



The **23rd Annual**

Planned Giving CONFERENCE

presented by the **Northern California Planned Giving Council**
in association with Colonial Consulting, LLC

FUNDAMENTALS TRACK

Session 1: 9:30 am - 10:45 am

Topic:

Basic Estate Planning

Presented by:

Michael B. Hobson, Esq.
Robert L. Hobson, Esq.

Workshop Summary:

This presentation should provide the participants with exposure to the fundamental concepts of non-charitable estate planning, and knowledge essential to meeting with planned giving donors.

Workshop Presenter



Michael B. Hobson, Esq., received his Juris Doctorate Degree from the University of California, Hastings College of the Law in 1995, and his Bachelor of Arts Degree in Economics from the University of California, Berkeley in 1992. Mike started his career as an associate Tax and Estate Attorney practicing with his father, Robert Hobson. For two years, Mike practiced with his father primarily in the areas of taxation, planned giving, probate, and estates and trusts. In 1997 Mike joined Ernst & Young's Private Client Service Practice. Mike specialized in wealth transfer planning, planned giving and tax planning for individuals, estates and trusts. He primarily focused on advising high-net-worth individuals in connection with wealth transfer planning, income tax planning, structuring of charitable gifts, and planned giving associated with private foundations and charitable remainder trusts. Mike advised U.S. Citizens, resident aliens, and non-resident aliens, with both onshore and offshore concerns. His clients included exempt entities organized within the United States. Mike acted as National Segment Leader for the Private Client Service portion of Ernst & Young's Online Tax Advisor. Mike led Ernst & Young's Gift and Estate Tax Network in the Pacific Northwest. Mike also contributed to the Ernst and Young Tax Guide for several years as an author and as an editor. Mike rejoined his father as a partner of Hobson & Hobson in February of 2006 with a continued focus on estate planning, planned giving, trust and estate administration, and income tax planning for individuals, estates and trusts. Mike is a member of the California Bar Association, the American Bar Association, the San Francisco Estate Planning Council, the Northern California Planned Giving Council, and the National Committee on Planned Giving. He has been designated a Certified Specialist in Trusts and Estates by the State Bar of California Board of Legal Specialization. He frequently speaks on various areas of tax and estate planning.

Mike and his wife, Nina, live in Los Gatos. Nina practices surgery in a private group located in Los Gatos. Mike and Nina are happy parents of their eight-year-old boy, Nicholas, and their six-year-old daughter, Alexa.

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Workshop Presenter



Robert L. Hobson graduated from Wabash College and, after serving in the US Navy as a commissioned officer, received his J.D. from the University of California, Hastings College of the Law. He has been admitted to the practice of law in California since 1964 and is also admitted to practice before the Supreme Court of the United States. Bob was Vice President and National Director of the Endowment and Charitable Trust Services Group at Bank of America where he created the Bank's Pooled Income Fund administration, which became an industry leading service. Bob left Bank of America in early 1986 to concentrate on providing independent administration services for charitable remainder trusts and Pooled Income Funds. He was formerly a Tax Attorney with the Internal Revenue Service, General Council for an investment advisory firm and a special consultant to a national fund raising consulting firm.

Bob presently devotes his law practice to tax and estate planning for individuals, particularly as it relates to charitable trusts. He also works with many charitable organizations in providing trust administration for their charitable trusts and Pooled Income Funds. Other aspects of his practice include planning for Wills, revocable living trusts and probate. He has become a popular speaker on these topics, both locally and nationally. Bob was the President of the Endowment Board of the Methodist Church, a member of the National Advisory Committee of the YMCA and Treasurer of Clausen House, an organization which provides services for developmentally disabled adults. He is currently on the Planned Giving Advisory Board for Wabash College.

He has two sons, both graduates from the University of California at Berkeley. His older son, having spent 10 years in the health insurance industry is now an independent health and life insurance broker. His younger son is a graduate of Hastings College of the Law, admitted to practice in California and was a Senior Tax Manager for Ernst & Young in their Personal Financial Counseling unit, and now practices with Bob in the firm of Hobson & Hobson. Bob is retired from the US Naval Reserve and holds the permanent rank of Captain, United States Navy.

