

WILLS AND TRUSTS

By: Steve Giammichele, Esq.
Tustin Law Group, APC

17592 Irvine Blvd
Tustin, CA 92780

October 10, 2025

<https://www.tustinlawgroup.com/>



Agenda

Wills and Probate

- Benefits of a Will
- Probates and Statutory Fees

Trusts

- Types of Trusts
- Benefits of Simple Trusts
 - Title to Assets
- Joint Trusts and Estate Tax Basics

What is a Will?

A Will is a legal document that outlines how a person's assets and affairs should be handled after their death. It specifies the distribution of property, names executors to manage the estate, and can appoint guardians for minor children. A Will typically requires court proceedings for administration (Probate).

Without a Will:

- Default Statutory Scheme Applies (Do you trust your state to make any other decisions for you?)
- Where did you die?
- Did you have assets in other states?
- Who are your heirs in each state? Is it different? Maybe.
- Who will administer the estate? Who has priority?
- Do you have Minor children? Are they ready or old enough to choose a guardian?

With a Will:

- Change the Default Rules
- Choose Who Administers Your Estate (Executor)
- Choose a Guardian for a Minor Child
- Choose Who Inherits Your Assets
- Choose the Terms for Who Inherits Your Assets
- Did you have assets in other states? Still an issue with a Will.

What Is A Probate?

Probate is the legal process of administering the estate of a deceased person, which may include validating a Will. It involves distributing assets according to the Will or state law (laws of intestacy) if there is no Will.

Main Aspects:

- Court Process (~2 Years to Complete)
- Statutory Fees for Administrator
- Statutory Fees for Administrator's Attorney
- Extraordinary Fees?
- Public Record (Limited Privacy)
- Court Costs (Filing Fees, Bond Premiums)

What are the Fees?

Every state is different. In California, the fee is calculated as a decreasing tiered percentage based on the **gross** value of the estate, excluding liabilities and expenses. For a \$1m estate, the fees are \$23,000 for the administrator and \$23,000 for his/her attorney. There might also be ***extraordinary fees for both***.

What are the Other Court Costs:

- Filing Fees = About \$1,000 (First Petition ~\$465, Last Petition ~\$435, Several Other Filings)
- Publication Costs = About \$800
- Appraisal Fees = \$75, or 0.1% of the Value Appraised, Whichever is Higher
- Appraisal Expenses - Mileage, Other?
- Bond Premiums = Depends on Value of the Estate and Creditworthiness (Usually 0.5%-1% of Value)

Statutory Compensation in California Probates

California Fee Base Calculation:

- Appraised Value as of Date of Death (Court Appointed Probate Referee)
- Plus Receipts (Income), Excl. Principal (Refunds)
- Plus Gains on Sale
- Less Losses on Sale

California Statutory Compensation Calculation:

- 4% of the First \$100,000 of the Fee Base
- +3% of the Next \$100,000 of the Fee Base
- +2% of the Next \$800,000 of the Fee Base
- +1% of the Next \$9,000,000
- +0.5% of the Next \$15,000,000
- +*Reasonable* Amount for Fee Base over \$25m*

*We only charge half of a reasonable amount for estates this size.

Ways To Minimize the Need for Probate

- **Own Nothing or Under the Small Estate Limit**
 - The small estate limit varies by state. In California it depends on asset-type, claimant (i.e., spouse), and value, and are updated every three years by the California Judicial Council. (See DE-300 on Next Slide)
- **Pay-On-Death (P.O.D.) / Transfer-On-Death (T.O.D.)/ Beneficiary Designations**
 - When the owner dies, one or more persons are designated to inherit the asset automatically without the need to pass through probate.
- **Joint Tenancy with Right of Survivorship**
 - Step-up in tax cost basis for capital gains only as to one-half of property value.
- **Community Property with Right of Survivorship**
 - Step-up in tax cost basis for capital gains is for the entire property.
- **Trust**

MAXIMUM VALUES FOR SMALL ESTATE SET-ASIDE
& DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

This form lists the maximum dollar values of a decedent's estate or specific property in that estate, *as of the date of the decedent's death*, for purposes of determining eligibility for

(1) an order setting the estate aside for the decedent's surviving spouse and minor children; or

(2) disposition of the estate or specific real or personal property in the estate informally, without full administration.

NOTE: The values in the left column apply to property of a decedent who died between April 1, 2022, and March 31, 2025. The values in the right column apply to property of a decedent who died on or after April 1, 2025. To find the values that apply to property of a decedent who died before April 1, 2022, see the Self-Help Guide to the California Courts at <https://selfhelp.courts.ca.gov/>.

The amount of the adjustment of the prior values is based on the change in the United States city average of the Consumer Price Index for All Urban Consumers for the three-year period ending December 31, 2024, with each adjusted value rounded to the nearest \$25. (See Prob. Code, § 890(b).) Unless otherwise provided by statute after April 1, 2025, these values will next be adjusted April 1, 2028.

