



# *Protecting and Preserving Wealth for Future Generations:*

## **Sage Advice and Information from Dennis M. Sandoval**

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*Protecting and Preserving Wealth for Future Generations*

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*Mr. Sandoval is the only attorney in California certified as a Taxation Law Specialist and an Estate Planning, Trust & Probate Law Specialist by the California Bar Board of Legal Specialization as well as a Certified Elder Law Attorney by the National Elder Law Foundation*

### **Dennis M. Sandoval, A Professional Law Corporation Opens Office in Riverside**

Effective March 1, 2005, my office will be located at 3233 Arlington Avenue, Suite 105, Riverside, California 92506. I will be sharing a suite with two other prominent Riverside attorneys. My new phone number will be (951) 787-7711 and my new fax number will be (951) 786-9813. Look for an announcement regarding the addition of new staff to my firm in upcoming client newsletters.

While I will be maintaining my relationship with the American Academy of Estate Planning Attorneys and will continue to speak across the United States to its members and other attorney groups regarding estate planning, elder law and tax issues, I will be devoting substantially more time to developing my law practice. If you know of friends, neighbors, relatives, fellow employees, etc... that need assistance with estate planning, probate, elder law or tax issues, I would appreciate your referral. If you are in this area of Riverside, please do not hesitate to stop by to see my new office.

### **Court Looks to Technical Provisions of Trust to Prevent Revocation and Award Residence to Children**

During the course of a long marriage George and Barbara Heaps executed a joint revocable living trust with both spouses acting as co-trustees. It provided that the trust would split into two trusts, a "family trust" and a "marital trust", after the death of the first of them. The surviving spouse would act as co-trustee over the "family trust" with George and Barbara's son and son-in-law. The surviving spouse would serve as the sole trustee over the "marital trust".

The terms of the trust provided that it became irrevocable after the death of the surviving spouse. The beneficiaries of the trust were George and Barbara's children. The trust contained two important provisions. One specified that an amendment or revocation of the trust required the execution and delivery to the

trustee of a document stating the intent of the trustor(s) to amend or revoke. The other provided that “the trustee may hold . . . [trust] property . . . in the trustee’s own name without a designation showing it to be trustee . . ., [or] in the name of [the] trustee’s nominee . . .”

At the time of execution of their trust, George and Barbara also executed a quitclaim deed transferring title to their residence to the trust. This deed was held by George and Barbara’s attorney and never recorded. Four years later, George and Barbara sold the residence and took back a promissory note and deed of trust in the amount of \$236,000. Because the quitclaim deed transferring title of the residence to the trust was never recorded, the escrow company was unaware of it and it issued to note and deed of trust was issued to George and Barbara as joint tenants.

Five years later Barbara died. A few months after Barbara’s death George married Mary Ann. George never consulted an attorney about establishing the family trust and marital trust under George and Barbara’s trust. George also never transferred title to the note and deed of trust to that trust. Instead, George created a new trust with Mary Ann and transferred all his assets, including the note and deed of trust to the new trust. After George’s death a few years later, Mary Ann transferred all the assets from their joint trust assets, including the note and deed of trust, into a new separate trust for herself.

George and Barbara’s children, as beneficiaries of the George and Barbara trust, demanded that Mary Ann return of the promissory note, the deed of trust and the payments that had been made on the note to the George and Barbara trust, alleging that the George and Barbara trust was never revoked and that George and Barbara held title to the note and deed of trust as nominee for the trustee of the trust. Mary Ann argued that George that by virtue of the joint tenancy George owned the note and deed of trust as his separate property. In addition, Mary Ann alleged that George’s act of disregarding the provisions of the George and Barbara trust and his creation of the new joint trust with her were sufficient to evidence his intent to revoke the George and Barbara trust. Unfortunately, since George was dead, we will never know his true intent..

The California Court of Appeal, in *Heaps v. Heaps*, Docket No. G033133 (11/19/2004) held that the George and Barbara trust, as provided under its terms, became irrevocable at the death of Barbara. It also held that George had not, prior to the trust becoming irrevocable, complied with the formalities contained in the trust document that were necessary for him to revoke the trust. Therefore, the found that the George and Barbara trust was still in existence at George’s death.

The Appellate Court further held that the residence was an asset of the George and Barbara trust by virtue of the unrecorded deed. Since the residence was an asset of the trust, the proceeds of the sale of the residence were also trust assets. George and Barbara held title as joint tenants only as nominees for the trustee of the George and Barbara trust.

Finally, the California Court of Appeal held that George’s actions of holding the note and deed of trust as joint tenants and his subsequent transfer of his assets to the joint trust with Mary Ann did not sufficiently comply with the requirements of the George and Barbara trust to be construed to be an amendment of the trust, removing the note and deed of trust from the trust estate.

