

Recap, key discussion points

## **HIS, HERS, THEIRS OURS, FAMILY LAW AND THE 2018 TAX CODE UPDATE**

At our Nov. 7, 2018 event hosted by the Women's Collective of Marin, we reviewed implications of the 2018 tax code update on negotiated and litigated settlements of divorce involving payment of spousal support or alimony. ***The discussion was meant as an educational overview of this subject, and anyone reviewing the recap that follows should seek professional counsel before acting upon the information given.***

Alimony settlements that have already been settled are not affected by the new tax code. However, alimony awards executed after December 31, 2018 will be subject to new tax rules, and this may change the math of any settlement agreements being negotiated for ongoing divorce proceedings.

Speakers were Alexia P. Cloutier, CPA and family law attorney Michael Samuels, who kindly replaced Christina Sherman, who had taken ill. Kathleen Nemetz, registered investments advisor and certified financial planner, McClurg Capital, moderated.

In addition to spousal support and alimony, we reviewed key distinctions between prenuptial and postnuptial agreements, separate and community property, and decisions about estate planning in blended marriages with children. We also discussed timing of the sale or real estate and real estate refinancing pursuant to a divorce.

Following is a short checklist of issues raised that merit discussion with your professional advisors, should be engaged in a divorce mediation or litigation process.

- **Tax considerations.** Under the new rules, beginning in 2019, the payor will pay the tax before distributing funds to the payee. The payor of alimony is usually in a higher tax bracket. Thus, more money will go to the taxing agencies. There will be less money available to allocate to both the payor and the payee. Thus, many couples already in divorce proceedings would likely be motivated to finalize their divorce proceeding before December 31, 2018. That said, most counties have a cutoff period for accepting final paperwork for a decree in order to finish a divorce by the end of 2018.

--**Do your own due diligence.** Currently used software for divorce cases in California is still being updated for the new tax code. Spreadsheets and other documents produced by existing legal software for divorce should be reviewed with accounting and financial planning professionals, before any decisions.

--**Save on the capital gain tax.** To get a marital tax exemption for the first \$500K of capital gain on a house sale, review options with your attorney and your CPA. There are ways to work the divorce decree to permit a later sale, but the language must be carefully crafted. There are also IRS imposed time limits to consider.

--**Secure financing for equity buyouts.** For spouses attempting to buy out the other spouse from home equity, financing should be secured before the divorce is finalized. We discussed many options including use of private reverse mortgages. Talk to experts before making a final decision.

--**Divorce can be expensive.** Mediation was discussed as a less costly alternative to litigation, for many cases. It pays to educate oneself about how to best use professionals to avoid spending the family nest egg on legal fees.

**Questions about this discussion can be directed to the speakers. Please feel free to call or email:**

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