

It's Your Estate: Intro

Mark Powell, ACTEC Fellow
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Simplicity is the ultimate sophistication.

- *Leonardo da Vinci*



This is your default estate planner.

An overview of your default plan.

Can't make
medical
decisions?

The court
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conservator
of the
person for
you.

Can't
manage
your
finances?

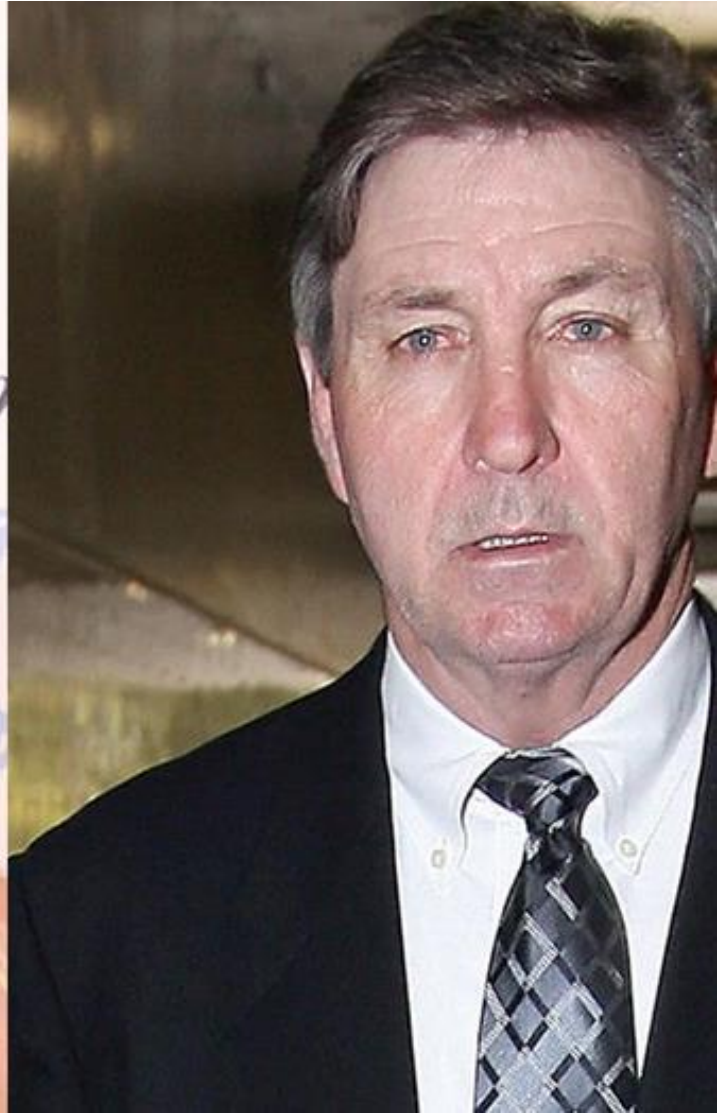
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Can't raise
your minor
kids?

The court
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No
direction
about
distribution
of assets?

Probate
and
intestate
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Mark E. Powell
LAW CORPORATION

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Is probate really that bad?

- 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
 - \$184,500 threshold for small estate affidavit
 - Spousal property petition
 - *Heggstad* petition

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 and \$10 million is charged at a 1% flat 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 – that is, no liability for PR
- Reminds PR of fiduciary duties to beneficiaries
 - Communicate, communicate, communicate





Gerald Johnston
Judge Orange County, California

Avoid the court system every way you can.

Can't make
medical
decisions?

Have a
current
advance
health care
directive;
nominate
your own
conservator

Can't
manage
your
finances?

Have a
current
durable
power of
attorney;
nominate
your own
conservator

Can't raise
your minor
kids?

Nominate
guardians
and revisit
this issue
regularly

No
direction
about
distribution
of assets?

Use
probate
alternative
or execute a
will or
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 in 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

Key to avoiding probate.

- Review the terms of your trust, especially the fiduciary roles, regularly
- Review your personal financial statement regularly
- Find an attorney who will do these things with you; in fact, will require these things of you

A look at the current transfer tax rules.



Federal unified exemption: \$12,060,000
No California estate tax

Annual gift exemption: \$16,000
Lifetime gift exemption: \$12,060,000

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

What's at risk?



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