
Wills & Trusts

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Introduction to Estate Planning: Trusts & Wills

- Estate Planning: The process of organizing your assets and making decisions about their management and/or distribution after your death or incapacity.
- Key Terms
 - Trust: A legal entity that holds assets for the benefit of beneficiaries, without requiring Court oversight.
 - Will: legal document outlining distribution of assets through Probate after death .
 - Probate: Court oversight of the administration of your estate: validation of your will, appointing your Executor, paying debts and distributing assets.
 - Intestate: Dying without a will; state law determines how your assets are distributed through Probate.

What Happens If You Don't Have a Trust or Will?

- **Intestate Succession:**

- If you die without a trust or will, California law dictates how your assets are distributed and who is in charge of your Estate.
- Assets go to spouse, children, and other relatives in a set order of priority, regardless of your wishes.

- **Loss of Control:** You have no say in who inherits your assets or how they are distributed.

- **State Control:** If no eligible relatives are found, your estate may go to the state.

Last Will and Testament

- A legal document memorializing your wishes regarding how your assets should be distributed after your passing which takes effect upon your passing.
- Can be “simple” or complex, handwritten or pre-printed form, witnessed by 2 witnesses.
- Pour over Will makes your Trust the beneficiary of assets left “outside of trust”.
- Relatively inexpensive to make but has specific requirements to be valid.
- Wills require Court oversight (i.e. “Probate”)
 - Petition to open Probate is filed (current cost is approximately **\$465**)
 - Notice of Probate is published in the newspaper (current cost **\$500-\$1000**)
 - Executor is appointed by Court to manage administration of Estate.
 - Bond posted, if required (**\$\$\$- hundreds or thousands** depending on Court’s requirement based on size of estate and credit worthiness of Executor).
 - Estate is valued (Probate Referee earns **fee based on % of Estate’s value**).
 - Creditors are identified, notified and can make claims on the Estate.
 - Government agencies are notified and can make claims (Medi-cal, taxes, incarceration).
 - Assets are marshalled by Executor.
 - Petition for Final Distribution (**\$465**)-Debts are paid and assets distributed pursuant to your wishes.
 - **\$\$\$\$\$\$\$\$- Thousands of dollars for even the smallest probate estates!**
- **Wills are generally inexpensive to make but can be costly for your heirs!**

Why Should You Avoid Probate?

- **Time-Consuming:** Probate in California commonly takes 1 to 2 years, and can take longer depending on complexity of the Estate.
- **Expensive:**
 - Statutory attorney fees based on Estate value (i.e. 4% of the first \$100,000 + 3% of next \$100,000 + 2% of next \$800,000 + more).
 - Numerous court fees also apply, cutting further into the Estate's value.
- **Subject to repayment of benefits received from Government:** Does not protect your Estate from government “clawback” of certain benefits like Medical, received during your lifetime.
- **Court approval of all actions required:** a judge must approve all aspects of administration of your Estate.
- **Public Process:** Probate records and hearings are public.

Ways to Avoid Probate

- **Joint Ownership:** Assets held in joint tenancy pass directly to the surviving owner, avoiding probate, but does not avoid probate if joint tenants pass away together.
- **Beneficiary Designations:** Life insurance, retirement accounts, and “pay-on-death” accounts bypass probate when living beneficiaries are named. Always name alternate beneficiaries or probate may be necessary.
- **Small Estate:** California’s small estate threshold (currently \$208,850) allows for a simplified process, avoiding probate for smaller estates. **New law** allows for exclusion of your home from probate if it is valued at less than \$750,000.
- **Have a properly drafted and funded Trust!**

How a Trust Avoids Probate

- **Trust Assets:** Assets placed in trust don't go through probate because your successor is already in place and legally empowered to act when needed without Court approval.
- **Immediate Effect:** Trusts take effect during your lifetime and provide for management of your assets for your benefit during any incapacity, so your wishes can be carried out when you are no longer able to make financial decisions if necessary.
- **Trusts continue after death:** Trustees are legally empowered by your trust to control assets, and given detailed instructions on their distribution allowing for seamless transfer to your beneficiaries without Court oversight or approval.
- **Timely administration of your Estate:** Many trusts are administered within one year. No dependence on a Court's schedule or timeline.

