

GUIDE TO CALIFORNIA ESTATE PLANNING

The following information is provided to introduce you to what Estate Planning involves and why it is so important. Since individual needs vary, be sure to contact this office and your financial advisor before deciding what is best for you.

WHAT IS ESTATE PLANNING?

Estate Planning consists of a number of things that a person can do in order to protect his or her estate from the ravages of probate costs, attorneys fees, estate taxes, conservatorship, and unnecessary time delays in distributing your property to your heirs. Simply put, it is devising an effective method that will allow as much of your estate as possible to be preserved and passed on to your heirs and beneficiaries, without all of the costs and headaches.

Building an effective estate plan is like putting together a puzzle. There are several pieces to the estate plan puzzle. The smallest piece is the **WILL** while the largest piece is a **TRUST**. Other pieces include Powers of Attorney, Physicians Directives, and more. What your puzzle should look like when completed will depend on the size of your estate and your specific desires. Just as a puzzle that is missing a piece is not complete, if you leave out pieces of your estate plan, your wishes may not be achieved.

WHAT IS A WILL?

A Will is the basic building block of Estate Planning. In a Will you designate who will get your real and personal property upon your death. If you should die without making such a designation, the laws of the State of California will determine who gets your property regardless of what your unwritten intentions may have been (California does not recognize "oral wills"). All persons related to you through blood or marriage have a claim at law on your estate property including all of your children (natural, adopted, illegitimate, etc.) and their successors if predeceased. Furthermore, if you desire to intentionally omit providing for any child, you must state this intent.

In a Will you would also designate who you want to administer the disposition of your property upon your death and who should be the Guardian of your minor children. This typically would be your spouse or secondarily a close relative or friend who you trust to carry out your wishes.

ADVANTAGES OF A WILL

Creating a Will is a relatively easy matter. You complete a short questionnaire from which we prepare the Will which you then sign in the presence of several Witnesses.

DISADVANTAGES OF A WILL

1. Probate: If the gross value of your estate exceeds \$100,000 (or \$10,000 in real estate) and you only have a Will (or no estate plan at all), your property distribution must be done through a Court process called "Probate". Probate is a legal proceeding in which the Court determines that all of your debts have been paid and that your remaining assets are distributed properly. This process can take several years and cost your estate thousand of dollars in attorney fees and court costs before your heirs get your property. For example, the minimum fees for probating a \$200,000 estate (including real property, personal property, retirement and investments) would be \$7,000 PLUS court costs, appraisal fees, and more. (See the listing of California Probate Fees attached).

2. Estate Taxes: Each individual has an exemption from Estate Taxes: 2005 = \$1,500,000; 2006-2008 = \$2,000,000; 2009 = \$3,500,000; 2010= No Tax; 2011= \$1,000,000. Tax on the excess varies up to 55%.

HOW CAN I AVOID THESE COSTS AND DELAYS?

The easiest way to avoid these costs is through the use of a **Revocable Living Trust**.

WHAT IS A REVOCABLE LIVING TRUST?

A Revocable Living Trust is a legal entity that you create to hold your assets for you. In other words, the Trust owns your real estate, your personal property, and your investments. It is called "revocable" because you can change it or even terminate it at any time during your life. It is called "living" because it is created and operated while you are still alive. And it is called a "Trust" because it holds and manages all of your property for you and your beneficiaries.

DOESN'T THIS MEAN I LOSE CONTROL? NO! When you create your Living Trust, you are the owner, the manager, and the beneficiary of the Trust throughout your lifetime. Since you own the Trust, you can set up the "rules" such as who will manage your property if you can't, who will get those assets you put into the Trust, and when those assets will be distributed. You can in effect continue to control your property after your death. During your life, you can continue to add and remove assets from your Trust, receive any and all income, and you can change any provision. You NEVER lose control.

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The information herein is not to be used as legal advice. Please consult and attorney for your estate planning questions

HOW DOES THIS SAVE ME TIME AND MONEY?

1. Probate Avoidance: Because a Trust is treated as a separate legal entity, when you die the Trust survives. If you have properly transferred all your assets into the Trust while you are alive, you have no estate when you die and therefore there is no need for Probate. The role of the Trust then is to manage and distribute your estate. Once the estate is all distributed, the Trust comes to an end and, since there are no assets remaining in the Trust estate, no probate is required.

2. Minimizing Estate Taxes: Through a Trust, you can combine your \$1,500,000 tax exemption with that of your spouse to obtain a combined \$3,000,000 exemption. This alone could save your heirs huge amounts in federal estate taxes.

WHAT OTHER BENEFITS WILL A LIVING TRUST BRING ME?

1. Avoid a Conservatorship: If you become incapacitated and cannot manage your financial and health care affairs, someone will have to be authorized to step in and take control. Without proper planning, a Court supervised Conservator will have to be appointed at substantial cost and inconvenience. However, a properly drafted Trust can avoid this by designating in advance who you want to take control and providing the power for them to act during your incapacity.

