

# “It's Your Estate” ESTATE PLANNING BASICS

Presented by:

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# Attorney & Law Firm Background

- Holly's Education
  - Bachelor of Arts, Political Science, University of California, Los Angeles (UCLA)
  - Juris Doctorate, Loyola Law School of Loyola Marymount University, Los Angeles
- Holly's Experience
  - Worked with over 2,000 clients to create/amend their living trust or administer a loved one's trust
- Law Firm Background
  - Holly has worked for the Law Office of James F. Roberts & Associates for 11 years. The firm was founded by attorney James F. Roberts over 40 years ago and has proudly established over nine thousand living trusts for individuals and families throughout Southern California.

# Overview of Presentation

- What is Estate Planning
  - Main Components of an Estate Plan
- What is Probate
  - Advantages and Disadvantages
- How to Avoid Probate
  - Non-probate transfers
- Tax Considerations
  - Property Tax
  - Capital Gains Tax
  - Estate Tax

# What is Estate Planning?

## Definition of Estate

- Your estate includes all assets that you own:
  - Real estate (including timeshares)
  - Bank accounts
  - Investments, stocks, bonds
  - Retirement accounts (401k, IRA, annuity)
  - Business interests
  - Personal property (automobiles, jewelry, furniture, collectibles, etc.)
  - Life insurance
  - Pretty much everything...

# What is Estate Planning?

Estate Planning is the creation of a well- organized and written plan that comes into effect upon your death and/or incapacity and addresses the following:

- Who will inherit your assets
- Who will care for your minor children
- Who will manage your personal, medical and financial affairs if you lose capacity (i.e. Alzheimer's Disease, Dementia)

# Estate Planning and Organization

- It is extremely difficult to properly plan your estate (or for an attorney to help you plan your estate) if you do not maintain an **organized list of all your assets** and **your legal heirs.**
  - Net worth statement
  - Identify all potential heirs (even those we don't want to provide for under our estate plan)

# Main Components of an Estate Plan

- ❖ Durable Power of Attorney
- ❖ Advance Healthcare Directive
- ❖ Living Trust
- ❖ Will

# What is a Living Trust?

- A living trust is a written document in which you designate how and to whom you would like your assets to be distributed.
- Parties to a living trust:
  - The person who creates the Trust is the Trustor
  - The person who carries out your wishes is the Trustee
  - The ultimate recipient(s) of your assets is the Beneficiary (or Beneficiaries)

# What is a Will?

- A Will is a written document in which you designate how and to whom you would like your assets to be distributed.
- Parties to a Will:
  - The person who creates the Will is the Testator
  - The person who carries out your wishes is the Executor
  - The ultimate recipient(s) of your assets is the Beneficiary (or Beneficiaries)

# Different Types of Wills

- Holographic Will
  - Entirely handwritten and signed
  - No witnesses or date required
- Statutory Will
  - Mostly typed but the material provisions must be handwritten and signed (“fill in the blanks”)
  - Witnesses required
- Formal Will
  - Can be entirely typed
  - Must be signed and requires two witnesses
- Pour-over Will

# Should You Prepare Your Own Will?

- Probably not...unless you're well versed in:
  - Pretermitted heir and Pretermitted spouse rules
  - California witnessing requirements (tricky)
    - Timing of witnessing
    - Interested witness rules

# The Difference Between a Will and a Living Trust

With a Will, if you have more than \$61,500 in real estate, or more than \$184,500 combined in real estate and cash assets, then your estate must go through probate.



With a Living Trust, you can leave assets of *any amount* to your beneficiaries *without the need for probate.*

# What is Probate?

The government's plan for those who don't plan



It is a court supervised process whereby a person's assets are transferred to their loved ones after death. But before that can happen...

- Probate referee must be appointed
- Assets must be inventoried and appraised
- Creditors must be notified and paid
- Court and administrative costs must be paid
- Mandatory attorney's fees must be paid

# DISADVANTAGES OF PROBATE



**Time**

**Cost**



**Headache**

**Lack of Control**



# Disadvantages of Probate: Time

In California, the average probate process takes between 1 to 2 years to complete

- Personal representative appointed
- Inventory and Appraisal of assets
- Validating a will (if there is one)
- Mandatory notification to creditors to file claim
- Final Account / Petition for Distribution

# Disadvantages of Probate: Cost

- Attorney & Executor fees are set by statute
  - 4% of the \$100,000
  - 3% of the next \$100,000
  - 2% of the next \$800,000
  - 1% of the next \$9,000,000
    - EX: \$800,000 probate estate = \$38,000 (\$19,000 in attorney's fees + \$19,000 in Executor fees)
- Court Costs
- Probate Referee cost
- Extraordinary costs (granted by court for sale of assets, preparation of tax returns, litigation, etc)

# Statutory California Probate Fees

Size of Estate **	Attorney Fee	Executor Fee	Total Fee
\$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
\$1,000,000	\$23,000	\$23,000	\$46,000

# Disadvantages of Probate: Headache

The probate process tends to create a forum for family fighting, conflicts and disharmony



# Disadvantages of Probate: Lack of Control

In California, if you die without a will or a living trust, the laws of Intestate Succession govern who will inherit your assets:

- Community Property
- Separate Property

## Community Property

100% to spouse

100% to children

100% to grandchildren

100% to parents

100% to siblings

And so on...

## Separate Property

No children → 100% to spouse

One child →  $\frac{1}{2}$  to child and  $\frac{1}{2}$  to spouse

Two or more children →  $\frac{1}{3}$  to spouse,  $\frac{2}{3}$  children

# ADVANTAGES OF PROBATE

- Court supervision of the transfer of assets
- Supervised accounting
- No money spent on a living trust
  - Average cost \$2,000 - \$5,000

# How to Avoid Probate

- Joint Tenancy
  - Hold assets jointly with spouse
    - No remarriage protection
    - No full step up in basis
  - Hold assets jointly with one or more children
    - Creditor risks
    - No full step up in basis
- Payable on Death Account
  - Also known as POD or TOD account
- Living Trust
  - A properly funded Living Trust avoids probate entirely

**Remember:** a Will does NOT avoid probate

# How Does a Living Trust Work?

The concept of a living trust is not difficult. All assets are transferred into your living trust by **re-titling the asset** in the name of the trust. Once the assets are titled in the name of trust, the trust document controls what happens to those assets upon your death. The assets inside the trust **avoid probate entirely at your death and can be distributed to your loved ones in a relatively short time.**



# Tax Considerations

- Property Tax (Propositions 13 and 19)
  - Real Property passing to children may keep the same tax rate under certain circumstances
- Capital Gains Tax
  - Gain = difference between sale price and basis
  - 100% Step-Up in Basis for assets in trust
  - Only Partial Step-Up for assets held jointly
- Estate Tax (also known as the “death tax”)
  - \$12,060,000 million estate tax exemption per person
    - Married couples can double this amount through the use of a Living Trust or Portability
    - 40% estate tax rate for amounts over

# Final Thoughts...

- Maintain an organized inventory of your assets and debts
- Thoroughly think through the individual(s) you name as your agent/executor/trustee
- Seek the help of an experienced estate planning attorney who can prepare the necessary documents and with whom you feel comfortable
- Don't wait!

# I want to get started...

## What should my next step be?

Call Holly Nabiey at (714) 282-7488 to schedule a free consultation to discuss creating your estate plan or to review an existing estate plan

- First meeting: no cost, no obligation
- Fixed-fees for a complete custom estate plan
- Usually a two (2) appointment process; generally takes two weeks to a month to complete your estate plan