

ESTATE PLANNING

BASICS

Presented by

**Richard B. Ashworth, Esq.
33401 Dosinia Drive
Dana Point, CA 92629
(949) 489-8172**

“IT’S YOUR ESTATE”

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WHAT IS AN ESTATE

- Real Property
- Ira Accounts/401(K)
- Bank Accounts
- Personal Property
- Stocks/Mutual Funds
- Insurance Policies

WHAT IS ESTATE PLANNING

- Estate Planning is the process of organizing your assets and legal documents to meet your goals before and after your death
- It is not just about what happens when you die
- Estate planning is for everyone. Here is some friendly advice.
 - To get started, **make a list of your assets and their approximate values.** Be certain to include all assets – real property, bank accounts, stock brokerage accounts, personal property, IRA's and 401k's, retirement plans, etc.
 - Set a reasonable **target date** to complete your estate plan. If you use an attorney, discuss the cost and the time frame you have established to complete your estate plan. Stay with your plan.
 - Remember that the estate plan you create at this time can be changed later as certain aspects of your life change, such as the birth of children, grandchildren, increase or decrease in wealth, change in tax laws or providing for a charitable beneficiary.

WHY PLAN YOUR ESTATE

- Deciding who will inherit your assets
- Deciding how and when your heirs or beneficiaries will receive their inheritance
- Passing the maximum amount of assets to your heirs or beneficiaries
- Appointing a guardian for minor children
- Ensuring that if you become sick or incapacitated and you are no longer able to manage your assets that someone is legally authorized to step in and manage your assets for you
- Ensuring that if you become sick or incapacitated and you are no longer able to make health care decisions for yourself that someone can make health care decisions for you
- Clarifying your wishes concerning your desires if a life ending decision needs to be made

WHO HAS AN ESTATE PLAN

- Everybody has an estate plan
 - If you have not done your own estate plan, the California Probate Code has one for you
 - Obviously, you may not like the California Probate Code plan, also referred to as "intestate succession".

COMMON ESTATE PLANS

- Will

- Doing nothing
- Joint Ownership – all to surviving joint tenant
- Giving Away Assets During Lifetime
- Beneficiary Transfers – life insurance, IRA's, 401 (K)
- Revocable Living Trusts – alternative to Will

PLAN #1: WILL

- Expresses Your Wishes at Death
- Only Controls Assets Titled In Your Name
- Enforced By Probate Court

TYPES OF WILLS

- Holographic Will (handwritten by Testator)
- Statutory Will
- Attorney Drafted Will

WILLS & INCAPACITY DURING LIFETIME

- Will Is No Help
- Court Process to Appoint Conservator
 - Expensive

- Time Consuming
- Public
- Does not Replace Probate
- Durable Power of Attorney – appoints agent during lifetime
- Advanced Health Care Directive – appoints agent during lifetime

WHAT IS PROBATE

- Legal Process To carry out Will Provisions
 - Will Validated
 - Representative is Appointed
 - Debts Paid
 - Assets Distributed
- Only Legal Way to Change Title of Assets Held in Your Name

PROBATE ILLUSTRATION

- Assets Titled in Just Your Name Go Through Probate

ADVANTAGES OF PROBATE

- Court Supervision
- Creditor

TOP THREE REASONS TO AVOID PROBATE

- Cost
- Time
- Publicity

COSTS

- Statutory Executor Compensation
- Statutory Attorney Compensation
- Court Filing Fees and Costs
- Appraisal Fees
- Bond Premiums

STATUTORY FEES – FOR EXECUTOR & ATTORNEY

- (1) Four percent on the first one hundred thousand dollars (\$100,000)
- (2) Three percent on the next one hundred thousand dollars (\$100,000)
- (3) Two percent on the next eight hundred thousand dollars (\$800,000)
- (4) One percent on the next nine million dollars (\$9,000,000)
- (5) One-half of one percent on the next fifteen million dollars (\$15,000,000)

- (6) For all amounts above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court

EXAMPLE

- Based on the California Probate Code, a person with a \$1.5 million dollar estate would have the following fees:
 - Executor Compensation: \$28,000
 - Attorney Compensation: \$28,000
- \$56,000

Note that this is based on the gross estate and that the above fees do not include court fees, costs, bond premiums, appraisal fees, taxes or extraordinary fees.

EXTRAORDINARY FEES – FOR EXECUTOR & ATTORNEY

- Court can authorize the payment of extraordinary fees to Executor and Attorney for sale of real property, sale of stocks/bonds/mutual funds, preparation of tax returns, etc.

PROBATE TAKES TIME

- 9 Months – 2 Years

PROBATE IS PUBLIC

- No Privacy

- Published In Newspaper
- Available Via the Web
- Copies of All Documents are Available at Court

PLAN #2: DOING NOTHING

- At Death
 - Probate
 - Assets Distributed by State Law – “intestate succession”
- At Incapacity
 - Court Controls Assets
 - Court Controls Health Care Decisions

PLAN #3: JOINT OWNERSHIP

- Surviving Joint Owner Has Full Ownership

JOINT OWNERSHIP SUMMARY

- Only Postpones Probate
- Unintentional Disinheriting
- Incapacity = Court Interference
- Difficult To Remove Co-Owner

- Lawsuits/Debts of Co-Owner

PLAN #4: GIVING AWAY ASSETS DURING LIFETIME

- You Lose Control of Assets
- No Help at Incapacity
- Gift/Estate Tax Issues
- Income Tax Issues

BASIS

- Basis is Commonly the Purchase Price of An Asset
- Basis is Used to Determine Tax Liabilities
 - Example:
 - Purchase a Stock for \$100,000 in 2002
 - The Basis in this Stock \$100,000

BASIS

- You Decide to Sell

Selling Price	\$200,000
Basis	<u>-100,000</u>
Gain	\$100,000
Capital Gains Tax	\$ 15,000

GIVE IT AWAY AND RECIPIENT SELLS

- Recipient Takes Your Basis

Selling Price	\$200,000
Basis	<u>-100,000</u>
Gain	\$100,000
Capital Gains Tax	\$ 15,000

STEPED-UP BASIS

- What happens to basis when someone inherits your property
- The basis in inherited property for the new owner is "stepped-up" to the market value of the property at the time of death

STEPPED-UP BASIS

- Example: If the value of the stock was \$200,000 on the date of death, then the new basis for sale purposes is \$200,000
- Old basis is irrelevant and capital gains are erased

PLAN #5: BENEFICIARY TRANSFERS AT DEATH

- Usually No Probate
 - Beneficiary Dies First or at Same Time

- Court Interference
 - Your Incapacity
 - Beneficiary is a Minor

PLAN #6: REVOCABLE LIVING TRUST

- Living Trust Is Usually The Solution
 - The primary reason to create a living trust is to avoid probate. Assets transferred before death to a living trust are removed from the probate estate
 - Living trusts can also provide for lifetime asset management
 - Advantages and Disadvantages to be discussed in the Advanced Estate Planning Lecture in the coming weeks

LIVING TRUST SUMMARY

- Avoids Probate at Death
- Prevents Court Control of Assets at Incapacity
- Provides Maximum Privacy
- Allows Control of Distribution of Assets to Beneficiaries, Protection from Creditors and Irresponsible Spending

FINAL THOUGHTS

- Many Choices in Estate Planning

- Write Down Your Goals/Objectives
- Inventory Your Assets and Debts
- Make Choices
- Consider Professional Help
- Everybody Needs a Durable Power of Attorney
- Everybody Needs a Health Care Directive