



July 2008

The Inland Empire's
Premier Estate Planning,
Elder and Tax Law Firm

Dennis M. Sandoval,
A PROFESSIONAL LAW
CORPORATION

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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*

Visit Our Websites at:

www.protect-your-wealth.com

www.cal-elder-lawyer.com

www.cal-special-needs-attorney.com

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Sandoval's Soliloquy

A Periodic Update for Financial Professionals of New Developments in Estate Planning, Elder Law, Asset Protection, Retirement Planning and Tax Planning

Dennis Joins Special Needs Alliance

MEMBER



Special needs require special lawyers.

Dennis is proud to announce that he has been invited to join the Special Needs Alliance, an exclusive organization of attorneys that specialize in planning for special needs persons. Through his affiliation with the Special Needs Alliance, Dennis will have the collective wisdom and planning experience of some of the top special needs planning attorneys in the United States available to him and his clients. Dennis is one of only six Special Needs Alliance members in California. The Special Needs Alliance has slightly over one hundred members nationwide.

Dennis Attends NAELA Board Retreat

Dennis will be traveling to Monterey, California this month to participate in the National Academy of Elder Law Attorney Board of Directors Retreat. At the retreat, Dennis will be joining with other members of the Board of Directors of NAELA to shape the direction that the National Academy of Elder Law Attorneys will be taking in coming years as one of the leading professional associations advocating for and defending the needs of the elderly and the disabled.

Veterans Administration Cracks Down on Agents

Concerned with abuse being perpetrated by annuity salespersons marketing to seniors desiring to qualify for Veterans Aid and Attendance benefits to help pay for long term care expenses at home as well as in an assisted living facility or skilled nursing home, the Veterans Administration has promulgated new regulations effective May 23, 2008 requiring accreditation of persons seeking to

represent claimants before the Veterans Administration.

The new regulations were released in 73 Federal Register 100 on May 22, 2008 at page 29852. These new regulations will be incorporated into 38 Code of Federal Regulations Parts 1 – 20. Any person, other than an attorney licensed to practice before the Veterans Administration, who wishes to act as a paid representative for claimants who have been denied Aid and Attendance benefits must: (a) pass an exam and (b) fulfill the other requirements necessary to become accredited to practice before the Veterans Administration. Both non-attorneys and attorneys will be required to fulfill certain continuing education requirements in order to remain accredited. If you would like a copy of the new regulations, you can get them by contacting our office at 951-787-7711.

Dennis is accredited by the Veterans Administration as an attorney who can represent clients in the application for Veterans Aid and Attendance benefits as well as appeal of denial of benefits.

Financial advisors seeking to learn more about Veterans Aid and Attendance benefits can attend our Lunch and Learn session on VA Aid and Attendance benefits, to be held at noon in our office classroom on September 19, 2008 or you could also attend Dennis' presentation to the Inland Empire Society of Enrolled Agents (What Every EA Needs to Know About Long Term Care Planning, Including Qualifying for Long Term Care Medical and Veterans Aid and Attendance), which will be at the San Bernardino Hilton on November 12 from 6 – 9 p.m. (includes dinner, fee charged by EA Society). Call out office at 951-787-7711 for more information on how to register for either of these events.

Tax Court Issues Unanimous Decision Validating Formula Clause

The Internal Revenue Service has given its blessing to the use of some types of formula clauses used by estate planning attorneys for years, while rejecting other types of formula clauses based on tax evasion and public policy arguments.

One type of formula clause that has gained favor with the IRS is a clause that divides a married decedent's estate or trust into two shares when he or she dies – the first share contains the maximum amount of the decedent's estate or trust that can pass free of estate tax and the second share contains the excess, which if properly planned for will qualify for the unlimited marital deduction. This type of planning allows for no estate tax to be paid at the death of the first spouse. This is often referred to as A/B Trust planning.

