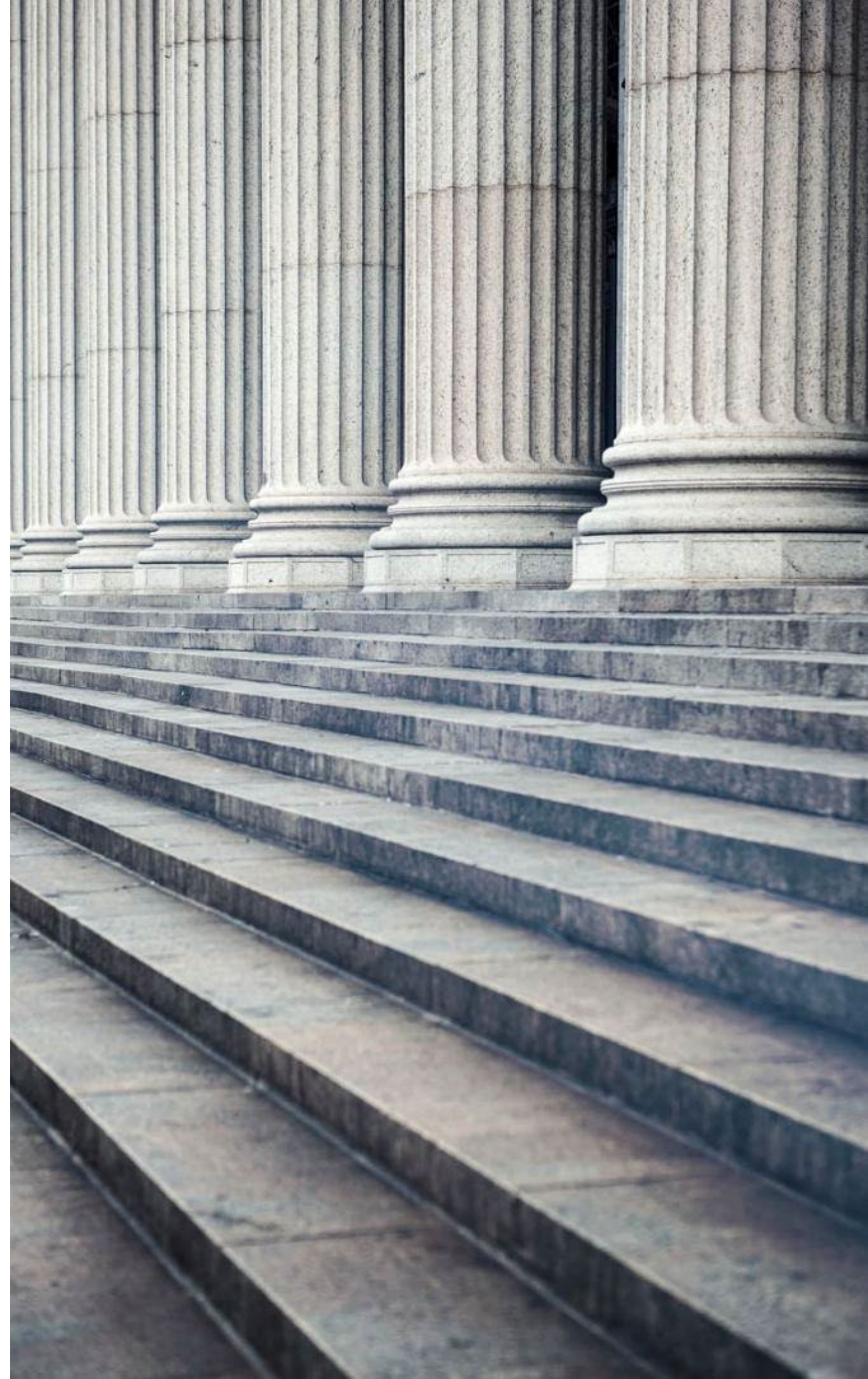




Financial & Estate Literacy
It's Your Estate Series

Guide to Wills & Trusts

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Get in Touch

CALIFORNIA LOCATIONS

Orange County · San Diego

· Pasadena · Los Angeles

· Bay Area · Fresno

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What we'll cover today

01 Estate Plans vs. Probates

04 Purposes Benefits Pros Cons

02 Wills vs. Trusts

05 Financial Elder Abuse

03 Types of Wills and Trusts

06 Mental/Legal Capacity

ESTATE PLAN vs. PROBATE



WHAT'S AN ESTATE PLAN

A collection of legal documents that spells out how your money, property and personal care will be managed if you become incapacitated or after you pass away.

