

# ESTATE PLANNING BASICS

- **Presented by: Fred G. Muscarella, Esq. Muscarella & Associates, APC**
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- **IT'S YOUR ESTATE**

- **Fall 2020 Virtual Seminar**
  - **September 30, 2020**

# *FRED G. MUSCARELLA, Attorney at Law*

- **Mr. Fred G. Muscarella, Esq. has been a Probate, Trust and Estate attorney for more than 14 years and is a Certified Specialist by the State Bar of California in the field of Estate Planning, Trust and Probate Law. Prior to practicing in the field of Probate, Trust and Estates, Fred had the pleasure of clerking for Honorable Judge Marjorie Laird Carder, former presiding Judge of the Orange County Superior Court, Probate Division. Fred is an expert with the California Probate Code and counsel's his clients in the various options available to fiduciaries and beneficiaries. Fred handles both litigated and uncontested probate and trust related matters including Trust proceedings, Probate Estate administrations, Conservatorship and Guardianship matters. Fred frequently drafts Trusts, Wills and other Estate Planning documents for Clients. Fred also handles elder abuse matters and is often appointed by the Orange County Superior Court, Probate Division to act as counsel in contentious matters. Fred's practice extends throughout California to Counties including Orange, Los Angeles, Ventura, San Diego, Riverside and San Bernardino.**

# *FRED G. MUSCARELLA, Attorney at Law*

- Areas of Practice:

- Fred handles contested and uncontested Court proceedings, including court accountings, will and trust contests, petitions for removal, disputed conservatorships and guardianships, litigated trust matters, heirship determinations, disputes with creditors, wrongful death issues, court supervised real property sales, no contest clause disputes, real property disputes, etc. Fred frequently counsels his clients as to tax implications of various courses of action. Fred has counseled his client with regard to the transfer of more than a billion dollars. Fred represents individuals, private professionals, and corporate trustees in their capacities as trustees, personal representatives, conservators, guardians, beneficiaries and heirs.

- Professional and Community Affiliations:

- Fred is a regular volunteer at the Orange County, Probate Court's Conservatorship clinic. Fred is a frequent speaker for "It's Your Estate." Fred also has frequently volunteered at the Florence Sylvester Senior Center (Laguna Hills, California).

# ***FRED G. MUSCARELLA, Attorney at Law***

- **Education:**

- **Bachelor of Science, Finance, Real Estate and Law, Cum Laude,**
- **California State University, Long Beach**
  
- **Juris Doctorate, Chapman University, School of Law**
  
- **During his time at Chapman University, Fred focused his time, training and education on trusts and estates, and tax issues related thereto. During his time at Chapman University, Fred also served as an academic fellow and was a co-editor of the law school's Nexis Law Journal.**

- **Admissions:**

- **California State Bar – 2006 to Current**
- **California State Bar, Board of Legal Specialization – 2012 to Current**
- **Active member of the Orange County Bar Association, Trusts and Estates Section – 2005 to Current**

# “Ask First!”

This form is to be filled out by any person who is offering legal, financial, retirement, insurance, accounting, estate, long-term care or similar planning services.  
Respond to ALL categories completely; sign and date at the bottom of the page.

⊗ MY EDUCATION- I have achieved the following level of education (check HIGHEST level achieved):

<input type="checkbox"/> Some High School	<input type="checkbox"/> High School Diploma	<input type="checkbox"/> Bachelors Degree
<input type="checkbox"/> GED	<input type="checkbox"/> Some College	<input checked="" type="checkbox"/> Masters or other Advanced Degree

⊗ MY CREDENTIAL(S)- I have the following specialized credential(s) and training (examples: CFP, ChFC, CLU, CPA, JD, MBA, years of relevant experience):

JD, 15+ years relevant experience
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⊗ MY RELEVANT LICENSE(S)- I have the following license(s) giving me the legal authority to provide the services I am offering to you (examples: bar license (attorney); securities license; insurance license):

License Type	Covers What Activities	Issued By	License No.
License to Practice Law	Practice of Law	State Bar of CA	242880
Certified Specialist	Focus on Estate Planning, Probate and Trusts	Legal Specialization Board	242880

⊗ LEGAL SERVICES- (Check ONE):

- I DO NOT practice law, and the services I am offering to you do not involve practicing law.  
 I DO practice law, and have an active license to practice law in California.  
 I DO practice law, but DO NOT have an active license to practice law in California. I am, however, under the supervision of the following attorney who has an active license to practice law in California:

Name of attorney:	Telephone:
Address:	

⊗ OUR BUSINESS RELATIONSHIP- Check TRUE or FALSE:

- True /  False: In our business relationship, I will at all times serve as a fiduciary and put your interests before my interests and those of my employer.

