Financial & Estate Literacy Workshops: Wills and Trust

Sea Country Community Center
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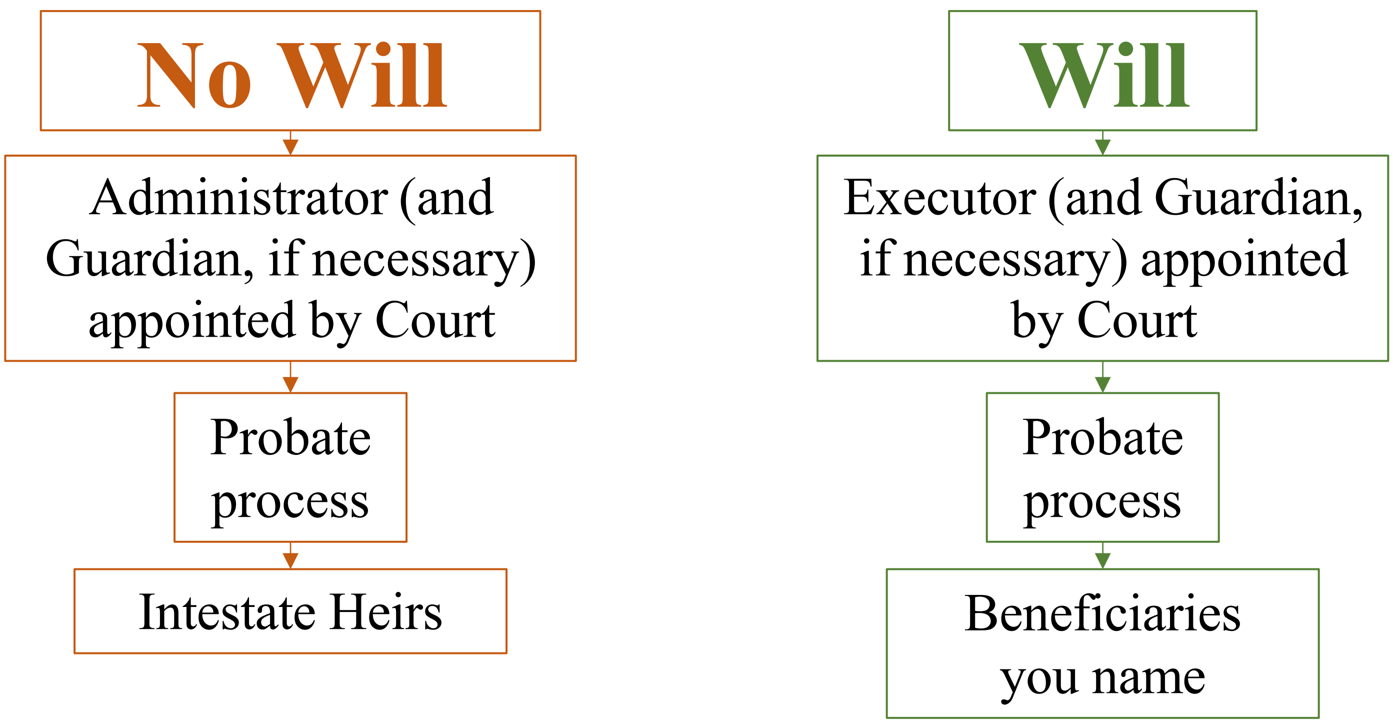
What is Probate?

- **Probate is the court-supervised process of distributing a decedent's assets after death.**
- **Probate happens if you have No Will or only a Will, and your gross assets exceed the threshold (currently $184,500*).**



Estimated Cost of a $1,000,000 (FMV) Probate Estate

Executor/Administrator's Fees

4% of the first $100,000=	$4,000
3% of the second $100,000=	$3,000
2% of the remaining $800,000=	$16,000
Total Executor Fees=	$23,000

Attorney's Fees

4% of the first $100,000=	$4,000
3% of the second $100,000=	$3,000
2% of the remaining $800,000=	$16,000
Total Attorneys Fees=	$23,000

Other Fees

Filing Fees for Petitions=	$1,200
Probate Referee fee (0.1%)=	$1,000
Bond, Notice and Publication (approx.)=	$5,000
Total Other Fees=	$7,200