Another type of formula clause that has not received favor with the IRS is a formula clause that attempts to fix the value of a gift and dissuades the IRS from auditing the gift or estate tax return. An example of this type of formula might involve a transfer of an interest in a family limited partnership whereby the client asserts he is transferring FLP units valued at \$1 million to family members or to a trust for family members and if the IRS audits and values the FLP interests at more than \$1 million, the excess value is given to a private foundation controlled by the client or some other charitable entity. The IRS has argued against this type of formula clause because any increase in valuation of the FLP interest does not result in any additional gift or estate tax to the federal government. The reason for this is the excess amount passes to charity and is entitled to a charitable gift or estate tax deduction. The IRS has argued the holding in the case *Commissioner v. Procter* as support for its position.

The recent case, *Estate of Christiansen v. Commissioner*, 130 T.C. 1 (1/24/2008), is a **very** important case because the U.S. Tax Court unanimously held that a formula disclaimer was effective to pass to charity any increase in the federal estate tax valuation of the estate. The Tax Court held that the formula approach employed was not prima facie invalid — that it did not violate public policy.

In so holding the court rejected the Service's consistent assertion that strategic formula provisions that discourage the government from litigating valuation questions are invalid as against public policy under the *Proctor* doctrine. While the *Christiansen* case may not stop the IRS from challenging formula gifts of this nature, the case may empower knowledgeable estate planning attorneys who have been on the sidelines regarding this planning strategy.

The *Christiansen* case involved a testamentary bequest of the decedent's estate (which included family limited partnership units) to the decedent's daughter. The bequest allowed her to disclaim the bequest to the extent IRS valued the bequest in excess of \$6,350,000.00. The disclaimed portion passed by the terms of the decedent's Will, 75% to a charitable lead annuity trust (CLAT) and 25% to a private foundation (which also was the lead beneficiary of the CLAT). The CLAT remainder was payable to the disclaimant if living at the end of the lead term. As explained earlier in this newsletter, the idea behind the strategy is to prevent additional estate taxes from being paid should the IRS claim the bequest should be valued in excess of the designated \$6,350,000.00 amount. For technical reasons dealing with qualified disclaimers that are beyond the subject matter discussed herein, the court found the disclaimer to the CLAT ineffective, but as to the 25% of the estate passing to the foundation directly, the disclaimer was effective and generated an estate tax charitable deduction as if it had passed directly from the decedent.

The majority of the Court (with the two dissenting judges joining on this point, making this a unanimous holding) held with regard to the formula disclaimer language:

“We do recognize that the incentive to the IRS to audit returns affected by such disclaimer language will marginally decrease if we allow the increased deduction for property passing to the foundation. Lurking behind the Commissioner's argument is the intimation that this will increase the probability that people . . . will lowball the value of an estate to cheat charities. There's no doubt that this is possible.

But . . . executors and administrators of estates are fiduciaries, and owe a duty to settle and distribute an estate according to the terms of the will . . . Directors of foundations . . . are also fiduciaries . . . [and] . . . the state attorney general has authority to enforce these fiduciary duties.
...

We therefore hold that allowing an increase in the charitable deduction to reflect the increase in the value of the estate's property going to the Foundation violates no public policy and should be allowed.”

This type of language is comforting for estate planning attorneys looking for strategies to maximize estate tax savings for their clients and it is likely that the result of this case and the earlier case, *Estate of McCord v. Commissioner*, 461 F.3d 614 (5th Cir. 8/22/2006) will result in more of this formula disclaimer language being employed by knowledgeable estate planning attorneys.

Recent Victories

Dennis is pleased to announce he has recently favorably settled several cases for his clients:

Defense of Trust

The daughter of the decedent provided care for her father for many years prior to his death. To compensate her for her services, the decedent amended his trust to leave his residence to the daughter and divided his remaining assets fairly evenly between the daughter and her siblings.

