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ESTATE PLANNING & BUSINESS LAW

It's Your Estate!

Overview & Estate Law Changes Workshop*

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Disclaimer



The information included in this presentation is educational in nature and is not intended to be legal advice or relied upon for any purpose.

The answers to any questions will be general information and not legal advice directed at a specific individual or situation.

If you have a particular issue or question, I recommend you speak with an attorney who specializes in the area of law pertinent to your situation.

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AGENDA



This session is intended to help you understand the following basic estate planning:

- 1. What is Estate Planning and Who Needs It**
- 2. The Importance of Asset Titling**
- 3. The Advantages and Disadvantages of Probate**
- 4. Types of Wills and Intestate Succession**

What is Estate Planning?

- **Plan for Best Use of Assets During Owner's Lifetime**
 - Kid's education/Income for retirement
- **Control Distributions at Death & Plan for Possibility of Incapacity**
 - Plan for your surviving spouse
 - Control income to your kids, grandkids & charities
- **Eliminate or Decrease Taxes, Costs and Professional Fees**
 - Reduce capital gains tax on a sale of a business or appreciated asset
 - Eliminate or decrease estate tax by planning in advance



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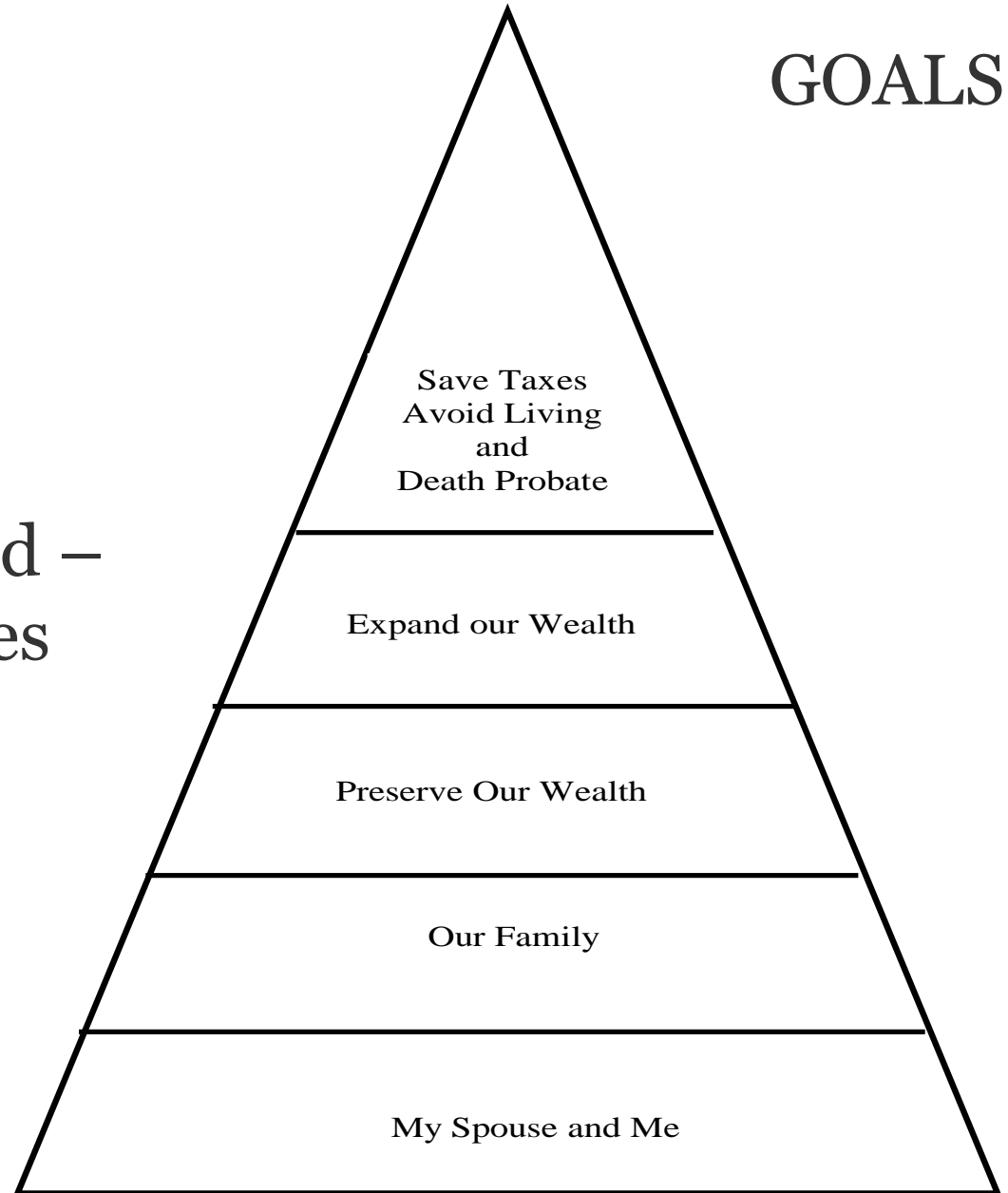
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GOALS

Planning Pyramid – Married Couples

Most Important Goal →



Who Needs An Estate Plan?