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Hobson & Hobson

Basic Estate Planning

Thursday April 29, 2015
NCPGC Annual Conference
Palace Hotel

About us

- Robert Hobson
 - Wabash College, Hastings College of the Law
 - More than 40 years in Planned Giving & Estate Planning
 - IRS, In-House Counsel, BofA, Private Practice, Hobson & Hobson
- Michael Hobson
 - UC Berkeley, Hastings College of the Law
 - More than 20 years in Planned Giving & Estate Planning
 - Private Practice, Ernst & Young, Hobson & Hobson

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Today's Topics

- Intestate Succession
- Wills & Codicils
- Probate
- Trusts
- Federal Estate Tax
- Estate Tax Marital Deduction
- Conventional Marital Deduction Planning
- Portability
- Powers of Attorney & Advanced Health Care Directives
- Lifetime gifts

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Intestate Succession

What happens if a person dies without any estate plan?

- Probate
- California's Intestacy Laws
- Court appoints administrator, and guardian

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Intestate Succession

Intestacy Laws

- Married (or in Domestic Partnership) with no issue, parents, siblings or deceased siblings
- 100% to Surviving Spouse (or Domestic Partner)
- In some cases, this would be poor tax planning

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Intestate Succession

Intestacy Laws – 50% to the Surviving Spouse (or Domestic Partner) in the following situations:

- One child or issue of deceased child
- No issue, but a parent or issue of a parent
- Not many people would actually want this disposition

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Intestate Succession

Intestacy Laws – 1/3 to the Surviving Spouse (or Domestic Partner) in the following situations:

- More than one child
- One child and issue of deceased child
- Issue of two or more deceased children
- I've never encounter a person who wanted to leave on 1/3 to their spouse

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Wills & Codicils

Definition of a Will

A Will is an instrument directing the disposition of property after the Testator's death.

Testator: One who makes a Will (a Testament)

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Wills & Codicils

Nature of a Will

- Has absolutely no effect during life
- It can be revoked or changed as long as the Testator is mentally competent
- A change to a Will is referred to as a Codicil

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Wills & Codicils

What does a Will accomplish, generally?

- Allows someone to control who receives assets upon their death (no Intestacy Laws)
- Lets a person choose a Guardian for minor children
- Also allows a person to choose an executor
- Can also create trusts and accomplish tax planning (discussed in connection with revocable living trusts)

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Wills & Codicils

Types of Wills

- Formal
 - Subscribed and acknowledged by the Testator
 - Witnessed
- Holographic
 - Entirely in Testators handwriting
 - Dated & signed, but not witnessed
- Living Will
 - Used in other states
 - California law refers to this as an Advanced Health Care Directive (more on this later)

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Wills & Codicils

Bequests, Legacies & Devises

- Bequest – gift of personal property by Will
- Devise - gift of real property by Will
- Legacy - gift of money by Will

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Wills & Codicils

Types of Bequests

- Specific – my green Rolls Royce
- Demonstrative – from my Schwab Account
- General – no specific description (\$5,000)
- Residuary – all the rest, residue and remainder

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Wills & Codicils

- Assets that pass under a Will must be probated
- What is probate?

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Probate

Definition

A formal and public court-supervised proceeding which transfers assets from a deceased persons name into the names of beneficiaries

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Probate

Where does a Probate take place?

- In the Superior Court of the County in which the decedent resided
- Potentially other counties where the decedent owned real property

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Probate

California Statutory Fees (paid to Attorney & Executor)

4%	First \$100,000	\$100,000	\$4,000
3%	Next \$100,000	\$200,000	\$7,000
2%	Next \$800,000	\$1,000,000	\$23,000
1%	Next \$9,000,000	\$10,000,000	\$113,000
.5%	Next \$15,000,000	\$25,000,000	\$188,000

** Above \$25,000,000 court determines reasonable fees

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Probate

- These fees are in addition to any Estate Tax
- Must also pay appraisal fees (Probate Referee)
- Also must pay court filing fees and pay to publish notices

