



February 2005

**Dennis M. Sandoval,**  
A PROFESSIONAL LAW  
CORPORATION

*Protecting and Preserving  
Wealth for Future  
Generations*

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*Mr. Sandoval is the only  
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a Certified Elder Law  
Attorney by the National  
Elder Law Foundation*

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# Estate Planning / Trust and Estate Litigation Newsletter

## **Dennis M. Sandoval, A Professional Law Corporation to Open 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.

## **Dennis M. Sandoval, A PLC, Adds Professional Geriatric Care Manager to Staff**

I am very proud to announce that Karen Griffith has joined my law firm as our Professional Geriatric Care Manager. Karen has a bachelors degree in Social Work from the University of Nebraska and she has over seventeen years of experience of working with seniors and the disabled. She is a member of the National Association of Professional Geriatric Care Managers.

She will assist me with the development of plans and the submission of applications for those seniors and disabled individuals seeking to obtain and maintain Medi-Cal, Supplemental Security Income (SSI), Social Security Disability (SSDI), In-Home Supportive Services (IHSS) and other government assistance programs.

Her other functions include the evaluation of the residences of newly disabled individuals to determine what modifications and accommodations may be necessary, participation in care plan meetings for clients in nursing homes and providing assistance to clients looking to select a nursing home or assisted living facility for their loved ones.

If you know of anyone that might benefit from Karen's expertise, please give her a call at 951-787-7711 or email her at [karen@protect-your-wealth.com](mailto:karen@protect-your-wealth.com).

## ***Joint Taxation Committee Releases Monster Report***

On January 27, 2005 the Congressional Joint Committee on Taxation (JCT) released a 435 page report entitled *JCS-02-05 Options to Improve Tax Compliance and Reform Tax Expenditures*. Several key members of Congress have voiced a willingness to back away from complete repeal of the estate tax in favor of raising the amount that can be passed estate tax free to a higher amount, perhaps \$ 3 million to \$5 million. In 2003, federal estate taxes generated approximately \$20.6 billion, the majority of which was paid by 3,486 estates of \$5 million or more. Based on that figure, complete repeal of the estate tax could be viewed by the public and their representatives as being a significant annual gift to only the richest 3,500 families in the United States. Assuming that the estate tax is not repealed, the following proposals contained in the JCT report may be enacted in order to tighten up several estate planning strategies the IRS has viewed as abusive.

**Generation Skipping or Dynasty Trusts.** Section XI, Part A of the report, entitled “Limit Perpetual Dynasty Trusts” states that Dynasty Trusts are inconsistent with the objective of imposing a transfer tax once every generation, and that existing law provides unequal treatment since only some states have repealed the Rule Against Perpetuities. The allocating GST exemption to a Generation Skipping Trust or Dynasty Trust, taxpayers currently have the ability to pass assets from generation to generation free of gift, estate and generation-skipping transfer taxes for a period of hundreds of years or more. The JCT proposal would limit the GST exemption to one generation.

The JCT proposal would subject asset in a Generation Skipping Trust or Dynasty Trust passing from a grandchild to the grandchild’s children to the generation skipping transfer tax. Generation Skipping Trusts created before the enactment of laws proposed by the JCT would continue to benefit multiple generations free of gift, estate and GST tax.

**Discounts on Family Limited Partnerships and Family Limited Liability Companies.** Section XI, Part B of the report, entitled “Determine Certain Valuation Discounts More Accurately for Federal Estate and Gift Tax Purposes” states that under present law, valuation discounts can significantly reduce the estate and gift tax values of transferred property.

Under current law, a taxpayer may (a) make a gift of a minority interest and claim lack of control discounts even though the taxpayer or taxpayer’s child controls the property being transferred, (b) contribute marketable securities to a partnership that he controls, and (c) at death, claim marketability discounts even though heirs may be able to liquidate the entity and recover full value by accessing the underlying assets.

Under existing law, each family member’s interest in a FLP or FLLC is considered separately. Consequently, when valuing the interest of a particular family member, the extent of ownership by the remaining family members is irrelevant.

For example if mom and gave give away 51% of the ownership interest in a FLP or FLLC to their children while retaining a 49% interest in the entity, the fact that the taxpayers’ immediate family owns 100% of the entity has no bearing on the valuation of the 49% retained interest in the FLP or FLLC.

The JCT report includes a “transferee aggregation rule” that would aggregate mom and dad’s 49% interest with the interests of the other family members that received FLP or FLLC interests. If the transferee aggregation rule results in the taxpayer having a controlling interest, then little or no valuation discount would be permitted for the FLP or FLLC interests being transferred during life or at death. The effective date of the transferee aggregation rule would be for transfers during life or at death occurring on or after the date of enactment.

**Crummey Powers.** Section XI, Part C entitled “Curtail Use of Lapsing Trust Powers to Inflate the Gift Tax Annual Exclusion Amount” states that certain arrangements using *Crummey* Powers have extended the “present interest” concept far beyond what Congress originally contemplated.

Currently, irrevocable life insurance trusts and other similar trusts have the ability to take advantage of annual gift tax free gifting by provided lapsing withdrawal powers known as *Crummey* Powers in the trust document.

The JCT suggests three options that Congress should consider: (a) the beneficiary of a *Crummey* Power must be a direct, non-contingent beneficiary of the trust. (b) powers to withdraw trust assets can only be considered for gift tax purposes if they cannot lapse during the powerholder’s lifetime, or (c) withdrawal powers will only be taken into account if (i) there is no arrangement or understanding not to execute the withdrawal power and (ii) at the time of creation of the withdrawal powers a meaningful possibility existed that the withdrawal power would be exercised.

The first alternative would be effective for any transfers after the date of enactment and the other two alternatives would only be applicable to trusts established after the date of enactment.

**Section 529 College Savings Plans.** Section XI, Part E entitled “Modify Transfer Tax Provisions Applicable to Section 529 Qualified Tuition Accounts” states that assets transferred to a 529 Plan would generally not qualify as a completed gift and would be included in the owner’s gross estate for estate tax purposes.

Currently, with some exceptions, the owner of a 529 Plan of which he or she is not the beneficiary is entitled to exclude the value of the 529 from his or her estate, even though the owner retains significant control over the account, including the ability to take assets back (subject to a penalty). Furthermore, Florida and other states provide that the assets of a 529 Plan are exempt from the creditors of the owner.

The JCT proposes that a gift to a 529 plan would not be a completed gift at the time of transfer and to the extent there are assets remaining in the 529 Plan at the owner’s death, the value of the 529 Plan would be included in the owner’s estate. These new provisions would be effective only for contributions (and earnings thereon) made in taxable years beginning after the date of enactment and would not apply to contributions (and earnings thereon) made on or before the date of enactment, as long as a separate accounting is made.

## ***Time to Take Action Now?***

It is impossible to say at this time whether or not Congress will repeal the estate tax or instead keep the estate tax in place and enact one or more of the JCT’s recommendations. However, these proposals should provide incentive for many taxpayers with potentially taxable estates that

have been contemplating one or more of these estate planning strategies to act now, before any potential enactment of the JCT's recommendations.

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) 787-7711 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 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