

Should I Stay or Should I Go?

Leaving California Can Change More Than Your Taxes

By **STEFANIE J. LIPSON**

Clients are increasingly focused on whether to remain a California tax resident, whether they risk being treated as one unintentionally, and how to mitigate undesirable tax outcomes. Sensitivity to California's taxes is not new, but the question of whether to stay or go comes up more frequently amid pandemic-era moves, displacements from fires and other natural disasters, planning around liquidity events, and now Proposition 40, the proposed one-time wealth tax on billionaires, which reaches certain trusts as well.

Tax-focused analysis can dominate the discussion, leaving marital property, estate, and trust consequences overlooked.

MARITAL PROPERTY FRAMEWORK

In California, property earned or acquired during marriage is generally community property. Both spouses have an equal, present right to it during marriage, and on divorce or death each receives 50%. Property brought to the marriage, inherited, or received by gift is that spouse's separate property. Agreements between spouses, such as a premarital agreement, can vary these default rules.

There are eight other community property states, and others allow spouses to elect into community property, but their rules do not necessarily match California's. Even for spouses relocating to another community property state, planning around their intent for marital property going forward is still needed. In California, for example, passive income from separate property generally remains separate; in Texas, also a community property state, this is not the default rule.

Most states are separate property states with some form of marital property or equitable division on divorce, and spouses who are moving should work with matrimonial counsel to clearly address their marital property rights and intentions.

Differences go beyond characterization of property. States also vary in creditors' access to community property, support obligations, and the enforceability of premarital and postmarital agreements.

ESTATE AND PROBATE PROTECTIONS

Across the US, individuals can decide how to distribute their property at death through their estate plan, but states differ in the breadth of that freedom of disposition.

California generally permits a person to disinherit a spouse, children, and anyone else, but protects a share for an "omitted" spouse or child, meaning someone who became a spouse or child after the documents were signed and was not provided for under those existing documents, unless the documents show the omission was intentional or the right was waived. California does not have spousal "elective share" or "taking against the Will," which elsewhere allows a spouse to claim a minimum share of the estate instead of what the plan provides. Florida,



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for example, generally entitles a surviving spouse to an elective share of 30% of the decedent's "elective estate,"

which can include certain probate and non-probate assets. Florida law also restricts how homestead property may be devised when the homeowner is survived by a spouse or minor child.

Thus, while estate planning documents validly signed in one state will generally be recognized after a later move, the default estate and probate protections for a spouse or child can differ and may affect how those documents are implemented.

ADMINISTRATION OF TRUSTS

Most trust documents contain a "governing law" clause, which designates the state law that applies. A trust may empower the trustee, or another powerholder, to change that law, even if the trust is irrevocable.

While the law governing validity of a trust, its construction or interpretation may be set out in the document, the laws governing administration of the trust are often based on where the trust is being "administered" by the trustee, typically where the trustee is located. As a result, a change in trustee, or in where an individual trustee lives, can shift not only taxation but also the administration rules, affecting for example a beneficiary's notice rights, accountings, trustee liability, and modifications. When a client or trustee relocates, those laws warrant attention alongside the tax impact of the move.

Tax, from income and property tax to estate, inheritance, and wealth tax, can dominate the analysis of whether to stay or leave California. But the non-tax implications also affect personal planning and wealth, and deserve similar attention. Left unaddressed, they can raise complex questions about which state's law applies, and lead to ambiguity and disputes. Those who go should plan the move with qualified tax and legal advisors in each jurisdiction, so their estate, property, trust, and tax planning intentions remain clear despite the change of address.

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