Probate Code Section	Description	Amount (death between Apr. 1, 2022, and Mar. 31, 2025)	Amount (death on or after Apr. 1, 2025)
1. SMALL ESTATE SET-ASIDE UNDER PROBATE CODE SECTIONS 6600–6613			
§§ 6602, 6609	The net value of the decedent's estate, excluding all liens and encumbrances at the date of death and the value of any probate homestead set apart under Probate Code section 6520, must not exceed:	\$ 95,325	\$ 107,900
2. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION UNDER SECTIONS 13000–13606			
a. PROPERTY EXCLUDED FROM DETERMINING VALUE OF ESTATE			
§ 13050(c)	The amount of any salary or other compensation owed to the decedent for personal services from any employment, not to exceed:	\$ 18,450	\$ 20,875
b. AFFIDAVIT FOR COLLECTION, RECEIPT, OR TRANSFER OF PERSONAL PROPERTY			
§§ 13100, 13101	The gross value of the decedent's real and personal property in California— excluding any property described in Probate Code section 13050 and any property included in a petition filed under Probate Code section 13151—must not exceed:	\$ 184,500	\$ 208,850
c. PETITION & COURT ORDER DETERMINING SUCCESSION TO PRIMARY RESIDENCE			
§§ 13151, 13152, 13154	The gross value of the decedent's primary residence in California must not exceed:	\$ 184,500	\$ 750,000
d. AFFIDAVIT FOR SUCCESSION TO REAL PROPERTY OF SMALL VALUE			
§ 13200	The gross value of all real property in the decedent's estate located in California— excluding any real property described in Probate Code section 13050—must not exceed:	\$ 61,500	\$ 69,625
e. AFFIDAVIT FOR COLLECTION OF COMPENSATION OWED TO DECEASED SPOUSE			
§§ 13600, 13601	Net salary or other compensation owed, in aggregate, by one or more employers for personal services of the deceased spouse, must not exceed: <i>(This limit does not apply if the decedent was a firefighter or peace officer described in Government Code section 22820(a).)</i>	\$ 18,450	\$ 20,875

NOTICE

- If the decedent died on or after April 1, 2022, this form must be attached to
- an affidavit or declaration furnished under Probate Code section 13101;
 - a *Petition to Determine Succession to Primary Residence* (form DE-310) filed under Probate Code section 13151;
 - an *Affidavit re: Real Property of Small Value* (form DE-305) filed under Probate Code section 13200; or
 - an affidavit or declaration furnished under Probate Code section 13601.

What Is A Trust?

A trust is an arrangement where one party (Trustee), holds and manages assets for the benefit of another party (Beneficiary). The person who creates the trust is the Grantor/Trustor/Settlor.

Types of Trusts:

- *Revocable* Trust (Revocable Living Trust, Living Trust)
- *Irrevocable* Trust
 - Asset Protection
 - Life Insurance Trust
 - Charitable Remainder Trust
 - Complex Tax Planning Trusts
 - Special Needs Trusts

Cost of a Trust:

Usually, the initial set up costs are more than a Will, but the post-death costs are generally much less and the post-death administration is typically about 1 year.

Main Aspects of a Revocable Trust:

- Similar Aspects of a Will, but Usually No Court Process Needed and Much Flexibility
 - Use Your Imagination
 - Trust Protectors
 - Reduces Likelihood of Conservatorship
- Designed to survive the death of the settlor, thereby negating the need for a probate (Make sure title is correct!)
- The Settlor is usually also the trustee and beneficiary during his or her lifetime.
- Significantly reduced administration expenses, and much faster than probate
- Privacy (Usually)

Two Person Trust

This is sometimes referred to as a Married Couple Trust, but it essentially operates the same as a revocable living trust for one person. In a single person trust, the questions are (1) Who will manage this when you're unable to? and (2) Who will inherit the assets when you die?--for a two person trust, there's just another question to answer: (3) What happens when the first of you dies?

- **Options at the First Death:** (A) Entire Trust Remains revocable and/or amendable by the Surviving Spouse; (B) Part of the Trust Becomes Irrevocable and/or Not Amendable by the Surviving Spouse; or (C) The Entire Trust Becomes Irrevocable and/or Not Amendable by the Surviving Spouse.
 - Option A is typically for long term marriages with joint children only (less complex, easier to manage after the first death.
 - Options B and C used to be more common due to the estate tax exemption being much lower, but is much more commonly associated with blended families (children from prior marriages) these days. *These options will involve a separate tax return for the irrevocable portion of the trust, and give the residual beneficiaries **present rights to enforce**.*

Funding the Trust

Title Title Title
~~Location~~, ~~Location~~, ~~Location~~

Funding: Funding a trust is simply the process of designating an asset as an asset of the trust or transferring an asset to the trustee. For certain assets, this requires a formal change of the form of title, but for assets that do not have a formal “title”, the funding is accomplished with an assignment.