Revocable Living Trusts: Key Benefits

- **Avoid Probate:** Assets in a revocable living trust pass directly to beneficiaries, skipping the expensive, time-consuming and public probate process.
- **Flexibility:** You can change, add, or remove assets, and even cancel the trust at any time. You can address changing circumstances and specific needs as things change in your life.
- **Control During Life:** You manage the trust's assets as the trustee while alive, and you appoint successor trustee(s) to manage them after death.
- **Control After Death:** You can set up your trust to distribute to your beneficiaries how and when you think best- at certain ages or stages/milestones of life, or to protect their inheritance from creditors or predators, can protect inheritances in blended families, all with no Court oversight or intervention.
- **Easy Maintenance:** Usually no additional fees are required unless amendments are made. No separate tax returns are required.
- **Save your heirs time and money!**

Steps to Set Up a Trust

- 1. Identify Assets:** Make a list of all your assets (homes, bank accounts, investment accounts, stock, vehicles, etc.).
- 2. Choose a Trustee:** Select a reliable trustee to manage (commonly yourself first, then a successor or successors to act after your death or incapacity).
- 3. Draft the Trust:** Work with a California estate planning attorney to create the trust and ancillary documents (Pourover Will, POA, AHCD, Assignment, Deed).
- 4. Fund the Trust:** Transfer title of your assets into the trust's name.
- 5. Regular Updates:** Review and update the trust regularly to reflect any changes in your circumstances, assets or wishes.

Irrevocable Trusts in California

- **Protecting Assets:** Irrevocable trusts can safeguard assets from creditors and estate taxes.
- **Cannot Be Changed:** Once created, this type of trust cannot be altered or revoked.
- **Estate Tax Shield:** It helps reduce estate taxes and provides additional security for your assets.
- **Protect Benefits:** Can protect a beneficiary's eligibility for certain government benefits.

Common Estate Planning Mistakes

1. Not having an Estate Plan.
2. DIY'ing your Estate Plan- you don't find out what's wrong until it is too late!
3. Not funding your assets into the trust.
4. Not naming contingent beneficiaries.
5. Not planning for disability.
6. Choosing the wrong person to handle your estate.
7. Procrastinating until it's too late.
8. Naming co-agents to serve.
9. Keeping Estate Plan documents in a safe deposit box or safe (no one can access).
10. Not taking steps to protect children's inheritance in blended families.
11. Joint accounts: adding your children to your bank accounts "for convenience".
12. Putting your children on title to your home/real property during your lifetime.

Times You Should Review Your Estate Plan

1. You are having your first child (name guardians, trustee for their trust).
2. You are thinking about divorce (do it before you file or can't change it until divorce is final).
3. You have gotten divorced (update beneficiary designations, name change).
4. Your child gets married (create trust for child, protect assets from divorce).
5. Your beneficiary develops creditor or substance abuse problems (trustee discretion).
6. Your named executor/successor trustee or beneficiaries die.
7. Your young family member becomes a responsible adult (re-evaluate trustees).
8. New legislation is passed (estate tax laws may change).
9. You come into a windfall or inheritance.
10. You can't find your original trust/will.
11. You buy property in another country or move to another country/state.
12. Your family and friends become enemies (include no-contest provisions).
13. You are thinking about getting remarried.
14. Every 3-5 years (good practice).
15. Your spouse passes away.

Things You Should Do

1. Consider restating any pre-2013 A/B Trusts.
2. Carefully evaluate whether to have Trust as IRA beneficiary (stretch IRA rules/Secure Act)
3. Revisit all beneficiary designations (primary and contingent)-and elections for issue of predeceased beneficiaries.
4. ERISA (401k/employee retirement plans)
5. Beware “affluenza”: (divide and distribute vs. leave in trust)-discretionary/incentive trusts.
6. Be cautious of late-state EP changes (capacity issues, certificates of independent review).
7. Portability; 706 filing at death of first trustor.
8. Digital estate planning: (passwords, log-ins, social media accounts, crypto, contacts, email, cloud, financial accounts).
9. Consider professional trustees on larger estates.
10. Leaving kids/grandkids inheritance in irrevocable trusts: preservation of wealth, asset protection, divorce, remarriage, disability, business failures, creditor issues, lawsuits/liability.

Conclusion: Why Set Up a Trust

- **Avoid Probate:** Save your loved ones time, money, and stress.
- **Ensure Privacy:** Keep your estate and financial details private.
- **Maintain Control:** Dictate how and when your assets are distributed with full control during your life.
- **Save Money and Time for Your Heirs:** pay now or your heirs pay much more in Probate later.