One of the siblings brought a lawsuit trying to overturn the trust amendment, claiming that the decedent lacked capacity to execute the trust amendment and that he was unduly influenced by the daughter. The sibling further claimed that daughter engaged in elder financial abuse. The elder financial abuse claim was brought in an attempt to have the daughter disinherited under the California elder financial abuse statutes and to have her personally bear the cost of the attorney fees for the sibling, but my firm was successful in eliminating the elder financial abuse cause of action by pre-trial motions early in the case.

The trustee of the trust, who was a friend of the decedent, firmly believed that the decedent had capacity and that daughter did not unduly influence the decedent or engage in elder financial abuse. He hired my firm to defend the trust.

After almost a year of discovery work and working with medical experts, my firm was able to convince the attorney for the sibling that he would not prevail at trial and the attorney advised the sibling to dismiss the case. One of the strongest tools we had to use in the case was the presence of a “no contest” clause in the trust document, which meant the sibling would be disinherited should he not be able to prove his case. This case is a great example of how the decedent’s wishes can ultimately be carried out if the trustee stands firm and hires good defense counsel who recognize the facts and the law support his case.

Undue Influence

In a case that is basically the opposite of the one described above, we were successful in securing a settlement for a daughter of the decedent. Our client alleged that her mother lacked capacity to amend her trust, that her sister had unduly influenced the mother into giving her the bulk of the trust estate and that her sister had committed elder financial abuse. Because of substantial discovery work over the past year, we were able to convince a mediator and counsel for the trustee daughter that we were likely to prevail at trial. The mediator assisted us in settling the matter for half of the trust estate, which meant my client received in excess of \$800,000 for her share.

Hear Dennis on the Radio

Dennis can be heard every Saturday, on his radio show, **Senior Talk with Dennis Sandoval**. The show will highlight information of importance to seniors and disabled individuals. Recent guests interviewed by Dennis include Sharon Guggisberg, Executive Director of Somerford Place Assisted Living in Redlands and Karen Griffith, who discussed how to find a quality assisting living facility and paying for the care; Judy Williams from Wells Fargo, who discussed the intricacies of reverse mortgages and how they can be used to help finance care in the home; David Frasier, Executive Director of the Inland Caregiver Resource Center, who discussed caregiver resources and dealing with caregiver burnout and Dr. Tarek Mahdi, M.D., chairman of the Inland Empire Palliative Care Coalition, who discussed with Dennis and Karen how hospice care is being under-utilized and what is going on at the Inland Empire Palliative Care Coalition. You can download a copy of these interviews from our website, www.protect-your-wealth.com, or call us for an audio CD of one of more of the shows of interest to you. To make sure you don’t miss any of these important broadcasts, make sure you tune in to KTIE, AM 590, every Saturday at 2:30 p.m. to hear Dennis on **Senior Talk with Dennis Sandoval**



2008 / 2009 Lunch and Learn CE Classes for Financial Professionals

Topic	Date	CE Credit *	Cost
Understanding Aid and Attendance Benefits for Veterans	September 19, 2008	1 hour	FREE
Life Care Planning: What Is It and Why You Need to Know About It	October 24, 2008	1 hour	FREE
Conservatorships: What Financial Professionals Needs to Know	November 14, 2008	1 hour	FREE
Protecting and Preserving Wealth for Beneficiaries Using the Access Trust™ and Sentry Trust™	December 12, 2008	1 hour	FREE
Retirement Estate Planning: A Magical Mystery Tour of the Rules Dealing With Retirement Assets	January 16, 2009	1 hour	FREE
What You Don't Know (and Should Know) About Life Insurance Trusts	February 20, 2009	1 hour	FREE
Planning for a Special Needs Persons: The Basics	March 20, 2009	1 hour	FREE
An Introduction to Charitable Estate Planning Strategies	April 17, 2009	1 hour	FREE
Advanced Estate Planning: Squeezing Techniques	May 15, 2009	1 hour	FREE
Advanced Estate Planning: Freezing Techniques	June 19, 2009	1 hour	FREE
Domestic Asset Protection Trusts: All Hype or Veritable?	July 17, 2009	1 hour	FREE
No Lunch and Learn in August 2009!			
Business Succession Planning	September 18, 2009	1 hour	FREE
Asset Protection Planning for Doctors and Dentists	October 16, 2009	1 hour	FREE
What Financial Professionals Need to Know About the IRS (and FTB) Audit and Appeals Process	November 13, 2009	1 hour	FREE