Legal Documents

1. Last Will and Testament (Will)
 2. Revocable Trust (Trust)
 3. Financial Power of Attorney (POA)
 4. Advanced Health Care Directive (AHCD)
 5. Deed(s) to Transfer Real Property to the Trust
- The purpose of an Estate Plan is to **AVOID** the Probate Process!

WHAT'S A PROBATE

Probate is the court-supervised process of validating a deceased persons Will, appointing an Executor or Representative, pay the Decedent's remaining debts and distribute their net probate estate assets remaining per the Will.

If NO Will Probate defaults to state intestacy laws,

- Community Property:
 - All goes to spouse,
- Separate Property:
 - 1/2 to spouse and 1/2 to child if there is only one child, or descendants of deceased child, parents or their descendants.
 - 1/3 to spouse and 2/3 to children if more than one child.

WILL vs. TRUST

WHAT'S A WILL

A Will is a legal document that takes effect only after your death to distribute assets, name an executor and provide specifics to probate process.

- A Will DIRECTS the Probate Process
- Probate Estate Administration is PUBLIC Process
- Nominates Executors and designates Guardians
- Directs distribution of your remaining property and assets AFTER death to your beneficiaries

WHAT'S A TRUST

A Trust is a legal arrangement where one party the SETTLOR/TRUSTOR gives a second party the TRUSTEE the right to hold and manage assets for the benefit of a third party the BENEFICIARY.

- A Trust AVOIDS the Probate Process
- Trust Administration is a PRIVATE Process
- Appoints Trustees, co-Trustees and successors to administer the Trust or Subtrusts
- Trustee can use the terms of the trust and trust assets DURING your life, if incapacitated and after death to keep in trust or distribute the assets to your beneficiaries per your wishes

TYPES OF WILLS vs. TYPES OF TRUSTS

TYPES OF WILLS

- Formal Will – typed will and two witnesses
- Pour-Over Will – pours any assets subject to Probate into Trust after and two witnesses
- Holographic – hand written will material terms in testator's handwriting, must be signed.
- Statutory – can be filled in but not altered, must be signed and two witnesses
- Joint or Mutual Wills – outdated but two witnesses
- Living Will – is actually healthcare directive

When referring to witnesses they are required and must be independent people, those without any beneficial interest therein.

TYPES OF TRUSTS

- Revocable Living Trust (RLT) – a Trust that can be changed by the Trustor since assets still owned by he/she/them Trustor is also the current Beneficiary and typically also Trustee (though trusteeship not required).
- Irrevocable Trust (IT) – a Trust that cannot be changed – set in stone – assets are no longer owned by the Trustor
- Specific Trusts – ex., insurance (ILIT), spousal (QTIP), exemptions (GST Exempt), subtrust (Subtrust), special needs (SNT)

Revocable Living Trusts Purposes and Benefits

- **Retain Full Control - Private**
- **Flexible and Amenable**
- **Incapacity Protection – can avoid conservatorship upon incapacity**
- **Avoids Probate**
- **Assets are distributed without court involvement**
- **Business interests and or entities covered**

Irrevocable Trusts Purposes and Benefits

- **Do NOT Retain Control**
- **Set in Stone**
- **Estate Tax Reduction**
- **Asset Protection**
- **Charitable Giving**
- **When Irrevocable - can become irrevocable due to terms incapacity, by giving up ownership of and or upon death**

Trust Admin and Distribution Upon Death

- **Beneficiaries Determined**
- **Set in Stone**
- **Process Defined by Trust and Trust Law**
- **Notification by Trustee 16061.7 Trust Terms**
- **Duties and Liabilities of Trustees**
- **Rights and Questions by Beneficiaries**

Court Proceedings Involving Trusts

- **Contested or Uncontested**
- **The Intent of the Trustor Per Terms of Trust Document Primary Focus**
- **Many Different Actions – from changing a trustee, appointing a private professional fiduciary, challenging an accounting, or modifying the terms of the Trust**

TRUSTS MUST BE FUNDED!

