

**Estate Planning in 2013:  
Mopping Up and Moving On**

Beverly Hills Estate Planning Council  
March 4, 2013

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Jane Peebles is a Partner in Karlin & Peebles, LLP in Beverly Hills, California. She is certified by the California State Bar Association as a specialist in Estate Planning, Probate and Trust Law. Jane is also a nationally recognized lecturer and author on a variety of domestic and international estate and charitable planning topics. Ranked one of the Top 50 Female Super Lawyers in Southern California in 2005 through 2007, and a Southern California Super Lawyer and Best Lawyer in America in the specialty of Trusts and Estates each year since 2008, Jane has dedicated her practice to estate, international and charitable planning. She is a Fellow of the American College of Trust and Estate Counsel.

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**Whew, that was fun!**

In the mad dash to the 2012 finish line, what did we leave out? What potential messes lurk?

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**Engagement Letters  
and Other Firm Requirements**

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**Fully Executed Documents**

- Trust
  - Settlor
  - Trustee
  - Protector/Special Trustee
  - Administrative Trustee
  - Distribution Trustee

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**Partnership Agreements &  
LLC Operating Agreements**

- Drafted or Amended?
- Signed?
- Assignments & Acceptances
- Consents of GP's/Members
- Permitted Transferee Provisions

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## What Was Gifted?

- How much?
- What form?
- Any cash top offs?
- Wandry clause follow-up
- Schedules to trusts

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## Gift Documentation

- Proof of transfers
- Gift Letters
- IDGT sale documentation

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## Due Diligence

- Can client really do without those FLP assets?
- Any fraudulent conveyance issues?
- Does the trust have cash flow needed to function property? Use \$130,000 additional 2013 exemption?

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## Appraisals

- Written Reports
  - 100% interest
  - Discount analyses
- Written versus verbal
- Defined value clauses: documentation of adjustments

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## SLATS

- Did you bifurcate/transmute community property?
- Amend pre- or post-nuptial agreement?
- Advise Settlor not to take direct distributions?
- Address reciprocal trust issue?

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## Swapping Hard-to-Value Assets for Cash

- For grantor trust funded with cash, consider swapping in hard-to-value appreciating asset.
- Risk: Green book proposal to include grantor trusts in Settlor's gross estate.

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## QPRTs

- Appraisals
- Insurance coverage (title, hazard, quake)
- Deed & PCOR recorded?
- Agreement to lease?

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## Pre-existing Trusts

- Ideal? Flexible?
- Decant?
- Special trustee or protector powers?
- Powers of appointment?
- Situs

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## Pre-existing Trusts and GSTT

- Allocate GSTT exemption now?
- If decanting or modifying:
  - Materially similar dispositive provisions
  - Perpetuities period
- GSTT tax consequences of decanting unclear where trust exempt or grandfathered

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## Grantor Trusts

- Client cash flow analysis – Toggle?
- Risk 2013 top offs might not be grandfathered

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## Greenbook Grantor Trust Proposal

- Cessation of grantor trust status subject to gift tax if occurring during grantor's life or FET at grantor's death
- Distributions to beneficiaries during grantor's life subject to gift tax
- Est.: \$910M tax revenue over 10 years

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## Defined Value Clauses

- Gift of set value only
  - Excess to charity, marital deduction trust, or zeroed out GRAT
- or-
- As in Wandry, excess never gifted

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### Defined Value Gift with Excess to Trust or Charity

- If excess over value intended to be gifted will pass to a QTIP, GRAT or charity:
  - Should the QTIP/GRAT/charity issue a voting proxy to the gift trust pending resolution of defined value clause?

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### Nominee Agreement?

Should gift trust sign agreement to hold distributions attributable to interests ultimately determined to belong to the QTIP/GRAT/charity solely as agent?

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### Outright Gifts

- Can we now get some of the protection afforded by trusts?
  - GSTT benefits
  - Creditor protection
  - Spendthrift protection
  - Avoidance of inclusion in beneficiary's estate

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## Donee Has Existing Grantor Trust

- If donee has own grantor trust, consider selling gifted assets to that trust
  - Obtains creditor/divorce protection
  - Keeps appreciation out of donee's estate

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## Donee Gift to DAPT

Donee creates domestic asset protection trust and re-gifts the gifted assets to the DAPT

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## Directly Gifted Entity Interests

- Tighten up permitted transferee provisions
- Have spouses consent/waive rights

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### **Planning with Increased GSTT Exemption**

- Allocate late to wholly non-exempt trusts for an inclusion ratio of zero if:
  - Value of trust equal to or less than available GSTT exemption
  - and-
  - Trust benefits two or more successive generations

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### **GSTT and GRAT or QPRT**

If GRAT or QPRT terminates into a dynasty trust, allocate GSTT exemption to dynasty trust at end of ETIP period

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### **Create GST Exempt Trust from Non-exempt Trust**

If gift trust will be subject to FET or GST at child's death:

- Distribute \$5.25 M principal to child
- Have child settle exempt dynasty trust

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### Non-Qualified Disclaimer to GSTT Exempt Trust

- Child who is beneficiary of nonexempt trust makes non-qualified disclaimer of \$5.25 million
- Child allocates gift tax and GSTT exemptions for ongoing exempt dynasty trust

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### Gift Tax Returns

- Who is preparing 709?
- If CPA, provide all documents and instructions:
  - Gift tax and GSTT exemption allocations
  - Valuation disclosures

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### Valuation Disclosures

- Disclose valuation and discount methodology
- Attach full appraisal reports
- In reporting defined value clause gifts, refer to *values*, not shares transferred

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## Fiduciary Returns

- Letter to CPA
  - EIN
  - Grantor or non-grantor
  - Data for K-1 issuance
  - Confer re 3.8% Medicare tax on investment income
  - Consider distributions to beneficiaries under \$400K/450K threshold

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## Entity Returns

Give CPA data for all entity returns:

- FLP
- Multi-member LLC
- S Corp
- C Corp

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## Entity Formalities

- Client and CPA Letters
- Respect Entity (FLP cases)
- Have annual meetings/minutes

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**Investment Policies**

- Establish as needed for trusts/entities
- Work with investment advisor

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**Client Explanations**

- Document or flesh out year end client explanations
- Meet with clients to be sure they understand what was done
- Bring children into meeting?

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**...and finally**

Get some rest after April 15th

Cheers!

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