⊗ MY COMPENSATION- I will be paid in the following way (commission, fee, salary, etc.), by the named person or company, in connection with the services I am offering to you:

Way(s) I'll Be Paid	Payment Will Be Made By (name each person or company)
Flat Fee/Hourly/% of Estate/Statutory Fees/etc.	Client(s), Trust, Estate or Agreed Upon 3rd Party

⊗ FINANCIAL PRODUCTS / AFFILIATED ORGANIZATIONS- Check TRUE or FALSE:

- True /  False: I offer or sell annuities, insurance, mutual funds or other financial products; or I am, or my employer is, affiliated with a person or organization that offers or sells annuities, insurance, mutual funds or other financial products.

⊗ I certify under penalty of perjury that the responses herein are true to the best of my knowledge.

Date: 9/28/20	Business Name: Muscarella & Associates, APC
Signature: <i>Fred Muscarella</i>	Address: 24012 Calle De La Plata, Suite 410, Laguna Hills, CA 92653
Print Name: Fred G. Muscarella	Telephone: (949) 305-0091

# GOALS

- Learn differences between a Trust, a Will, an Advance Health Care Directive and Power of Attorney for Finance;
- Learn the importance of title in Estate Planning;
- Learn about Probate and when it is required;
- Learn about Probate administration process (similar to Trust administration process);
- Learn about Estate taxes;
- Learn about step-up in basis;
- Learn about real property taxes.

# TITLE TO ASSETS

- Three “T’s”;
- Manners in which Title May be Taken:
  - Individually;
  - Tenants in Common;
  - Joint Tenancy;
  - Community Property;
  - Community Property with Right of Survivorship;
  - Trustee of Trust;
  - LLP, LLC, Corporation, etc.

# WHAT IS AN ESTATE?

- Collection of all assets owned by an individual;
- Can be basic or complicated based on the what the individual purchases or receives during their lifetime (or after their life);
- Basic Estate vs. Complicated Estate;
- Prepare organization chart of all assets, how assets are titled and whether there is a beneficiary designation.



# WHAT IS AN ESTATE PLAN?

- Organizing the legal process around assets or assets around the legal process;
- Documents and titling of assets to move assets pursuant to your wishes;
- Estate Plan can adapt to changed circumstances;
- Can consist of no documents or extensive documents;
- If no documents, the State of California's Last Will may apply (Laws of Intestacy);
- Typical Estate Planning documents include:
  - Will;
  - Trust;
  - Advance Health Care Decision;
  - Durable Power of Attorney;
  - Trust Certification;
  - HIPPA Release;
  - Nomination of Conservator;
  - Nomination of Guardian;
  - Deeds and Affidavits;
  - Assignment of tangible personal property.

# WHY PREPARE AN ESTATE PLAN?

- If you do not, the State of California has an Estate plan for you (laws of intestacy);
- Deciding who will inherit your assets;
- Deciding who will manage your assets;
- Decide how and when your heirs or beneficiaries will receive their assets;
- Avoiding taxes;
- Planning for incapacity;
- Financial;
- Medical;
- Deciding end of life decisions;
- Who is to handle the disposition of your remains.

# ALTERNATIVE OPTIONS TO TRANSFER ASSETS AT DEATH

- In addition to transferring assets via Will or Trust, other options to transfer assets on death include:
  - Multiparty Accounts;
  - Beneficiary Designation;
  - Payable on Death (“POD”);
  - Transfer on Death Deed;
  - Right of Survivorship:
    - Joint Tenancy;
    - Community Property with Right of Survivorship.

