

“It's Your Estate” ESTATE PLANNING BASICS

Presented by:

James F. Roberts, Esq. *

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The Law Office of James F. Roberts & Associates
3061 E. La Palma Avenue | Anaheim, CA 92806
(714) 282-7488

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