

“It's Your Estate” WILLS & TRUSTS 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 13 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

Durable Power of Attorney

- A Durable Power of Attorney is a document in which you name an “Agent” to act on your behalf with respect to the management of your personal and financial affairs
- For example, an Agent could do the following:
 - Pay your bills, file your taxes, invest your assets, manage your IRA's / 401k, etc.
- Springing vs. Non-Springing
- California Uniform Statutory Power of Attorney (CPC Section 4401) (“Gold Standard”)

Durable Power of Attorney: Why is it so important?

- Advances in technology and medicine allow people to live longer than they ever did before:
 - Average Life Expectancy in 1930:
 - Male: 58 years
 - Female: 62 years
 - Average Life Expectancy today:
 - Male: 77
 - Female: 82
- With advanced age, there is a much higher likelihood of mental illness (Alzheimer's Disease, Dementia, etc.) and thus a greater need to plan for incapacity.

Advance Healthcare Directive

- An Advance Healthcare Directive is a written document in which you name an “Agent” (i.e. spouse, sibling, child, friend) to make medical decisions for you should you be unable to make such decisions for yourself.
 - Life Support Provisions (feeding tube, breathing tube/ventilator, pain medication, etc.)
 - Burial vs. Cremation
 - Organ Donation

Advance Healthcare Directive: Why is it so important?

- *Case of Terri Schiavo:*

Terri and Michael Schiavo married in 1984. After six years of marriage, at the age of 27, Terri suffered a heart attack and was placed on life support. She remained unconscious and on life support for eight years. Michael then petitioned the court for life support to be discontinued. A bitter legal battle between Michael and Terri's parents ensued. Between 1998 to 2005, both parties endured 14 appeals and countless hearings, until the court finally upheld the decision to discontinue life support in 2005.

- Moral of the Story?

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...

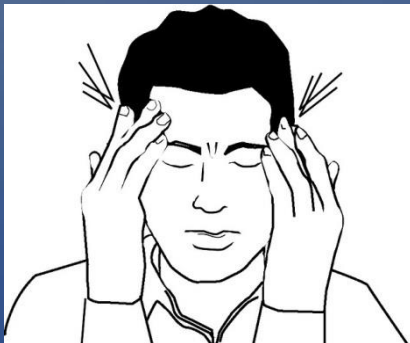
- Probate referee must be appointed
- Assets must be inventoried and appraised
- Creditors must be notified and paid
- Court and administrative costs must be paid
- Mandatory attorney's fees must be paid

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

** Size of estate is based on GROSS value, not NET

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”)
 - \$12,900,000 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