Reservations Required!! – Call 951-787-7711 to reserve your space

Unless attendance requires a larger classroom, all classes will be held in the classroom at Dennis M. Sandoval, A Professional Law Corporation, located at 3233 Arlington Avenue Ste. 105 Riverside, California 92506 (corner of Division Street and Arlington (near Target Store and across the street from California School for the Deaf) -- Call for directions (max attendance in classroom is 15 professionals))

*** Approved for one hour of CFP, CPA and California Insurance Agent CE Credit Registration begins at 11:30 a.m. and classes adjourn at 1:00 p.m.**

Interested in having Dennis Sandoval or Pamela Valencia conduct a private CE class for your office staff or speak before your professional group? Call 951-787-7711 now to inquire about his or her availability – their availability to speak is subject to a myriad of other business, professional and family commitments each have.

2008 / 2009 Consumer Seminars

Call 951-787-7711 to make reservations – Seating is limited!!!!

Topic	Date	Location
Life Care Planning: Planning for Your Long Term Care Needs	September 24, 2008 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	September 27, 2008 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	October 22, 2008 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	October 25, 2008 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	November 5, 2008 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	November 8, 2008 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	December 3, 2008 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	December 6, 2008 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	January 28, 2009 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	January 31, 2009 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	February 11, 2009 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	February 14, 2009 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	March 11, 2009 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	March 14, 2009 9 – 11 a.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	April 15, 2009 7 – 9 p.m.	Our Classroom*
Life Care Planning: Planning for Your Long Term Care Needs	April 19, 2009 9 – 11 a.m.	Our Classroom*

Call our office for the dates and times of our private Legacy Wealth Estate Planning dinner seminars at The Victoria Club in Riverside. These private seminars are by invitation only.

** Unless attendance requires a larger classroom or is scheduled elsewhere, all classes will be conducted in our law firm classroom, located at 3233 Arlington Avenue Ste. 105 Riverside, California 92506 (on the corner of Division Street and Arlington (opposite Cold Stone Creamery on Division Street -- near Target Store and across the street from California School for the Deaf)). (Maximum attendance in the law firm classroom is twelve to fifteen persons)*

Interested in having Dennis Sandoval or Pamela Valencia conduct a seminar for your church, employee group or other organization? We would be glad to accommodate most requests. Call 951-787-7711 now to inquire about availability of a speaker.

**Know other Financial Professionals that
would like to receive *Sandoval's Soliloquy*?**

Have them complete this application below and fax it to us at (951) 786-9813



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*Providing Peace of Mind to Seniors,
the Disabled and their Family Members*

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***Tax Planning • Tax Controversy before IRS and State Agencies • Estate Planning, including Legacy
Wealth Planning • Elder Law, including Qualification for Medi-Cal and Veterans Aid and
Attendance benefits and Asset Preservation Planning • Wills and Trusts • Life Care Planning •
Probate • Conservatorships • Will and Trust Contests • Planning for Special Needs Persons •
Advanced Estate Planning for Entrepreneurs and Business Executives • Estate Planning for Large
Retirement Plans • Asset Protection Planning for Wealthy Individuals***

Sign up for *Sandoval's Soliloquy* e-Newsletter

Yes, I would like to receive Sandoval's Soliloquy e-Newsletter, which will be sent to me on a periodic basis (no more frequently than monthly) via a secure and virus-free .pdf attachment to an email.

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- Sandoval's Soliloquy for Financial Professionals***
 Sandoval's Soliloquy for Health Care Professionals

Also, please notify me of any continuing education seminars you will be offering in my area.