Title: In most cases, for a Revocable Trust, nothing substantively changes in your life except for how you hold title to your assets. It needs to identify the trustee, the formal name of the trust, and the *original* date of the trust.

Example Form of Title: “Steven Giammichele, Trustee of the Giammichele Family Trust dated October 2, 2025”

Assets That Have a Chain of Title

- Real Estate
 - In-State and Out-of-State
 - Out-of-Country (Be Careful)
 - Timeshares (Please don’t)
 - Stock Cooperatives
 - Condominiums
- Business Interests (i.e., Stock)
- Bank/Investment Accounts
- Vehicles

Assets That Don’t Have a Chain of Title

- Cash
- Gold, Silver, Jewelry
- Furniture, Clothes
- Inheritance
- Sole Proprietorship*

How Do I Transfer Something into the Trust if I Cannot Change Title?

This is the most common inquiry related to retirement-related assets, which you should not transfer into your trust. This is where a beneficiary designation typically comes into play as part of an estate plan. Some institutions will allow just one beneficiary, others may allow multiple, or they might allow multiple successive beneficiaries.

Depending on the “plan” that you have set up, you may not *want* to designate the trustee of the trust as the beneficiary.

Mom and Dad Forgot to Fund the Trust

If someone forgets to fund their trust during their lifetime, it's still possible to avoid opening probate.

Power of Attorney: Agent can transfer assets to trust before Grantor's death

Small Estate Procedures (Pour-Over Will): If there is a Pour-Over Will, Trustee can collect assets informally through an affidavit procedure or summary court proceedings.

Heggstad/Ukkestad (Probate Code 850) Petition: Court petition that allows a trustee to obtain a court order deeming an asset to be titled in the name of the trust, and authorizing the trustee to sell the property (not just for real estate)

Distribution Options

Distributions can be for a specific dollar amount, of a specific asset, or of a fractional interest in whatever there is, or a percentage of whatever there is. These are straightforward, but sometimes people will want assets to be held in trust for someone, such as a minor, or someone who does not necessarily have special needs, but will squander money if given a large sum. These are some options to consider when establishing your estate plan.

Interval Distributions: Distributions based on future events, such as attaining a certain age, or a certain period of time passing. An example of this is distributions at age 25, 30, and 35.

Incentive Distributions: Distributions that incentivize a beneficiary to take certain action or accomplish certain goals. An example of this is to give a beneficiary a dollar amount distribution equal to his or her annual salary.

Lifestyle Distributions: Distributions that assist a beneficiary in maintaining a particular type of lifestyle, or maintaining their current lifestyle. An example of this is for the trustee to have discretion to distribute to a beneficiary based on his or her health, education, maintenance, and support (HEMS). Be careful! Some provisions might be “against public policy” and may not be enforceable (i.e., provisions that encourage discrimination of a protected class).

Relevant Taxes to Be Wary of in Estate Planning

“Mom’s lawyer said there would be no estate taxes! Now you’re saying he lied?”

Whatever the government can tax, it does tax.

- **Estate Tax:** A tax based on the value of assets as of a person if they exceed a certain dollar amount (the Estate Tax Exemption Amount)
 - 2025 - \$13.99m for a single person, or \$27.98m for a married couple (Portability)
 - 2026 - \$15m for a single person, or \$30m for a married couple
- **Lifetime Gift Tax:** A tax based on how much a person may give away during his or her lifetime.
- **Annual Gift Tax Exemption:** A tax based on how much a person gifts to another person in a single year. This is oftentimes confused with the lifetime gift tax, and may be used together to effectuate certain estate planning goals.
- **Capital Gains Tax:** A tax based on the proceeds received from the sale of an asset. Cost basis becomes relevant for this calculation.
- **Property Tax:** A tax on property owned.

Information Needed to Create an Estate Plan or Trust

We generally have a worksheet to fill out that is 10 page (16 for married couples) to walk you through how you would like your estate planning documents set up. We try to make it as easy as possible for you. It seems like a lot, but to get the ball rolling, we really just need to know three things:

- Your Name(s)
- Fiduciary Name(s) [Trustee, Agents, Executors, etc.]
 - Beneficiary Name(s)

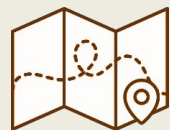
THANK YOU



Steven Giammichele, Esq.



(949) 339-1845



Tustin Law Group, APC
17592 Irvine Blvd Tustin, CA 92780

DISCLAIMER: Nothing in this presentation should be interpreted as legal advice. This presentation is intended to help a person to understand the general area of law to help ask the right questions with an attorney of their choice. Your time to act may be very limited and this could substantially reduce your rights and options. **YOU CANNOT** rely on anything contained herein. This information is not intended to substitute for professional legal advice and does not create an attorney-client relationship. You should accept legal advice only from a licensed legal professional with whom you have an attorney-client relationship. You should contact a lawyer in your area immediately, to assist you in any of these matters.

Circular 230 Disclosure: Pursuant to recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