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Probate - Procedure

- Executor usually retains attorney to file legal documents and make court appearances
- Executor files the Petition for Probate of the Will
- Executor files the original Will with the County Clerk
- Clerk sets Court date for hearing of the Petition to have Executor appointed
- Executor notifies all interested parties of the hearing date to appoint Executor & sends a copy of the Will to interest parties
- After Court hearing, executor notifies all beneficiaries of appointment as executor
- Executor notifies beneficiaries of all further Court dates
- Executor published Notice of the Probate, so creditors have an opportunity to make claims
- Court appoints Probate Referee to value property
- Executor inventories all assets and files inventory with the Court and the Probate Referee

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Probate – Procedure Cont'd

- Executor manages assets of the estate
- Executor pays all debts of the decedent and the estate
- Probate Referee values property and files and Inventory & Appraisal with the Court
- Executor files decedents last income tax returns
- Executor files fiduciary income tax returns for the estate
- Executor files Federal Estate Tax Return, if necessary
- Executor files an accounting for the estate showing all receipts and expenditures
- Executor files Petition for Distribution
- Hearing is set for Petition for Distribution
- After Order for Distribution, Executor distributes to beneficiaries
- Executor get receipts from distributees and files with Court
- Executor Petitions Court for Order to Close the Estate

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Probate

Advantages

- Provides an impartial forum to settle disputes with creditors
- Can reduce time creditors can make claims
- Some people view court supervision as a plus

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Probate

Disadvantages

- Costs can be high
- Distribution can be quite delayed. Typically, 9 months and often over a year.
- May need multiple probates, if real property is owned in different counties
- Lack of privacy, since all documents become public records

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Probate

Non-Probate Assets

- Joint Tenancy
- Community Property, with Right of Survivorship
- Transfer on Death (TOD) Accounts
- Certain U.S. Savings Bonds
- Life Insurance proceeds
- Employee Benefit plans
- IRAs and other retirement accounts
- Property held in trust
- Survivor's 1/2 of community property

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Probate

Planning Alternatives to avoid Probate

- Revocable Living Trust
- Joint Tenancy
- Community Property, with Right of Survivorship
- Transfer on Death (TOD) Accounts

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Trusts – General Concepts

- Separate legal entity
- Governed by the trust instrument
- Sometimes a separate tax entity

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Trusts – General Concepts

Parties to a trust

- Grantor (Trustor, Settlor, Creator)
- Trustee
 - Legal title
 - Management responsibilities
 - Fiduciary responsibilities
- Beneficiaries
 - Income beneficiaries
 - Remainder beneficiaries
 - Split Interest trusts

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Trusts – General Concepts

Types of Trusts

- Revocable
- Irrevocable
- Inter vivos (Living)
- Testamentary
- Grantor
- Nongrantor

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Revocable Living Trusts

Why use them?

- Avoid probate, the fees, the delays and the public nature
- Allows for planning in the case of incapacity
- **Dispelling a Common Misconception** -
- A RLT doesn't offer additional estate tax advantages to a Will

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Revocable Living Trusts

How does it work?

- Transfer assets from yourself, personally, to yourself, as trustee of the RLT
- Revocable and amendable during life
- The trust is a flow-through and has no income tax impact (grantor trust)
- Upon death, assets transfer by virtue of the trust so a Probate proceeding is unnecessary

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Federal Estate Tax - Overview

- Gross Estate Includes
 - Property owned
 - Appreciation on certain gifts made within 3-yrs of death
 - Interest with a retained life estate
 - Controlled corporation stock, if decedent retained the right to vote
 - Property over which decedent can control beneficial enjoyments
 - Annuities
 - Joint Interests
 - Powers to appoint property
 - Proceeds from life insurance owned
- Deductions
 - Administrative Expenses
 - Debts
 - Charitable transfers
 - Marital transfers

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Estate, Gift & Generation Skipping Taxes (Transfer Taxes)

Calendar Year	Estate, Gift & GST Exemption	Rates
2012	\$5,120,000	40%
2013	\$5,250,000	40%
2014	\$5,340,000	40%
2015	\$5,430,000	40%

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Estate Tax Marital Deduction

