

# AMBRECHT & BRITTAIN, LLP

TAX AND ESTATE PLANNING ATTORNEYS

JOHN W. AMBRECHT  
CYNTHIA DUNLEVY BRITTAIN  
GRANT K. WATANABE

1224 COAST VILLAGE CIRCLE, SUITE 32  
SANTA BARBARA, CALIFORNIA 93108  
TELEPHONE: (805) 965-1329  
FACSIMILE: (805) 965-7637

PARALEGALS:  
DIBBY ALLAN GREEN, ACP  
CHERYL E. WRIGHT  
BEVERLY M. ROBISON

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## DEAR CLIENTS AND FRIENDS:

We hope this letter finds you well, prosperous and enjoying life. We are sending this letter to inform you of changes at our firm, provide you with an update regarding a few changes in the law that could impact your estate plan, share some positive new planning strategies, and remind you how important it is with ever-changing law to keep your estate, business and tax planning current.

Our first announcement concerns our firm. As you know, in 2006 we formed the partnership, "Ambrecht, Arnold, Tokuyama & Brittain, LLP." The four of us had been together for some years and we worked well together. Over the years, we have had wonderful, quality people in the firm. It has always been my emphasis that every single person in the firm has a vital role in providing outstanding service to our clients. You probably already know that each of our lawyers must have a degree in Master of Law in Taxation, in addition to the usual J.D. degree. Everyone is well-trained and we emphasize continual learning and growth. We also encourage each person to develop an extraordinary level of competence in at least one particular area related to estate planning. With this atmosphere, and as happens in life in general, sometimes a person's growth leads them in a new direction.

So a year ago, Eric Tokuyama chose to locate his practice closer to home in Thousand Oaks and to further develop his interest in civil and fiduciary litigation. Shortly thereafter, Greg Arnold decided to open his own office in Santa Barbara specializing solely in tax controversy matters. We continue to work with Eric and Greg on many litigation matters and refer our clients where their particular skills are helpful.

At this time, Cynthia D. Brittain, who has focused her practice on international and business taxation, has decided to further her education in international estate planning, which means a move to the East Coast. Cindy will remain available to us for consultation on international tax matters, and will work with us to make a smooth transition on matters she is handling for our firm. We know this move will bring new growth from New York and development for Cindy which will "spill over" to the firm as the next few years pass in our international planning, and we wish her all the best.

Therefore, as of June 1, 2008, our firm name will return to "Ambrecht & Associates." We will continue to represent high net worth clients with sophisticated tax, trust and family business succession planning.

To reacquaint you with our law team, most of you know that I have been in practice for about 35 years and focus my practice on integrating sophisticated estate and tax planning with the intergenerational family dynamics of family business owners. I am a fellow of the American College of Trust and Estate Counsel (ACTEC, a national invitation only group for high-end planners), a principal of the California Trust and Estate Counselors, LLP (CALTEC), a member of the Society of Trust and Estate Professionals (STEP, an international invitation only

May 12, 2008

Page 2

planning organization), a member of the Family Firm Institute (FFI) and Attorneys for Family Held Enterprises (AFHE). I have just had a book published, *“For Love & Money, Protecting Family & Wealth in Estate & Succession Planning with a New Approach Blending Law and Psychology”* in which I collaborated with two Boston psychiatrists in extensive research and development of models to aid families and businesses with the transitions that occur when the next generation comes into the business. The condensed edition of our book, “For Love and Money,” is now published and available (see [www.familiesandwealth.com](http://www.familiesandwealth.com)), and an unabridged edition will be out later this year.

My associate attorney **Grant K. Watanabe** received his B.A. degree from Claremont College, his J.D. degree from Washington University School of Law, St. Louis, Missouri, and his LLM in Taxation from New York University School of Law. He continues his estates and trusts practice, with an emphasis on sophisticated trust planning.

