

# “It's Your Estate” ESTATE PLANNING BASICS

Presented by:

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# Overview of Presentation

- What Is Conservatorship
- What is Probate
  - Advantages and Disadvantages
- Beneficiary Designations and Title of Property
- What is a Will
- Personal Property Distributions
- Tax Considerations
  - Property Tax (Propositions 13, 58, and 19)
  - Capital Gains Tax and Step Up in Basis
  - Gifting
  - Estate Tax
- What is Estate Planning and How Can It Help Avoid Probate and Conservatorships
  - Durable Power of Attorney
  - Advanced Health Care Directive

# Conservatorship

- Appointment by a judge of an individual due to mental limitations or incapacity
- Filing fee can be up to \$1,176 and attorneys fees can range from \$5,000 to \$10,000 in the state of California.
- Can take several months to obtain

# What is Probate?

The government's plan for those who don't plan



It is a court supervised process whereby a person's assets are transferred to their loved ones after death. But before that can happen...

- Probate referee must be appointed
- Assets must be inventoried and appraised
- Creditors must be notified and paid
- Court and administrative costs must be paid
- Mandatory attorney's fees must be paid

# Advantages of Probate

- Lower initial drafting cost and likely need less updating
- Creditor period dramatically shortened
- Attorney & executor fees are only paid at the end of the administration and then only with the approval of the judge
- Protects the executor from ongoing liability
- The power of the black robe to control beneficiaries (court of equity)

# DISADVANTAGES OF PROBATE



**Time**

**Cost**



**Lack of Control**



# Disadvantages of Probate: Time

In California, the average probate process takes between 1 to 2 years to complete

- Personal representative appointed
- Inventory and Appraisal of assets
- Validating a will (if there is one)
- Mandatory notification to creditors to file claim
- Final Account / Petition for Distribution
- Distribution
- Petition for Discharge

# Disadvantages of Probate: Cost

- Attorney & Executor fees are set by statute
  - 4% of the \$100,000
  - 3% of the next \$100,000
  - 2% of the next \$800,000
  - 1% of the next \$9,000,000
    - EX: \$800,000 probate estate = \$38,000 (\$19,000 in attorney's fees + \$19,000 in Executor fees)
- Court Costs
- Probate Referee cost
- Extraordinary costs (granted by court for sale of assets, preparation of tax returns, litigation, etc)



# Statutory California Probate Fees

Size of Estate **	Attorney Fee	Executor Fee	Total Fee
\$200,000	\$7,000	\$7,000	\$14,000
\$300,000	\$9,000	\$9,000	\$18,000
\$400,000	\$11,000	\$11,000	\$22,000
\$500,000	\$13,000	\$13,000	\$26,000
\$600,000	\$15,000	\$15,000	\$30,000
\$700,000	\$17,000	\$17,000	\$34,000
\$800,000	\$19,000	\$19,000	\$38,000
\$900,000	\$21,000	\$21,000	\$42,000
\$1,000,000	\$23,000	\$23,000	\$46,000

\*\* Size of estate is based on GROSS value, not NET

# How to Avoid Probate and Conservatorship

## Proper Estate Planning:

Estate Planning is the creation of a well-organized and written plan that comes into effect upon your death and/or incapacity and addresses the following:

- Who will inherit your assets
- Who will care for your minor children
- Who will manage your personal, medical and financial affairs if you lose capacity (i.e. Alzheimer's Disease, Dementia)

# How to Avoid or Delay Probate and the Tax Ramifications of Each Method

- Beneficiary Designations
  - Payable on Death Accounts
  - Transfer on Death Accounts
- Different Ways to Hold Title
  - Individually
  - Joint Tenancy with the Right of Survivorship
  - Community Property with Right of Survivorship
  - Tenants in Common
  - Living Trust

# Beneficiary Designations

- Beneficiary Designations allow you to leave financial accounts to direct individuals as a means of avoiding probate.
- Full step up in cost basis for Individual Accounts
  - Payable on Death
    - Allows you to establish beneficiaries on Non-Retirement Accounts such as Checking, Savings Accounts, and Life Insurance.
  - Transfer on Death
    - Allows you to establish beneficiaries on Retirement Accounts such as 401k's, IRA's, Stocks, Bonds, Mutual Funds, etc.

