

It's Your Estate: Estate Planning Basics

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Holland & Knight



This is your default estate planner.

An overview of your default plan.

**Can't make
medical
decision?**

The local probate court will appoint a conservator of the person for you.

**Can't
manage
your
finances?**

The local probate court will appoint a conservator of the estate for you.

**Can't raise
your minor
kids?**

The local probate court will appoint a guardian of the person and estate of those kids.

**Where do
your assets
go after
your death?**

Probate and intestate succession rules



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**No direction
about
distribution
of assets?**

Probate and intestate succession rules

What is probate?

- Court proceeding
 - Think 18-months
 - Think expensive
 - Think public
 - Think open forum
- Intestate succession
 - Community property goes to surviving spouse
 - Separate property gets split between spouse and kids
- Statutory alternatives
 - \$166,250 threshold for small estate affidavit
 - Spousal property petition
 - Heggstad petition

Let's think expensive.

Probate Estate	Statutory Attorney's Fees	Statutory Executor's Fees	Total Fees
\$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 million	\$23,000	\$23,000	\$46,000

Every dollar between \$1 – 10 million is charged at a 1% rate
Some work isn't covered by the statutory fees

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Is there anything good about probate?

- Creditors
 - Have a short time to come forward
 - Are forever barred if they don't come forward in time
- Aid to Personal Representative
 - Process covers nearly everything
 - Court available for guidance
 - Court approves everything – i.e., no liability for PR
- Reminds PR of fiduciary duties to beneficiaries
 - Communicate, communicate, communicate



Supervising Judge of the OC probate court

Avoid the court system if at all possible.

**Can't make
medical
decision?**

Have a current advance healthcare directive in place; nominate a conservator.

**Can't
manage
your
finances?**

Have a current durable power of attorney in place; nominate a conservator.

**Can't raise
your minor
kids?**

Execute a nomination of guardian and keep it current.

**No direction
about
distribution
of assets?**

Use probate alternatives, a will, or (likely) a revocable trust.

Understand the preference for family.

- Statutory order of priority
 - Spouse
 - Adult children (jointly unless they can agree)
 - Parents
 - Siblings
 - Adult nieces & nephews
- If you want someone else involved, express your preference with details and do it several documents.

Probate alternatives to consider.

- Pay-on-death (transfer-on-death) provisions
- Beneficiary designations
- Rights of survivorship – e.g., joint tenancy & CPWROS
- Quick and easy transfers after death, but:
 - Lack of control over how assets are used
 - Loss of potential creditor protection

Execute a will.

- Types of wills
 - Holographic wills
 - Statutory wills
 - Formal wills
 - Pour-over wills
- Primary advantage is giving instructions about how the assets are to be used
- Does not avoid probate

How to avoid probate.

- Your probate estate includes
 - Assets in your individual name
 - That are not governed by a probate alternative
- The goal = no probate estate
- Common method in California is using a revocable trust to hold title to
 - real estate
 - personal property
 - investment assets and
 - essentially all other financial assets

A look at the current transfer taxes.



Federal estate tax exclusion: \$11,700,000
No California estate tax

Annual gift tax exclusion: \$15,000
Lifetime unified exclusion: \$11,700,000

Inherited assets: step-up in basis
Gifted assets: carry-over basis

What's at risk?



Federal estate tax exclusion: \$11,700,000

Annual gift tax exclusion: \$15,000

Inherited assets: step-up in basis Gifted assets: carry-over basis

Any questions?