Our paralegals are **Dibby Allan Green, ACP**, who has over 30 years of legal experience, 17 of those years with our firm, specializing in property tax, business entities, and estate and trust administration matters (seven years ago, Dibby was honored as paralegal of the year for the Western United States); **Cheryl Wright**, who also has 30 years of legal experience, six of those years with John Ambrecht, specializing in estate planning and trust administration matters and over 10 years with a major San Francisco estate planning firm; and **Beverly Robison** who has 18 years of legal experience, five with our firm, specializing in estate and trust administration. Our team is complemented by **Kimberly A. Arce**, Legal Assistant, **Sylvia G. Marley**, Firm Administrator, **Karey Ross**, Receptionist, and **Zully Morales** and **Weston Penfield**, providing clerical assistance.

We also continue to search nationwide for additional attorneys and paralegals, but it is difficult to find persons with the right combination of abilities, personal qualities and experience for our specialized “niche” in the practice of law. As you know, sophisticated tax, trust and family business succession planning especially with larger families takes time. We do not subject our clients to the “cookie cutter” approach you hear about elsewhere. Every strategy we shape and implement is tailored to the individual needs and goals of the client. For each of you who have had to wait, we appreciate your patience while we search to find qualified colleagues.

Finally, there have been relevant changes in the law and some “themes” in the law for planning purposes that we would like to apprise you of and suggestions regarding your estate planning documents:

**A. Estate Taxes.** The most prevalent question we hear these days is, “What will happen with the estate tax laws after 2009?” Under the current law, estate taxes will be eliminated in 2010 (replaced by a new system of tracking capital gains), and then the estate taxes will return in 2011 with a 55% maximum tax rate and only a \$1 million asset sum exclusion (estate tax exemption amount). Our sources in Washington, D.C., whom we believe are credible, anticipate that:

1. Changes in the law will be made effective January 1, 2010, and probably will include (they anticipate) an estate tax exemption amount of \$3.5 and maybe to \$5 million;
2. A lowering of the current top rate of 45% to the mid-30% level;
3. A potential increase in the current gift tax exemption of \$1 million to the level of the estate tax amount; and
4. A continuation of the step-up in basis upon death.

Given this, do not expect that the estate and gift tax laws will disappear in 2010.

**B. Selection of Jurisdiction.** For some time now, we have been creating sophisticated trust and business entities utilizing Delaware law, and/or locating in jurisdictions in other states or countries. This is due to the fact that we find clients are better served in many situations by moving their trusts and/or business entities to other jurisdictions to achieve:

1. Legitimate savings of state income taxes (personal, fiduciary, business);
2. Better asset protection;
3. Improved privacy of a trust by eliminating a need for trust accounting or noticing beneficiaries;
4. Better division of responsibilities within a trust or entity, complimenting a client's overall family estate plan; and
5. More predictable results. In other words, we also choose certain jurisdictions in anticipation that the courts and/or laws of that particular jurisdiction will uphold the intentions of the client more reliably than California law.

**C. Property Tax Reassessment.** We also want to remind our family business clients to continue to be aware that property tax reassessment **for real property owned inside a legal entity (partnership, LLC, corporation – but not a trust)** can be triggered when ownership interests in the entity are transferred (e.g., gift, sale, upon death). The parent-child exclusion is **not** available to prevent the reassessment. Sometimes the overall estate planning cannot achieve combined estate, gift, generation-skipping, and income tax savings and also prevent property tax reassessment in the future when gifts are made or upon the death of an owner. In such cases, we work with you to choose the plan which would provide the greatest overall tax savings or otherwise implement the wishes of the first generation (our client). So be aware, and not surprised, that reassessment can occur upon the death of an owner or when making gifts. There are additional strategies that can sometimes be taken to avoid a future reassessment, so it is worth reviewing your property tax planning at the time you review your estate and family business planning. We have considerable property tax information available on our website.

**D. Asset Vesting.** As we have in the past, again we want to remind you that **you are responsible for being sure that all of your assets are vested (titled) correctly in the right trust or business entity.** Your assets will change over time (particularly if real property is refinanced), so **take a moment now to make sure that all your assets are correctly vested.** Also check all of your insurance, IRA, retirement, etc., beneficiary designation forms to make sure they have the name of the correct beneficiary (a particular person or persons) listed. Finally **check all of your insurance** – property, liability, title – to be sure that each trust or entity which has an interest in the insured asset is named on the policy as an insured. For any life insurance more than 10 years old, take the time to review it with your agent, or an insurance consultant, to be sure it is up to date with today's insurance products and rates.

