

**IT'S YOUR ESTATE - OVERVIEW AND ESTATE PLANNING UPDATES**

**1. What is an estate plan?**

- ✓ An estate plan refers to a collection of documents executed for the purpose of planning for your death or incapacity.
- ✓ Most estate plans include the following documents:
  - ✓ Trust
  - ✓ Assignments
  - ✓ Certificate of Trust
  - ✓ Pour-Over Will
  - ✓ Advance Health Care Directive
  - ✓ Power of Attorney
  - ✓ Nomination of Conservator
  - ✓ Nomination of Guardian (if minor children)
  - ✓ Deeds to transfer property to Trust

**2. Who needs an estate plan?**

- ✓ Everyone!
- ✓ Families with minor children
- ✓ Individuals or couples who own real property in California
- ✓ Spouses with children from prior relationships
- ✓ Families with disabled children
- ✓ Individuals and couples with cumulative assets over \$184,500

**3. Why do you need an estate plan?**

- ✓ To avoid probate
- ✓ To avoid conservatorship
- ✓ To reduce stress for your loved ones in the future
- ✓ To specify funerary arrangements
- ✓ To clearly dictate what will happen to your assets on your death

**4. What is probate?**

- ✓ Probate is the process of administering a deceased person's estate to their ultimate heirs or beneficiaries.
- ✓ Facts about probate
  - i. It is court-supervised (court scrutinizes the personal representative's actions)
  - ii. It is time-consuming (1-2 years, on average)
  - iii. It is costly (\$1,000,000 estate = at least \$23,000 in attorney fees)

**5. Statutory Fees for Probate Administration**

- ✓ Probate Code §§10800 and 10810 and sets forth the following fees for the personal representative and his/her attorney as follows:
  - 4% of the first \$100,000

3% of the next \$100,000  
2% of the next \$800,000  
1% of the next \$9,000,000, etc.

## 6. Example of Statutory Fees

- ✓ A \$1,000,000 estate would incur at least **\$23,000** in attorney fees.
- ✓ This same amount could also be taken by the personal representative.
- ✓ This means that probate would automatically result in **\$46,000** in fees paid to the personal representative and his or her attorney.
- ✓ Attorneys and personal representatives can request additional fees for work outside the traditional scope of statutory services.

## 7. Cautionary Tale – Donald and Sally Smith

- ✓ Donald Smith executed a Trust in 1991. Donald was unmarried at the time. Donald's half-siblings were listed as the beneficiaries.
- ✓ Sally Smith married Donald in 2000.
- ✓ Donald never made changes to his Trust.
- ✓ Donald talked about listing Sally as his beneficiary, but died of cancer in 2023 without executing any updated documents.
- ✓ Sally is now litigating with Donald's siblings over the Trust.
- ✓ This could all have been avoided if he had executed an amendment.

## 8. Cautionary Tale – Sonia Henson

- ✓ Husband inherited property from his mother's estate. He and his wife lived in this property for over 20 years. He told her that he wanted her to have the house when he died, but never signed any documents.
- ✓ Husband had a child from a prior relationship.
- ✓ When Husband died, because he had no estate plan, Wife had to probate his estate and obtain a \$150,000 loan to buy out Husband's child.
- ✓ Without an estate plan, separate property passes 50% to the surviving spouse and 50% divided evenly among children (if any).

## 9. What is excluded from probate?

- ✓ **Non-Probate Transfers.** Any assets passing through a transfer-on-death mechanism or by beneficiary designation.
- ✓ **Trust Assets.** Any assets held in the name of a Trust on the passing of the Settlor.
- ✓ **Community Assets.** Generally, community property passes to a surviving spouse.

## 10. What is a conservatorship?

- ✓ A conservatorship is essentially a guardianship for an adult who cannot make their own medical or financial decisions.
- ✓ It can cost as much as \$10,000 to establish a conservatorship.
  - i. This amount does not include ongoing administrative costs.
- ✓ Conservatorships are heavily scrutinized by the court.
- ✓ No privacy – much of your medical and financial information is public record and can be accessed by anyone.

## 11. Fees in Conservatorships

- ✓ Conservator can have his or her attorney fees paid from the Conservatee's funds
- ✓ Conservatee will be assigned an attorney at the outset
- ✓ Conservatee's counsel will also be paid from Conservatee's funds

- ✓ Expenses of administration are paid from Conservatee's funds
- ✓ Litigation between family members increases all costs dramatically

## **12. Some options to consider to avoid litigation**

- ✓ Use Private Professional Fiduciaries
- ✓ Avoid Co-Trustees or Co-Agents

## **13. Additional considerations for estate planning**

- ✓ Distributions to disabled beneficiaries
  - ✓ Distributions can be detrimental to recipients of SSI, SSDI, and other public benefits
  - ✓ Consider adding a special needs sub-trust
- ✓ This will prevent public benefits from being impacted by a distribution
  - ✓ Distributions to minors
  - ✓ Consider holding a minor's interest in trust until they reach an appropriate age
  - ✓ Provisions can be customized to suit your preferences

## **14. Updates to the Law**

- ✓ **Federal Estate Tax Exemption**
  - i. Currently \$12,920,000 per person through December 31, 2025
  - ii. Effective January 1, 2026, Federal Estate Tax Exemption will be reduced to around \$6,000,000.
- ✓ **Proposition 19**
  - i. Effective for deaths after February 1, 2021
  - ii. Property passing from parents to children will be reassessed on the death of the parent unless 1) it was the principal residence of the parent and 2) it becomes the principal residence of the child within 1 year of date of death.

## **15. Cost comparison**

- ✓ **Conservatorship**
  - i. \$10,000 to \$500,000
  - ii. Cost varies by complexity and whether matter is litigated
- ✓ **Probate**
  - i. \$23,000 in attorney fees for a \$1,000,000 estate
  - ii. Personal representative can take same amount as attorney

## **16. Estate plan:**

- ✓ \$2,500 to \$5,000

**Q: I already have an estate plan. Do I really need to update it?**

**Q: When should I make an appointment with an estate planning attorney?**

- ✓ Marriages
- ✓ Births
- ✓ Deaths
- ✓ Divorces
- ✓ Sale or acquiring of property
- ✓ Every 5 years
- ✓ If your Trust is 25 pages or longer