



# Sandoval's Soliloquy

## A Periodic Update for Financial Professionals of New Developments in Estate Planning, Elder Law, Asset Protection, Retirement Planning and Tax Planning

February 2008

**Dennis M. Sandoval,**  
A PROFESSIONAL LAW  
CORPORATION

*Providing Peace of Mind to  
Seniors, the Disabled and  
their Family Members*

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*Mr. Sandoval is the only  
attorney in California  
certified as a Taxation Law  
Specialist and an Estate  
Planning, Trust & Probate  
Law Specialist by the  
California Bar Board of  
Legal Specialization as well  
as a Certified Elder Law  
Attorney by the National  
Elder Law Foundation*

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### *Retirement Asset Update*

#### *Non-Spousal Rollovers*

A few months ago, it appeared that non-spouse beneficiary rollovers would be made mandatory on plans beginning in 2008. That was then, this is now. Both Congress and the IRS seem to have backed off, leaving us with the uncertainty of "Notice 2007-7" still in place: Where do we stand now? It appears that retirement plan administrators and custodians do not have to offer beneficiary rollovers after all!

Under the Pension Protection Act of 2006 ("PPA"), effective for 2007 and later years, the "designated beneficiary" of a decedent's qualified plan, 403(b) plan, or 457 plan can "roll-over" (which really isn't a roll-over (only participants and spouses can rollover a retirement plan)) upon the death of the participant. Under the provisions of the PPA, a designated beneficiary could open and fund an "inherited IRA" and transfer via a plan-to-plan transfer from the qualified plan, 403(b) plan, or 457 plan, and then use the beneficiary's life expectancy in determining the required distributions from the newly-created IRA. Though most tax, estate planning and retirement attorneys read § 402(c)(11) of the PPA to require retirement plans to allow such non-spousal rollovers, the IRS disagreed. IRS Notice 2007-7 provided that plans would not be required to allow such rollovers. The plan could allow the beneficiary to rollover, or not, depending on the whim of the plan administrator or custodian.

The IRS' interpretation in Notice 2007-7 seemed contrary to Congressional intent. If plans were not required to offer a non-spousal rollover, many plans would choose not to offer it, and non-spouse beneficiaries would be right back where they were before the PPA — stuck with having to take distributions based on the provisions of inflexible plan documents. In August 2007, the Pension Protection Technical Corrections Act of 2007 (S. 1974), was introduced in Congress, making technical and clarifying changes to the PPA. Had it been enacted, this legislation would have made it clear that plans were required to offer a non-spousal rollover by adding to the PPA a statement that the term "eligible rollover distribution" included distributions under § 402(c)(11). Inclusion of this provision in a technical corrections bill led to a strong inference that is what Congress had

intended all along. As the result of the introduction of this bill, the IRS posted an announcement on its website, which included a list of 2007 Cumulative and Interim Amendments, including a statement that “[p]ursuant to an impending technical correction, non-spouse beneficiary rollovers will be required for plan years beginning on or after January 1, 2008.”

This posting seemed to say that the IRS now understood that it was Congress’ intent to mandate non-spousal rollovers, and the IRS would start requiring plans to offer non-spousal rollovers in 2008. However, it now appears that the IRS was merely reciting what the technical corrections bill said...and not in any way implying that the IRS would go along with this expression of Congressional intent if not forced to do so.

A new version of technical corrections bill was passed by Congress, the Tax Technical Corrections Bill of 2007 (“TTCB”). The TTCB says nothing about non-spousal rollovers; the provision clarifying that beneficiary rollovers are mandatory on plans was removed. The IRS has now issued in Notice 2007-94 its annual list of amendments that qualified retirement plans must adopt in order to stay qualified. The Notice states that for guidance on implementing beneficiary rollovers, the plan administrator or custodian should refer only to Notice 2007-7...which of course says that non-spousal rollovers are optional for the plan. Given the choice of amending their plan to add non-spousal rollovers, most plan administrators feel it’s just another burden that they would prefer to not have to deal with.

### **Wash Sale Rules Apply to Retirement Assets**

Taxpayers often would like to recognize capital losses as a year-end income tax planning strategy, but they also want to keep the loss stock for its long-term appreciation potential. For this reason, the taxpayers end up repurchasing the stock shortly after the sale at a loss. To prevent such behavior, the Congress enacted IRC § 1091, also known as the “wash sale rules”. That provision prohibits taxpayers from recognizing a loss on the sale of securities - if the same or substantially identical securities are purchased within 30 days before or after the sale. In order to put the taxpayer who has a wash sale back into the same position that would occur absent the sale, IRC § 1091(d) adds the nondeductible loss from the stock which were sold to the tax basis of the newly acquired securities. Some taxpayers do not want to have to wait 30 days before reacquiring their securities. They have sold stocks at a loss that they own personally and at the same time bought the same stock back in their IRAs.