**E. Fine Art Fraud Alert.** We want you to be aware that there has been tremendous growth in recent years of art as an investment. However, along with that growth, art fraud is on the rise. It has been estimated that each year there is \$50 billion of art transactions worldwide and \$6 billion worth of art theft. Twenty-five percent (25%) of title claims are based on theft and seventy-five percent (75%) on traditional liens and encumbrances. In dealing with estate planning and estate administration, for obvious reasons, it is the IRS that will likely determine the value of your collection and not the art world. The IRS is now wanting to see detailed estimates that are realistic and based on fact, and that usually means that an appraisal must be provided by a professional fine art appraiser. The appraisal fees will depend on the collection's value. The fine art market has found that all art transactions involve title risk, so obtaining title insurance for your fine art piece is a way to transfer that risk to a third-party. One company we have become acquainted with recently which offers such fine art title insurance is Aris Corporation ([www.aris-corporation.com](http://www.aris-corporation.com)).

May 12, 2008

Page 4

**F. Check Your Estate Planning.** Our perennial reminders:

1. For every married couple with a revocable family trust, we want to be sure you have signed a "Community Property Aggregation Agreement" if you want the flexibility to divide family assets non-pro rata on the death of the first spouse.

2. Also, married couples should be sure they have clearly stated in writing **which assets are separate property and which are community property**. This is important and is relevant not only in the case of divorce, but also upon the death of a spouse, which will have tax ramifications and most likely lead to other family issues.

3. We encourage everyone to have a signed "Advanced Health Care Directive" which gives another person the power to make your health care decisions for you in whatever way you have specified in that document. That document will be used only when you cannot speak for yourself. **Be careful if a hospital or doctor asks you to sign a new form because the form may be very different (less substantial) than what you may have already signed in our office and you likely will be revoking our document without realizing it!** We will be happy to send you a blank Directive for you to fill out, and/or I would also encourage you to come in and sign one before Cheryl so we can help you in filling it out.


4. Lastly, if it has been a few years since you last looked over your family trust, you will want to review it to make sure the beneficiaries and provisions are still what you desire now as well as consider if you want your trust administered in California. If you have an irrevocable trust with "*Crummey*" withdrawal notice provisions, **be sure the trustee sends the withdrawal notices to beneficiaries every time you make a gift to the trust** – this is important! – and be sure to file your gift tax return to keep track of any generation skipping tax exemptions that you may be using.

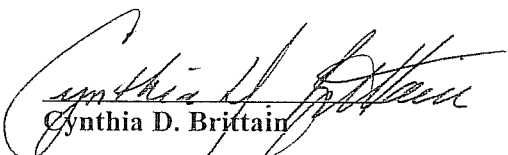
**G. Check Your Family Businesses and Foundations.** Check the operations of your corporations, partnerships or LLCs to make sure they are operating according to the governing documents. **If you do not treat each entity as a separate business structure** (but rather commingle money, pay personal expenses out of entity funds, or allow one partner to take non-pro rata distributions when desired rather than allocating profits among all partners on a pro-rata basis, etc.), **then you are at risk of losing both the liability/creditor protection the entity may be designed to give you, as well as any tax savings the entity is designed to provide**. Similarly, if you have a private foundation or other non-profit entity, make sure you keep up the corporate formalities of regular meetings and minutes, and make sure you operate the foundation according to the procedures you described in your exemption applications to the IRS and the FTB. Since 2005, there have been major federal and state legislative changes and you want to be sure your foundation or other exempt organization is in compliance.

Please do not hesitate to contact our office with any questions you may have.

Sincerely,

AMBRECHT & BRITAIN, LLP

By:   
John W. Ambrecht

By:   
Cynthia D. Britain