Persons who have one or more of the following should consider Estate Planning:

1. Spouses
2. Minor children
3. Dependents (parents, handicapped individuals, and children)
4. Assets over \$184,500 in California
5. Specific items of personal property that they want to go to someone in particular (e.g., jewelry, antiques, art)
6. Charitable objectives
7. Issues that need to be dealt with after their death: providing for unrelated persons, businesses, pets, special needs

What You Can Expect When You Meet with an Attorney to Discuss Estate Planning



- 1. Initial Consultation: Getting to know each other**
 - Initial Client Handout / Ask First Form
- 2. Designing your Estate Plan**
 - Customization to your Goals
- 3. Review and Signing Ceremony**
 - Review the Documents
 - Sign with a Notary
- 4. Funding your Trust**
 - Transfer Title to Assets to your Trust or Nominate Beneficiaries
- 5. Trust Maintenance**
 - Updating Trust based on Changes in Life and Laws
 - If your trust is not updated and after-acquired assets are not properly transferred to your trust, your estate plan will not work as planned.

Basic Estate Planning Documents

- Last Will and Testament / Pour-Over Will
- Revocable Living Trust
- Health Care Power of Attorney/HIPAA release/Living Will
- Financial or Durable Power of Attorney
- Nomination of Conservator (usually in FPOA or HCPOA)
- Nomination of Guardian (usually in Will)
- Assignment of Personal Property



Titling Property in Your Estate:

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Joint-Tenancy with Right of Survivorship

- Joint Ownership- Same proportional right with right of survivorship
- Downsides:
 - Affects ability to transfer ownership of asset- one owner must get approval of other owner(s) to sell
 - Owners cannot give assets away to another person (goes to joint tenant)
 - No Double Step-Up in Property Tax Basis
 - Still a probate once second spouse passes for kids or heirs

Community Property with Right of Survivorship

- In California, spouses own 50% of assets (property, wages and salary) acquired by either spouse during the marriage
- Upside: Double step-up in tax basis
- Downside:
 - Upon divorce, community property is split 50-50, and
 - Still a probate once second spouse passes for kids or heirs



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Titling Property in Your Estate: Beneficiary Designation

- **Beneficiary Designations**
 - Life insurance, annuities, IRAs, Retirement Accounts pass to the beneficiary you designate on your form
 - Keep your Beneficiary Forms up-to-date
 - If you name “my estate” as a beneficiary you will have to go to probate
- **Pay-on-Death (POD)**
 - You can name a person on your bank accounts that you “Pay On Death” to to avoid Probate

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The Purpose of a Will



To provide instructions on the disposition of your assets at death.

Why:

Avoid Intestacy
Appoint Executor
Appoint Guardians

Types of Wills:

Holographic
Statutory
Witnessed Pour-Over-Will
Will with a Testamentary Trust

What is a Will?



A will can name who will receive assets when the owner dies as well as an executor who handles assets subject to the will.

It can also name a guardian for minor children.

A will only applies to assets in the probate estate and does not avoid probate if used as the estate planning mechanism.

Types of Wills

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- **Formal Will:**
 - A will must be in writing, signed and dated by the person creating it in the presence of two valid witnesses (disinterested, must be 18)
- **Holographic:**
 - Self written in own handwriting (with testamentary capacity)
- **Form Statutory Will**
 - https://www.calbar.ca.gov/Portals/o/documents/CAStatutoryWillForm_ab_1986_bill_20100715_chaptered.pdf
- **Pour-Over Will**
 - In conjunction with a trust and pours over to trust

Downfalls of a Will

- Can cause Probate
- A Will does not protect against creditors, lawsuits or failed marriages.
- No continued control over your assets
- Time consuming (1-2 years typically)
- Not private
- Costly – statutory fees



WHAT IS PROBATE?

- Legal process for the administration of an estate
- Requires an executor or personal representative
- The probate estate includes all assets of the deceased for which there is no “probate avoider”
- If there is not a Will, all Assets Distributed under intestate succession
- Proceedings and Asset Information is Public
- All your Debts and Taxes are Paid
- Creditors can come forward and have a forum to get paid



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HOW MUCH DOES PROBATE COST?