In Rev. Rul. 2008-5 the IRS is hoping to put an end to this questionable year-end tax planning idea. Based on some Depression-era cases dealing with reacquisition of the securities by a trust over which the taxpayer had dominion and control, the IRS held that the wash sale rule does apply to prevent the recognition of the capital loss. Rev. Rul. 2008-5 goes on to state that IRC § 1091(d) basis adjustment does NOT apply, even though the wash sale rule does apply. In any other wash sale, the nondeductible loss is merely deferred until the sale of the replacement security. This ruling makes the IRA wash sale loss permanent, meaning it is the worst of all possible scenarios.



***Dennis M. Sandoval is the only attorney in the Riverside / San Bernardino area recommended by nationally recognized IRA expert, Ed Slott, for retirement estate planning work. Learn more at: <http://www.ira-help.com/consumers.php>***

## Office Update

Mr. Sandoval is pleased to announce that the California Education of the Bar (CEB) has just published its two-volume treatise, **Special Needs Trusts: Planning, Drafting and Administration**. Dennis is the author of the *Taxation of Special Needs Trusts* chapter of the two-volume treatise. Many of the leading California estate planning practitioners with special knowledge of planning for Special Needs individuals, including Mr. Sandoval, collaborated in this seminal work in this area of very specialized estate planning that involves knowledge of many areas of federal law as well as California law..



**Dennis M. Sandoval** has recently presented Estate Planning for Special Needs Persons classes to **The Down Syndrome Association of Orange County, The Inland Empire Autism Society Support Group, H.E.A.R.T.S. Autism Support Group** and **The Riverside Adults with Epilepsy Support Group**. If you know of a support group that would like Dennis to give a presentation on estate planning for special needs persons, give Karen Griffith, our Geriatric Care Coordinator, a call at (951)787-7711.

Mr. Sandoval is slated to attend the Academy of Special Needs Planners Second Annual Meeting in New Orleans in March. Dennis M. Sandoval, A Professional Law Corporation, is a **charter member** of the **Academy of Special Needs Planners**. For more information on the Academy of Special Needs Planners, go to: <http://www.specialneedsanswers.com>.

## The 2nd Annual Meeting of the Academy of Special Needs Planners

Dennis has accepted an adjunct professor position for the **Chapman University College of Law** LL.M. Master of Tax Law program in order to teach the Estate Planning for Business Owners class for the Spring 2008 session. Dennis taught the Post-Mortem Estate Planning class for the LL.M. (Tax) program during the Fall 2007 session. Mr. Sandoval is slated to teach Fiduciary Income Taxation class for the LL.M. (Tax) program at Chapman University College of Law in Fall 2008.



Dennis is scheduled to speak at the **American Academy of Estate Planning Attorneys** Spring Summit in Denver, Colorado

Dennis is also slated as a speaker at the 20<sup>th</sup> Anniversary **National Academy of Elder Law Attorneys** Symposium in Maui, to be held in May of this year. As a reward to his staff for the hard work they have done this past year, Mr. Sandoval will be taking his staff with him for this conference and the law office will be closed from May 14 through May 21.



Dennis is very proud to announce that **Pamela Y. Valencia** has passed the exam administered by the **California State Bar Board of Legal Specialization** to be certified as a **Certified Estate Planning, Trust and Probate Law Specialist!** Pamela plays a key role in working with our estate planning, probate, conservatorship and tax controversy clients. Pamela hopes to one day soon join Dennis as the only attorneys in California with triple certifications as a **Certified Estate Planning, Trust and Probate Law Specialist**, a **Certified Taxation Law Specialist** and a **Certified Elder Law Attorney ("CELA")**.

Pamela is also teaching the Wills and Trust class at **California Southern Law School** in Riverside for the Spring 2008 session. We are very happy to have Pamela teaching juris doctorate students as an adjunct professor at our local law school.

**Karen Griffith**, our Geriatric Care Coordinator (Social Worker), just returned from attendance at the **National Association of Life Care Planning Law Firms "UnProgram"** in Dallas, Texas. Ms. Griffith was one of approximately fifty Geriatric Care Coordinators that work for law firms across the United States in attendance. Dennis M. Sandoval, A Professional Law Firm, is a charter member of the National Association of Life Care Planning Law Firms and the only Life Care Planning Law Firm and the only law firm with a Geriatric Care Coordinator on staff in Southern California. For more information about life care planning, plan to attend our Life Care Planning CE seminar for financial professionals on February 15, 2008 at noon, as described later in this newsletter. Call 951-787-7711 to make your reservations.



**Dennis M. Sandoval,**  
A PROFESSIONAL LAW CORPORATION

*is proud to announce*

## **The Third Annual Inland Empire Caregivers Symposium**

Our law firm is proud to announce that it is once again the sponsor of the Inland Empire Caregiver Symposium, our third annual event. This year the event will be held at California Baptist University, and our many guest speakers will be providing information that is crucial to Registered Nurses, Licensed Clinical Social Workers, Nursing Home Administrators, RCFE (Assisted Living) Administrators and other health care professionals that work with the frail elderly. The Symposium is approved for seven hours of CE credit for these professionals. The Symposium will be held on April 18, 2008, starting at 8:00 a.m. Call our office if you would like more information.