It is not clear from this case whether George and Barbara intended their trust to be irrevocable at first death in order to protect their children from actions similar to what George took after the

death of Barbara. It appears from George's actions after Barbara's death that he intended to benefit his second wife, Mary Ann – and not his children with the sale proceeds from the residence. However, the terms of the George and Barbara trust prevented him from transferring the note and deed of trust in the manner that he did.

This case illustrates the power of a nominee clause to find property that is not in the name of trust to be a trust asset. This is sometimes very useful in finding an asset titled in other than the trust name to be a trust asset – thereby avoiding an unnecessary probate proceeding. However, the case also illustrates the danger of including a nominee provision as part of the trust provisions – the trustors must comply with the terms of the trust in order to remove an asset from the trust or effectuate an amendment or revocation of the trust to return title of the assets to themselves. In selecting an attorney to help you draft your estate plan you should select one that is aware of the significance of making a trust irrevocable at death, requiring strict formalities to amend or revoke the trust and including a nominee agreement in the trust language – and only includes these provisions where they are in congruence with your desires.

## ***Can We Be of Assistance to You?***

Dennis M. Sandoval, A Professional Law Corporation, specializes in estate planning (including probate administration and trust / will contests), asset protection planning, elder law (including qualifying for Medi-Cal coverage, conservatorships, and creation of Special Needs Trusts for disabled beneficiaries) and tax controversy work (including federal and state tax audits, appeals and litigation). All of your referrals will be handled promptly and professionally.

***Mr. Sandoval is available to speak to your group or organization. Call (951) 734-9728 to schedule him to speak on any topic relating to estate planning, elder law, asset protection or taxes.***

<b>Upcoming Seminar for the General Public</b>			
<b>Subject Matter</b>	<b>Dates</b>	<b>Time</b>	<b>Location</b>
Long Term Care Planning for the Middle Class	March 29, April 2, April 5	Call	Janet Goeske Senior Center 5257 Sierra Street Riverside
Planning for a Lifetime Partnership Under the California Domestic Partner Rights and Responsibilities Act	April TBD	Call	Riverside TBD
Estate Planning for Unmarried Couples	Summer 2005	TBD	Riverside City College Community / Adult Education
Providing for a Special Needs Child	Summer 2005	TBD	Riverside City College Community / Adult Education
Estate Planning for the Business Owner	Summer 2005	TBD	Riverside City College Community / Adult Education
Asset Protection Planning for Business Owners and Professionals	Summer 2005	TBD	Riverside City College Community / Adult Education

### Upcoming Seminars / Classes for Professionals

Planning Traps for Same Sex Partners Under the California Domestic Partner Rights and Responsibilities Act of 2003	2/9/2005	5 – 7 p.m..	San Bernardino Estate Planning Council University Club University of Redlands
Planning Traps for Gays and the Elderly Under the California Domestic Partner Rights and Responsibilities Act of 2003	4/9/2005	9 am – noon	University of California at Riverside Extension (UNEX) 3 hrs. Attorney CLE
The Basics of Medi-Cal Planning for Long Term Care	4/30/2005	8 am – 5 pm	UNEX 7.5 hrs. Attorney CLE
Naming a Trust as Beneficiary of a Retirement Plan: A Magical Mystery Tour; Federal Estate Tax Repeal Update and Recent Developments; Using a (d)(4)(A) Trust to Protect Benefits of Disabled Beneficiaries	5/12 – 5/15/2005	TBD	American Academy of Estate Planning Attorneys Eden Roc Resort & Spa Miami
Retirement Plan Distribution Rules: A Magical Mystery Tour; Federal Estate Tax Repeal Update and recent Tax Developments	5/19 - 5/22/2005	TBD	National Academy of Elder Law Attorneys Fairmont Hotel San Francisco
The Mechanics of Drafting First Party and Third Party Special Needs Trusts in California	6/18/2005	9 am - noon	UNEX 3 hrs. Attorney CLE
Maintaining and Maximizing Government Benefits for Special Needs Beneficiaries: The Basics of Administering a Special Needs Trust	6/18/2005	1 pm – 4 pm	UNEX 3 hrs. Attorney CLE
Retirement Plan Distribution Rules: A Magical Mystery Tour; Federal Estate Tax Repeal Update and recent Tax Developments	9/29 - 10/2/2005	TBD	National Academy of Elder Law Attorneys Sheraton New Orleans New Orleans
Topics to be Determined	10/6 – 10/10/2005	TBD	American Academy of Estate Planning Attorneys Catamaran Hotel San Diego