# Different Ways in Holding Title

Individually

Joint Tenancy with the Right of Survivorship

Community Property with Right of Survivorship

Tenants in Common

Living Trust

# Individually

- Can avoid probate so long as you have a beneficiary designation (remember POD and TOD)
- Full Step Up in Cost Basis

# Joint Tenancy

- Comes with the Right of Survivorship---Avoids probate on the death of the first Joint Tenant
- Only a 50% step up in basis

# Community Property

- Very similar to joint tenancy, except that holding title as community property is limited to Spouses
- Comes with the right of survivorship---Avoids probate on death of first spouse
- Full step up in cost basis



# Tenants in Common

- Does not come with the right of survivorship---  
Interest of an owner on the property could be subject to probate at the time of their death
- Step Up in Basis on only the interest owned by the decedent

# Living Trust

- You title the assets into the name of your Trust.
- Trust assets avoid probate
- Full step up in cost basis
- More flexibility for distribution purposes when compared to beneficiary designations

# What is a Will?

- A Will is a written document in which you designate how and to whom you would like your assets to be distributed.
- Parties to a Will:
  - The person who creates the Will is the Testator
  - The person who carries out your wishes is the Executor
  - The ultimate recipient(s) of your assets is the Beneficiary (or Beneficiaries)

# Different Types of Wills

- Holographic Will
  - Entirely handwritten and signed
  - No witnesses or date required
- Statutory Will
  - Mostly typed but the material provisions must be handwritten and signed (“fill in the blanks”)
  - Witnesses required
- Formal Will
  - Can be entirely typed
  - Must be signed and requires two witnesses
- Pour-over Will

# Personal Property

- Personal Property Items include tangible items, such as jewelry, antiques, furniture, and other various household items
- Personal Property can be subject to probate
- A Trust or Will can void the potential probate of personal property items. In addition, a Trust or Will can allow you to control specific distributions of such items.

# Tax Considerations

- Property Tax (Propositions 13, 58, 19, and Non Pro-rata/In Kind Distributions)
  - Proposition 58 allowed more flexibility in transfers of Real Property from Parents to Child. Proposition 19 which was implemented on February 16, 2021 severely limits this.
  - Trust allows for in kind distributions for sibling buyouts.
- Capital Gains Tax
  - Gain = difference between sale price and basis
  - 100% Step-Up in Basis for assets in trust
  - Only Partial Step-Up for assets held jointly
- Estate Tax (also known as the “death tax”)
  - \$11.5 million estate tax exemption per person Married couples can double the exemption amount
    - President Biden is likely to lower the exemption amount. If not, the law still sunsets at the end of 2025
- Gifting Limit to avoid filing a 709 gift tax return is currently \$15,000
  - However, you can gift up to 11.5 million dollars without paying any taxes.

# Main Components of an Estate Plan

- ❖ Durable Power of Attorney
- ❖ Advance Healthcare Directive
- ❖ Living Trust
- ❖ Will

# What is a Living Trust?

- A living trust is a written document in which you designate how and to whom you would like your assets to be distributed.
- Parties to a living trust:
  - The person who creates the Trust is the Trustor
  - The person who carries out your wishes is the Trustee
  - The ultimate recipient(s) of your assets is the Beneficiary (or Beneficiaries)



# The Difference Between a Will and a Living Trust

With a Will, if you have more than \$50,000 in real estate, or more than \$150,000 combined in real estate and cash assets, then your estate must go through probate.



With a Living Trust, you can leave assets of *any amount* to your beneficiaries *without the need for probate.*

# I want to get started...

## What should my next step be?

Call us at (714) 282-7488 to schedule a free consultation to discuss creating your estate plan or to review an existing estate plan

- First meeting: no cost, no obligation
- Fixed-fees for a complete custom estate plan
- Usually a two (2) appointment process; generally takes two weeks to a month to complete your estate plan