CALIFORNIA STATUTORY FEES & COMMISSIONS

[Probate Code Section 10810]

The personal representative (executor or administrator) handling the probate of an estate and the attorney representing the personal representative are each entitled to the statutory fees shown on this schedule.

Computations:

4% on first \$100,000

3% on next \$100,000

2% on next \$800,000

1% on next \$ 9,000,000 (.5% on next \$15,000,000)

Example: \$1,000,000 gross estate probate fee to attorney is \$23,000 plus \$23,000 to executor, plus court costs, publication, probate referee fee, any extraordinary fees!



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PROBATE ESTATE ADMINISTRATION

Every probate estate is unique, but most involve the following steps:

- Filing of a petition with the proper probate court.
- Notice to beneficiaries under the Will or to heirs at law (if no Will exists).
- Petition to appoint Executor (in the case of a Will) or Administrator for the estate.
- Inventory of estate assets by Executor/Administrator (valued by a California Probate Referee).
- Notice to Creditors- 4 months
- Appraisal of estate assets by Probate Referee.
- Payment of estate debts to rightful creditors.
- Sale or transfer of estate assets.
- Payment of federal estate and income taxes, if applicable.
- Final distribution of assets.

www.scscourt.org a self-help website and information about probate

Advantages of Probate



- Proceedings Controlled by a Judge who controls family disputes
- Creditors must submit claims within a 4-month period provided they have been notified, so sometimes easier to deal with creditors
- Executor may have to post a bond and must provide an accounting

Disadvantages of Probate



- High Cost – almost always higher than creating and administering a trust
 - Roughly \$23k to probate a million dollar estate
 - Usually around \$5,000 to do trust administration
- Long Time to Probate versus trust administration
 - Probate: can be around 1-2 years
 - Trust: 120-day notification period to contest in a trust
- Most estates do not need court supervision
- Not Private
- Property located in another state

Avoiding Probate in California



1. Trusts - Revocable or Irrevocable
2. Joint Tenancy
3. Beneficiary Designation- IRA, Life Insurance
4. Pay on Death Designation (POD)
5. Husband and Wife as “Community Property with Right of Survivorship”
6. Small Estates Procedure by affidavit if less than \$184,500 (PC 13100), updated as of April, 1, 2022

What is a Trust

A Revocable Living Trust is created while you are alive. Your property and assets are transferred into and owned by the Trust, over which you retain full ownership and control. When properly drafted and executed, your Trust allows your assets to be efficiently distributed upon your death according to your instructions, while avoiding the costly and time-consuming probate process and the mandatory attorney fees associated with probate.

A Trust also contains your instructions for your own care and the care of your loved ones should you become disabled. And, it keeps your instructions and your financial affairs private, unlike a will. However, it can only accomplish these objectives if you properly draft, execute, and fund your Trust.

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Advantages of a Trust



Advantages:

- **Avoids Probate, if properly funded**
- **Can save Estate Tax**
- **Privacy**
- **Children or beneficiaries get assets when you want**
- **Control of Fees**

Disadvantages of a Trust



Disadvantages:

- **More expensive to set up initially**
- **More complicated**
- **No court oversight of Trustee**
- **May have to file 1041 trust tax returns on death of trust maker**

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Overview of Estate Tax



ESTATE AND GIFT TAXES

- **2023: Federal Lifetime Exemption is \$12.92 million**
- **Unlimited Marital Deduction**
- **Estate Tax is 40% (for assets over Lifetime Exemption)**
- **2023 Annual Gift Exclusion is \$17,000 per person**
- **CA does not have a state estate tax**

Changes in Law



- **Prop 19:** went into effect on Feb. 16, 2021 and made changes to property tax reassessment on transfers of real property for parent-child (Prop 58) and grandparent-grandchild (Prop 193)
- **IRS Revenue Procedure 2022-32:** effective July 8, 2022 – a surviving spouse may elect portability (IRS Form 706) up to 5 years (rather than 2 years) from deceased spouse's date of death
- **Sunset of the Federal Lifetime Exemption Amount** – beginning Jan. 1, 2026 the lifetime amount an individual may give free of estate tax (includes during life and at death) will decrease from \$12.92 million to \$5.94 million* per person, if there is no change in law.

*Indexed for inflation, likely around \$6-7 million

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Remember the #1 Goal of Estate Planning!

While saving taxes is a part of the plan,
YOUR GOALS and OBJECTIVES
must be carried out in your estate plan!





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QUESTIONS?



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