and reaching out to experienced people is a great way to achieve that goal.

After calling the attorney who created the Estate Plan or an attorney who you trust to help you make sense of your duties, review the Estate Plan carefully. Make sure that you are following the Settlor's wishes for their care if they are incapacitated, that important business is managed efficiently, and that you communicate with beneficiaries and family members.

In the event of the death of the Settlor, first notify the family that you are Trustee and help with the funeral arrangements if you are directed to do so by the Trust.

Next, compile a detailed list of all assets, along with ball-park values. During your meeting with the attorney, this will help them determine if immediate tax planning is required, and make filing the death tax return easier.

Notify the bank, brokerage firm and others of the grantor's death and that you are now trustee. They will probably want to see a certified death certificate (we recommend ordering at least 10), a certificate of trust and your personal identification.

During this entire process, remember to keep careful, detailed records. You will need to be able to verify that all taxes and bills are paid, and that you have adequately accounted for the shares being distributed to beneficiaries.

We understand that this article is far from exhaustive—the list of duties a Trustee must complete is expansive. This article is meant as a brief set of guidelines, things to remember, and an offer for help. Our firm is always here to assist a Trustee during a truly difficult time. We encourage all of our clients to attend our Trustee Duties Seminar, whether you have been named Trustee or are thinking of a person to nominate for this important role.



WANT TO KNOW MORE ABOUT SUCCESSOR TRUSTEE DUTIES?

FREE SEMINAR

WEDNESDAY, APRIL 9, 2014 AT 2:00 P.M.
970 W. 190TH STREET, TORRANCE, CA 90502

Please join us for an informative seminar hosted by Bezaire, Ledwitz & Borncamp's managing partner, Samuel Ledwitz. Samuel will be discussing the duties of a Successor Trustee and common problems Trustees may encounter during their service.

Samuel will be holding a question and answer session immediately following his presentation. During this conversation, members of the audience can ask Samuel about the seminar material or **any** general Estate Planning issues they need some insight on.

This is a unique opportunity to take advantage of Samuel's knowledge and experience—don't miss out!

CALL US TO RSVP TODAY!
1-800-209-6880

Spotlight: Accident Law



The Most Important Thing You Can Do Before Your Accident

**By James L. Pocrass, Esq.
Pocrass & De Los Reyes LLP**

I recently represented a cyclist who was the victim of a hit and run accident that broke almost every bone in his body and caused traumatic brain injuries. The driver of the car turned out to be a 19-year-old woman who was driving drunk. She claimed not to have known that she hit my client, in spite of his leaving nine teeth in her SUV's back seat.

My client's medical bills were astronomical and because of the brain injuries, his life would never be same. The compensation my client received from this case would be his primary source of income for the rest of his life. The woman's insurance company wanted to settle the claim for "policy limits," which was the maximum amount they are required to compensate a victim of serious personal injuries or even a wrongful death.

Policy limits is how much insurance you bought in a specific category. In California, you are required to carry on your car insurance \$15,000 per person for bodily injury liability; \$30,000 per accident, which covers all persons hurt in one accident; and \$5,000 for property damage liability for one accident.

If you suffer catastrophic personal injuries or a family member is lost in a wrongful death due to a motor vehicle accident (car, bicycle, motorcycle, truck, bus, boat), your damages (medical and economic) could cost hundreds of thousands – or even millions – of dollars.

The person is responsible for all damages caused by their negligence. Their insurance company will cover those damages only to the limits of the individual's insurance policy. If the person who caused your accident owns a house or other property, you may be able to recover some monies from them, after a long and expensive court process. You might even be able to garnish any money they earn or receive in the future.

But many drivers own nothing – or not enough – to ever come close to compensating you for your injuries or lost loved one. You will be on your own to pay your medical and therapy bills, subsidize your living expenses either for the short or long-term, pay childcare expenses, and replace your destroyed property.

The best way to protect yourself from this disaster is to carry as much uninsured and under-insured motorist

insurance as your insurance company will permit you to buy. The cost is pennies on the dollar. The more you have to lose (meaning the more you own or could own in the future), the more uninsured and under-insured motorist insurance you should have.

Uninsured and under-insured motorist insurance protects you when you are hit by a driver who has no insurance (and a Los Angeles County sheriff told me recently that in approximately 50 percent of all motor vehicle accidents he sees the driver is uninsured). It also kicks in when you reach the maximum the OTHER driver's insurance will pay. It compensates you for the difference between what the other driver's policy limit is and the actual compensation you need to recoup from the damages caused by the accident.

In my client's case, I was able to negotiate additional monies from the woman's family. Though I was able to recover a multi-million dollar settlement for this client, it is still nowhere near what he should have received considering the damages she inflicted on him and for which he will have to live with for the rest of his life.

My hope for you is that you never need to use your uninsured and under-insured motorist insurance, but I urge you strongly to get as much uninsured and under-insurance motorist coverage that your insurance company will allow you to purchase.

For more than 25 years, Jim Pocrass has represented people who were seriously injured, or families who lost a loved one in a wrongful death, due to the carelessness or negligence of another. Jim is repeatedly named to Best Lawyers in America and to Southern California Super Lawyers lists for the outstanding results he consistently achieves for his clients. For a free, no-obligation consultation, contact Jim Pocrass at 310.550.9050 or at info@pocrass.com or visit us at www.pocrass.com

WHEN WAS THE LAST TIME YOU REVIEWED YOUR TRUST? WE OFFER FREE THREE YEAR REVIEWS!

We would like to invite everyone, whether you are a current Bezaire, Ledwitz & Borncamp client or are just looking for a fresh perspective, to take advantage of our **FREE** three-year estate plan reviews.

Schedule a meeting with one of our experienced attorneys to look over your documents, discuss options for more efficient planning in light of legal changes, or simply update existing documents so they are current for financial and medical institutions.

**CALL US TO SCHEDULE YOUR
APPOINTMENT TODAY!**

1-800-209-6880

ABOUT OUR FIRM

Bezaire, Ledwitz and Borncamp is a full-service law firm specializing in Estate Planning, Estate Administration, Probate and Estate Litigation. Our managing partner, Samuel Ledwitz, holds a post-doctorate degree (LL.M.) in Estate Planning and is a California State Bar Certified Specialist in Estate Planning, Trust, and Probate Law. Mr. Ledwitz has years of experience helping clients plan for their future.

While Bezaire, Ledwitz and Borncamp focuses on Estate Planning, Estate Administration, Probate, and Estate Litigation, we have a large network of peers who can handle any type of case, including personal injury cases.

We have several locations available to our clients throughout Southern California:

Torrance

Bezaire, Ledwitz, and Borncamp, APC
970 West 190th Street, Suite 275
Torrance, CA 90502
(310) 316-2400

Long Beach

Bezaire, Ledwitz, and Borncamp, APC
111 W. Ocean Blvd. Suite 473
Long Beach, CA 90802
(562) 951-1400

Pasadena

By Appointment Only
Bezaire, Ledwitz, and Borncamp, APC
482 North Rosemead, Blvd., Suite 203
Pasadena, CA 91107
(626) 398-0100

West Los Angeles

By Appointment Only
Bezaire, Ledwitz, and Borncamp, APC
10940 Wilshire Boulevard, Suite 600
Los Angeles, CA 90024
(310) 540-0879

Costa Mesa

By Appointment Only
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