- “Funding” a Trust means that assets are re-titled and rerecorded from the name of the individual Trustor(s) to the name of the Trustee of the Trust, so the successor trustee can step in and manage them upon your incapacity and/or distribute them at death in accordance with the terms of your trust and your wishes.
- Ex Jane Smith has a bank account in her own name at Bank of Money, she creates the Jane Smith Revocable Living Trust, so she contacts bank they send her forms to complete to change title on the accounts and usually collect a copy of the Certificate of Trust (cliff note summary of terms) so the bank knows who can act as Trustee
- The bank account is changed to Jane Smith as Trustee of the Jane Smith Revocable Living Trust and now that account is “IN the Trust” and the Trust has been funded.
- Same basic process for Real Property – change in title made via deed and recorded but is incredibly important to do.

PROBATE FEES vs. TRUST FEES



PROBATE FEES – FIXED

Statutory [Compensation] Fees Executor/Attorney

- 4% on first \$100,000
- 3% on next \$100,000
- 2% on next \$800,000
- 1% on next \$9,000,000
 - \$1million gross estate - \$23,000 x 2 paid to both executor/administrator and their attorney for total of **\$46,000** in statutory fees
 - \$3million gross estate - \$43,000 x 2 paid to both executor/administrator and their attorney for total of **\$86,000** in statutory fees
- Also fees for court, petition, publication, filing, bond, probate referees and other
- Potential for Extraordinary Fees that are determined by the court

TRUST FEES - FLEXIBLE

- [Compensation] Fees for Trustee set by You as Trustor in and per the terms of the Trust.
- Fees can be percentage based, per hourly rate, etc. and are paid from trust assets
- In the absence of or per boilerplate provision the Trustee shall be deemed to be entitled to reasonable [compensation] under the circumstances
- When court involved to determine compensation of Trustees and or their attorneys, they have discretion and the standard is the amount that is fair, reasonable, necessary and in the best interests of the trust/beneficiaries.
- Other fees involve attorney's fees, other professionals, admin, etc.

What is Financial Elder Abuse?

When someone wrongfully takes, appropriates, or retains the real or personal property of an adult over 65 years old (or a dependent adult aged 18-59)

Common activities include theft, embezzlement, forgery, scams, unauthorized use of power of attorneys or trustee, forcing an elder to change estate planning documents under undue influence

Financial Elder Abuse & Estate Plans

Be Aware and Be Safe

When you have a Trust and your Trust is funded such that your assets are titled in the name of your Trust, that may help to provide a layer of protection against Financial Elder Abuse.

When in doubt – report contact Adult Protective Services of Orange County.

INCAPACITY

Re: Mental/Legal Capacity

One of the most important things that a Trust can do is to provide a means whereby another person can assist the Trustor or Beneficiary when and or if they are or become incapacitated

A DIAGNOSIS IS NOT A DETERMINATION

- Many people believe that if a doctors diagnosis someone with dementia they are incapacitated – NOT TRUE
- Many people believe that if a doctor says they are unable to manage their own financial affairs they are incapacitated – NOT TRUE
- Many people believe that capacity/incapacity is an all or nothing absolute state or status – NOT TRUE
- Many people believe that capacity/incapacity is only an medical issue or legal issue – NOT TRUE

As we will discuss Mental/Legal Capacity has many sides, facets and degrees.

INCAPACITY



As Defined in the Trust

Provide the basis for one to act or not act and/or to become a beneficiary thereunder to amend or revoke the trust.

In Relation to the Trustor

The basis by which Trustor may no longer be in charge as trustee and or when duties and liabilities of next trustee become due to contingent beneficiaries

May Avoid Conservatorship

A Trust may provide a means to avoid a conservatorship of the estate (money side) since the Trustors assets in the trust estate can be used for the benefit and managed by the Trustee

THINGS TO NOTE

- **Lack of Capacity is a JUDICIAL DETERMINATION**
- **“Incapacity” as defined in a Trust can be per whatever choice of Trustor though usually written letter by 1-2 doctors**
- **Mental/Legal Capacity under psychology and the law**



GUIDE TO WILLS & TRUSTS

Thank You!

**Best,
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