Common dispositions that qualify

- Outright transfers
- Power of Appointment Trusts §2056(b)(5)
- Qualified Terminable Interest Trusts (Quips) §2056(b)(7)
- Qualified Domestic Trusts (QDOTs) §2056A

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Estate Tax Marital Deduction

Power of Appointment Trust

- Income for life, at least annually
- Surviving spouse may appoint property to themselves, or their estate
- With the power to appoint, the survivor can access all trust property

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Estate Tax Marital Deduction

QTIP Trust

- Income for life, at least annually
- Irrevocable QTIP election (now automatic unless the estate elects out)
- No other access to trust property

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Estate Tax Marital Deduction

QDOT Trust

- At least one Trustee must be a U.S. citizen or domestic corporation
- QDOT election must be made on estate tax return
- Must either:
 - Employ at least one trustee that is a U.S. bank or trust company, or
 - Furnish a bond or letter of credit equal to 65% of the estate tax
- If estate tax exceeds \$2 million, trust must prohibit holding more than 35% of assets in offshore real estate

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Common Marital Deduction Planning

- Credit shelter trust (Bypass or B Trust)
- Marital Deduction Trust (QTIP, Power of Appointment Trust, often referred to as the A Trust)

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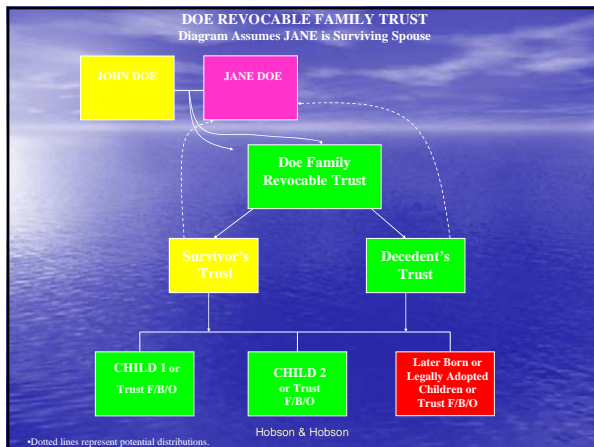


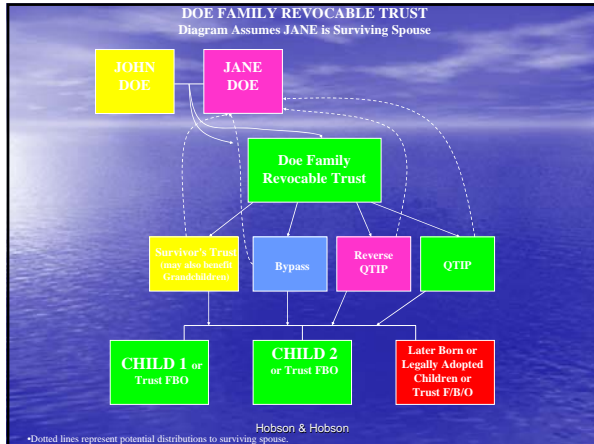
Portability

Must file an Form 706 Estate Tax Return to Elect Portability

- The Deceased Spouse's unused exemption can then be used by the Surviving Spouse
- Very similar result as conventional planning, without creating a Bypass Trust
- There are some benefits, but in a number of situations, Conventional Planning still works best

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Powers of Attorney

- Principal appoints an Agent to make decisions for them
- Generally, financial decisions
- Planning contemplates incapacity

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Advanced Health Care Directive

- Principal appoints and Agent to make decisions for them
- Health Care Decisions
- Again, planning contemplates incapacity

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Lifetime Gifts - Generally

- Creates what is referred to as an “estate freeze”
- Locks value for transfer tax purposes
- May also move income to children in lower tax brackets
- Transferred basis, rather than the stepped received from death transfers

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Lifetime Gifts – Annual Exclusion

- \$14,000 per donee
- Married couple can give up to \$28,000 per person every year
- No comparable rule for estate tax
- If the exclusions go unused, they are lost
- The amount of the exclusion is tied to inflation, but only increases in \$1,000 increments

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Lifetime Gifts – Common Forms for Annual Exclusion Gifts

- 529 plans
- Custodianship Accounts - UTMA/UGMA
- Crummey Trusts
- Outright

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