

ESTATE PLANNING BASICS

Presented by:

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“IT’S YOUR ESTATE”

**ST. JUDE CENTER FOR
REHABILITATION AND WELLNESS
BREA, CALIFORNIA**

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FRED G. MUSCARELLA, Attorney

Mr. Fred G. Muscarella, Esq. is a Certified Specialist by the State Bar of California in the field of Probates, Trusts and Estates. 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's practice extends throughout California to Counties including Orange, Los Angeles, Ventura, San Diego, Riverside and San Bernardino. Prior to joining Hess-Verdon & Associates, Fred spent approximately six years with a boutique law firm here in Southern California dedicated to probate, trust and estate matters. Fred also had the pleasure of clerking for Honorable Judge Marjorie Laird Carder, former presiding Judge of the Orange County, Probate Court.

Areas of Practice:

Fred handles the firms 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, etc. Fred frequently counsels his clients as to tax implications of various courses of action. Fred represents individuals, private professionals and entities 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 also has volunteered regularly at the Florence Sylvester Senior Center (Laguna Hills, California).

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

Active member of the Orange County Bar Association, Trusts and Estates Section.

GOALS

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

TITLE TO ASSETS

- Individually;
- Tenants in Common;
- Joint Tenancy;
- Community Property;
- Community Property with Right of Survivorship;
- Trust;
- LLP, LLC, Corporation, etc.

COMMUNITY PROPERTY VS. SEPARATE PROPERTY

- Community property is any asset acquired or income earned by a married person while living with a spouse;
- Separate property is any asset acquired by a spouse before the marriage, during the marriage by gift, devise, or bequest, and after the parties separate;
- Distinction relevant to divorce law;
- Distinction relevant to intestate succession;

WHAT IS AN ESTATE?

- Collection of all assets owned by an individual.
 - o Can be basic or complicated based on the what the individual purchases or receives during their life (or after their life);
 - o Basic Estate vs. complicated Estate;
 - o 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:
 - o Advance Health Care Decision;
 - o Durable Power of Attorney;
 - o Will;
 - o Trust;
 - o HIPPA Release;
 - o Nomination of Conservator;
 - o Nomination of Guardian;
 - o 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;
 - o Financially;
 - o Health care;
- Deciding end of life decisions;
- Who is to handle the disposition of your remains;

ADVANCE HEALTH CARE DIRECTIVE

- Determines who will make medical decisions for you when you cannot;
- Establishes a fiduciary relationship;
- Provides information on organ donation;
- Advises Agent as to your preferences on life sustaining treatment;
- Determines who will handle your remains upon your passing;
- Nominate Conservator of the Person;
- Other than disposition of remains, only valid while you are alive;
- Can be effective immediately or springing;
- Helps avoid Conservatorship of the Person.

DURABLE POWER OF ATTORNEY

- Determines who will be responsible for assets in your name individually;
- Establishes a fiduciary relationship;
- Clarifies extent of agent's authority;
- Nominate Conservator of the Estate;
- Can be effective immediately or springing;
- Helps avoid Conservator of the Estate.

LAST WILL & TESTAMENT

- Names beneficiaries of and Estate;
- Names manager of your Estate;
- No contest clause;
- Addresses issue of bond;
- Effective only upon death.

TRUST (REVOCABLE LIVING TRUST)

- If funded properly, avoids probate;
- Names beneficiaries;
- Decides when and how beneficiaries will receive assets;
- Names manager of Trust;
- Can avoid estate taxes;
- No contest clause;
- Addresses issue of bond;
- Effective immediately and can continue on for many years (not indefinitely);
- Note: Trustor will still have a Last Will.

WHEN IS A PROBATE REQUIRED

- Probate required when assets (excluding joint tenancy and beneficiary designation assets) have a value above \$150,000.00;
- Probate required when real property in estate valued above \$50,000.00;
- Does not matter if you have a Will or no Will;
- If you have a Trust and it is improperly funded, Probate may be required;

SMALL ESTATE AFFIDAVIT PROCEDURE

- 13100 Affidavit to claim assets of deceased individual;
- Must be \$150,000.00 or less in current value.

PROBATE PROCESS

- Determining title to assets;
- Petitioner & Proposed Personal Representative;
- Petition for Probate;
- Publication;
- 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.

ADVANTAGE OF PROBATE

- Court supervision;
- Did not spend a lot on Trust.

NEGATIVES TO PROBATE PROCESS

- Time;
- Cost;
- Lack of privacy;
- Court supervision;
- Ease of access by creditors;
- Easy to contest.

COSTS OF PROBATE

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

TRUST ADMINISTRATION PROCESS

- Trustee's Notification;
- Affidavit Death of Trustee;
- Marshal assets;
- Appraisals;
- Address creditors;
- Sales of assets;
- Taxes;
- Final Accounting (or First Accounting);
- Distribution.

ADVANTAGES OF TRUST

- Avoids Probate when property funded;
- Trustor has more input over Trustee's handling of assets;
- Can have estate tax savings;
- Does not have to end on death of Trustor;
- Privacy.

DISADVANTAGES OF TRUST

- More complicated;
- Less oversight over trustee to protect beneficiaries;
- Cost more when establishing the Trust;
- Cost more for annual administration (i.e. fiduciary income tax returns);
- Easy to file action against Trustee.

TRUST IMPROPERLY FUNDED

- Often better to have no trust at all as compared to having an improperly funded trust;
- Probate procedure vs. Heggstad Petition procedure.

COSTS OF TRUST ADMINISTRATION

- Trustees fees;
- Fees for attorney for Trustee;
- Appraisal Fees;
- Miscellaneous fees (i.e. CPA).

COSTS TO PREPARE TRUST VS. COST TO PREPARE WILL

- In California, Last will can range from \$300.00 to \$3,000.00;
- In California, Trust can range from \$1,000.00 to \$30,000.00;
- 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.

ESTATE TAXES

<u>Year</u>	<u>Amount</u>	<u>Tax Rate</u>
- 2012	\$5,120,000	35%
- 2013	\$1,000,000	55%
- 2014	Waiting on Congress	

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

HOW A REVOCABLE LIVING TRUST CAN HELP TO AVOID ESTATE TAXES

- A-B Trust;
- No such thing as an A-B Will.

STEP-UP IN BASIS

- What is basis;
 - o Starting figure when calculating capital gains;
 - o The lower it is, the more in capital gains;
- 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.

REAL PROPERTY TAXES

- Proposition 13;
- Proposition 58.

FINAL THOUGHTS

- Lots of choices in estate planning;
- 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.