# LAST WILL & TESTAMENT

- Types of Last Wills
  - Formal:
    - Outright Distributions to Beneficiaries;
    - Pour over to Trust;
  - Holographic;
  - Statutory;
- Functions of Last Will:
  - Identifies beneficiaries of an Estate;
  - Identifies manager of your Estate;
  - Includes No contest clause;
  - Addresses issue of bond;
  - Effective only upon death;
  - Revocable and amendable during lifetime.

# SMALL ESTATE AFFIDAVIT PROCEDURE

- 13100 Affidavit to claim assets of deceased individual;
- May not be used during initial 40 days from date of passing;
- Must be \$166,250.00 or less in current value.

# PROBATE PROCESS

- Determining title to assets;
- Petitioner & Proposed Personal Representative;
- Petition for Probate;
- Publication of Notice that Petition filed;
- Notice by Mail;
- Appointment;
- Inventory and Appraisal;
- Creditors;
- Taxes;
- Sale of Assets;
- Miscellaneous (i.e. lawsuit);
- Final Account/Petition for Distribution;
- Distribution;
- Petition for Discharge;
- Similar to Trust Administration Process but Involves Probate Court.

# ADVANTAGE OF PROBATE

- Court supervision;
- Shorten Period for Claims by Creditors;
- Did not spend a lot of money on Trust.

# DISADVANTAGES TO PROBATE

- Time;
- Cost;
- Lack of privacy;
- Court involvement and supervision.



# COSTS OF PROBATE

- Statutory fees (Executor and Attorney each receive);
- 4% of first \$100,000.00;
- 3% of second \$100,000.00;
- 2% of next \$800,000.00;
- 1% of next \$9,000,000.00;
- Extraordinary fees;
- Court costs;
- Probate Referee cost;
- Bond cost;
- Miscellaneous fees (i.e. CPA).

# TRUST ADMINISTRATION PROCESS

- Similar to Probate Administration but typically does not involve the Court:
  - Notices need to be given to beneficiaries and heirs at law;
  - Marshal assets;
  - Address Creditors;
  - File Taxes;
  - Accounting;
  - Distribution.
- Typically, no Court Case Number is Assigned to a Trust Administration;
- Comparison of Trust administration to Probate administration:
  - One Million Dollar Estate
    - Probate: Statutory Attorney and Personal Rep Fees; \$46,000;
    - Trust: Generally Subject to reasonable fees standard;
    - Court costs

# **COSTS TO PREPARE COMPLETE ESTATE PLAN: ESTATE PLAN BASED AROUND TRUST VS. ESTATE PLAN BASED AROUND WILL**

- In California, generally speaking, fees to prepare and execute Last will can range from \$300.00 to \$3,000.00;
- In California, generally speaking, fees to prepare and execute Trust can range from \$1,000.00 to \$30,000.00;
- Generally speaking, in Orange County, most Estate Plans based around a Trust range from \$1,500.00 to \$5,000.00;
- With a Will, many expenses may need to be paid during administration (i.e. probate);
- With a Trust, you avoid Court costs associated with probate administration.

# ESTATE TAXES

<u>Year</u>	<u>Exclusion Amount</u>	<u>Top Tax Rate</u>
• 2017	\$5.49 million	40%
• 2018	\$11.18 million	40%
• 2019	\$11.4 million	40%
• 2020	\$11.58 million	40%

- California has no Estate tax;
- Only federal Estate tax;
- No Inheritance tax;
- Relationship of Gift tax to Estate tax.

# STEP-UP IN BASIS AND GIFTING

- What is basis;
- Starting figure when calculating capital gains;
- The lower it is, the more in capital gains if property sold at value above basis;
- When a person dies, there is a step up in basis on most assets;
- Gifting does not get step-up in basis;
- Gifting gets carry over basis;
- Example of step up in basis-
  - Appreciated Stock
    - Devise at death;
    - Gift during life.

# REAL PROPERTY TAXES

- Relevant Laws:
  - Proposition 13;
  - Proposition 58.

# FINAL THOUGHTS

- Lots of choices in estate planning;
- If single, you must designate someone with legal authority to act on your behalf during incapacity;
- Maintain and organized an inventory of your assets and debts;
- Thoroughly think through the individual(s) you name as your agent/executor/trustee;
- Keep your agent/executor/trustee informed about your assets and debts;
- Don't wait;
- Use professional assistance;
- Thank you.