## 2008 Consumer Seminars

Call 951-787-7711 to make reservations – Seating is limited!!!!

Topic	Date	Location
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	February 7, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	February 9, 2008 9 – 11 a.m.	Our Classroom*
<b>Special Session</b> — Legacy Wealth Planning for Same Sex and Unmarried Partners: Why Your Existing Estate Plan † Won't Work	February 23, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	March 5, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	March 8, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning for Persons With Large Retirement Assets (More Than \$250,000): Why Your Existing Estate Plan † Won't Work	March 15, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	April 9, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	April 12, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	May 7, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	May 10, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	June 11, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	June 14, 2008 9 – 11 a.m.	Our Classroom*
<b>Special Session</b> — Legacy Wealth Planning for Same Sex and Unmarried Partners: Why Your Existing Estate Plan † Won't Work	June 21, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	July 16, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	June 19, 2008 9 – 11 a.m.	Our Classroom*
<i>* Unless attendance requires a larger classroom or is scheduled elsewhere, all classes will be conducted in our law firm classroom, located at 3233 Arlington Avenue Ste. 105 Riverside, California 92506 (corner of Division Street and Arlington (near Target Store and across the street from California School for the Deaf)) -- (Maximum attendance in the law firm classroom is twelve persons)</i>		
<b>† The reference to an existing estate plan is a reference to existing estate plan drafted by a law firm other than Dennis M. Sandoval, A Professional Law Corporation</b>		

To learn more about how Dennis M. Sandoval, A Professional Law Corporation, can assist you and your clients with their estate planning needs, elder law and asset protection needs, call Megan at (951) 787-7711 to schedule a telephone conference with one of our estate planning specialist attorneys. Also, you may want to attend one or more of our information lunch and learn CE classes for financial professionals. Our 2008 schedule is on the next page.

**2008 Lunch and Learn CE Classes for Financial Professionals**

<b>Topic</b>	<b>Date</b>	<b>CE Credit *</b>	<b>Cost **</b>
<b>Life Care Planning: What Is It and Why You Need to Know About It</b>	<b>February 15, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Probate: What Financial Professionals Need to Know</b>	<b>March 14, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Conservatorships: What Financial Professionals Need to Know</b>	<b>April 11, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Protecting and Preserving Wealth for Beneficiaries Using the Access Trust™ and Sentry Trust™</b>	<b>June 20, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Retirement Estate Planning: A Magical Mystery Tour of the Rules Dealing With Retirement Assets</b>	<b>July 11, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>What You Don't Know (and Should Know) About Life Insurance Trusts</b>	<b>August 15, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Planning for a Special Needs Persons: The Basics</b>	<b>September 19, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>An Introduction to Charitable Estate Planning Strategies</b>	<b>October 24, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Advanced Estate Planning: Squeezing Techniques</b>	<b>November 21, 2008</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Advanced Estate Planning: Freezing Techniques</b>	<b>January 16, 2009</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Domestic Asset Protection Trusts: All Hype or Veritable?</b>	<b>February 20, 2009</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Business Succession Planning</b>	<b>March 20, 2009</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>Asset Protection Planning for Doctors and Dentists</b>	<b>April 17, 2009</b>	<b>1 hour</b>	<b>\$25.00</b>
<b>What Financial Professionals Need to Know About the IRS (and FTB) Audit and Appeals Process</b>	<b>May 15, 2009</b>	<b>1 hour</b>	<b>\$25.00</b>

**Reservations Required!! – Call 951-787-7711 to reserve your space**

*Unless attendance requires a larger classroom, all classes will be held in the classroom at Dennis M. Sandoval, A Professional Law Corporation, located at 3233 Arlington Avenue Ste. 105 Riverside, California 92506 (corner of Division Street and Arlington (near Target Store and across the street from California School for the Deaf) -- Call for directions ( max attendance in classroom is 15 professionals))*

**\* Approved for one hour of CFP and California Insurance CE Credit  
Registration begins at 11:30 a.m. and classes adjourn at 1:00 p.m.**

**\*\* Cost includes CE credits and lunch**

**Interested in having Dennis Sandoval or Pamela Valencia conduct a private CE class for your office staff or speak before your professional group? Call 951-787-7711 now to inquire about his or her availability – their availability to speak is subject to a myriad of other business, professional and family commitments each have.**

**Know other Financial Professionals that  
would like to receive *Sandoval's Soliloquy*?**

**Have them complete this application below and fax it to us at (951) 786-9813**



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***Also, please notify me of any continuing education seminars you will be offering in my area.***