2. Avoid Publicity: A Living Trust is a completely private affair and generally no-one can know its contents unless you let them.

3. Flexibility: As the owner of your Trust, you have complete flexibility in relation to your estate and its distribution after you die. You can provide for all, or certain, of your children. You can provide for all, or certain, of your grandchildren. If you have heirs with "special needs", you can provide distribution that could take place over many years. Your Trust can also provide for children of prior marriages. Your Trust can even regulate when and how your beneficiaries may be provided for and prevent their creditors and others from attaching their interest in the Trust. The point is, everyone's needs are different and your Living Trust can meet those demands.

4. Revocable: You can change the terms of your Trust or revoke the entire trust any time you want. The Trust only becomes unchangeable when you die (the new "trust managers" cannot change the terms of your trust).

ARE THERE ANY DISADVANTAGES OF A LIVING TRUST?

The only disadvantage is that you may gain a false sense of security and fail to fund the trust, that is to change the ownership of your assets from you as an individual to you as a Trustee of your Trust.

WILL A LIVING TRUST MAXIMIZE MY ESTATE PROTECTION?

All things are not for all people. The same is true of a Living Trust. There are, however, for MOST people. By analyzing the size of your estate now and making reasonable projections as to how large your estate may become, as well as looking at what your specific desires are, we can determine what form of estate planning would best serve you and then custom design an Estate Plan to meet those needs.

WHAT SHOULD MY ESTATE PLAN CONTAIN?

To best provide for your affairs, we recommend the following documents be prepared. Each is custom designed to meet your specific objectives:

- a. **Living Trust**
- b. **Pour-Over Will** - to bring into your Trust that property which you fail to transfer to the Trust
- c. **Power of Attorney for Estate Management**
- d. **Advanced Health Care Directive with Physicians Directive**

Additional Documents may be recommended to achieve specific results. These most typically will involve methods of reducing estate taxes. Examples of such documents would include:

- Special Needs Trusts for disabled persons
- Life Insurance Trusts for estate tax coverage
- Charitable Remainder Trusts for estate tax reduction
- Family Limited Partnerships for estate tax reduction
- Special Trusts for business interests

CONCLUSION

In planning your Estate now, you are demonstrating the foresight and concern that will save your family and survivors time, trouble, money and grief. Our easy-to-follow Estate Planning Worksheet will guide you in assembling all the information you need to get your personal Estate Plan started. We look forward to assisting you and your family in this most important concern. Also please feel free to refer our services to other family members or friends who may not have begun their own estate planning.

THE HIGH COST OF PROBATE

When an estate is probated, the fees to be charged by the probate attorney as well as the executor or administrator are set forth in Probate Code sections 10800(a) - 10801(a) as follows:

| <u>Amount of Estate</u> | <u>Probate Fees each</u> |
|--------------------------|--------------------------|
| First \$100,000 | 4% |
| Next \$100,000 | 3% |
| Next \$800,000 | 2% |
| Next \$9 million | 1% |
| Next \$15 million | ½ % |
| Excess over \$25 million | Determined by court |

Since the fees are charges on the “gross” value of the estate not “net” after debt, the following is an example of fees that would be charged:

| <u>Size of Estate</u> | <u>Probate Attorney</u> | <u>Executor/Administrator</u> |
|-----------------------|-------------------------|-------------------------------|
| \$100,000 | \$4,000 | \$4,000 |
| \$150,000 | \$5,500 | \$5,500 |
| \$200,000 | \$7,000 | \$7,000 |
| \$250,000 | \$8,500 | \$8,500 |
| \$300,000 | \$10,000 | \$10,000 |
| \$350,000 | \$11,500 | \$11,500 |
| \$400,000 | \$13,000 | \$13,000 |
| \$450,000 | \$14,500 | \$14,500 |
| \$500,000 | \$16,000 | \$16,000 |
| \$600,000 | \$19,000 | \$19,000 |
| \$700,000 | \$22,000 | \$22,000 |
| \$800,000 | \$25,000 | \$25,000 |
| \$900,000 | \$28,000 | \$28,000 |
| \$1,000,000 | \$31,000 | \$31,000 |

The above fees are minimal amounts based upon an uncontested probate proceeding and do not include court costs, appraisal fees, advertising fees, and extraordinary fees arising out of related litigation

NOW, THINK ABOUT HOW MUCH YOUR PROPERTY IS WORTH

**ALL OF THE ABOVE CAN BE AVOIDED WITH A REVOCABLE LIVING TRUST!
AND AT A TYPICAL PRICE OF ONLY \$1,200.**

CALL TODAY FOR YOUR FREE, CONFIDENTIAL APPOINTMENT

(916) 966-2260