TOTAL FEES

$53,200

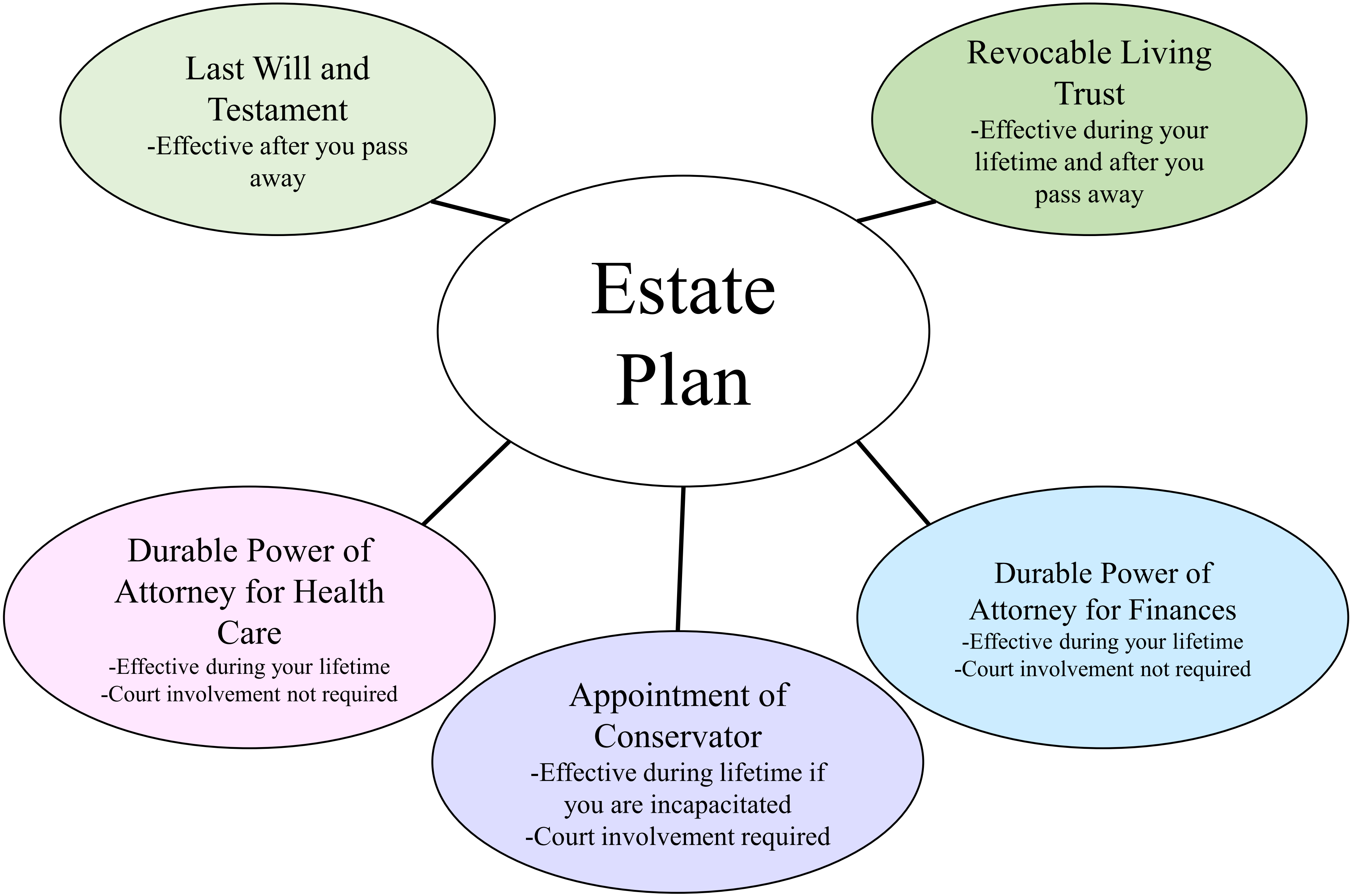
Probate Time

At least 1.5 years

*depends on County

What can you do to avoid a Probate?

- **Pay-on-death/transfer-on-death designations**
- **Beneficiary designations**
- **Titling (e.g., joint tenancy) - Drawbacks:**
  - **Possible gift tax.**
  - **May cause issues between children.**
  - **Exposes the property to sale by child, child's creditors, and child's divorce.**
  - **Child may lose step-up in cost basis resulting in capital gain.**
- **Trust(s)**


Last Will and Testament
-Effective after you pass away
Revocable Living Trust
-Effective during your lifetime and after you pass away
Estate Plan
Durable Power of Attorney for Health Care
-Effective during your lifetime
-Court involvement not required
Appointment of Conservator
-Effective during lifetime if you are incapacitated
-Court involvement required
Durable Power of Attorney for Finances
-Effective during your lifetime
-Court involvement not required

Durable Power of Attorney for Health Care

or Advance Health Care Directive

- The Durable Power of Attorney for Health Care gives a trusted person the power to make medical decisions if you become incapacitated.
- Can give specific or general directions to your agent for your medical care, whether you wish to reside in a facility, end of life, organ donation, and wishes regarding burial, cremation, and memorial services.
- Important questions when drafting:
  - WHO is being appointed to act?
  - WHAT powers are you giving them?
  - WHEN does the document become effective?

Durable Power of Attorney for Finances or General Power of Attorney

- **The Durable Power of Attorney for Finances gives a trusted person the power to make financial decisions if you become incapacitated.**
- **Can include restrictive or broad powers over your Non-Trust Assets**
- **Important questions when drafting:**
  - **WHO is being appointed to act?**
  - **WHAT powers are you giving them?**
  - **WHEN does the document become effective?**

Revocable Living Trust

- **A Trust is a legal entity that owns your property.**
- **Why is a Trust important?**
- **Assets in a Trust are not subject to Probate.**
  - **A Trust can be structured to hold and protect assets for your beneficiaries.**
  - **Tax Planning to avoid estate taxes.**
  - **Trustee is appointed to manage, administer, and distribute assets.**

Types of Trusts

- **Revocable Trust – Can be changed at anytime by the Grantor (creator). A Revocable Trust is usually the main component of an estate plan. Usually becomes irrevocable upon the Grantor's death.**

- **Irrevocable Trust – Cannot be changed as easily.**
  - **Can be modified or terminated during Grantor's lifetime if the Grantor and all beneficiaries agree, and after Grantor's death with court approval.**
  - **Removes assets from your estate as you no longer control the asset.**
  - **Compressed tax rates - highest rate at $13,451 of income.**
  - **Separate Tax returns**
  - **Trust Protector**

Benefits of Revocable Trust

- **If all assets are titled or designated to your Trust or a beneficiary that survives your passing, a Trust avoids conservatorship at incapacity and probate at death.**
  - **Assets are distributed without court involvement unless there are objections.**
  - **If Grantor/Trustee becomes incapacitated, a named successor Trustee takes over management of the assets without court involvement.**
  - **After death – no probate. You can dictate the distribution method for the assets which may protect beneficiary from himself/herself, creditors, predators, divorce, or from losing government benefits.**
  - **Privacy - In general, Trust provisions are not made public.**

Drawbacks of Revocable Living Trust

- **Cost to set up.**
- **No oversight.**
- **Trust Administration at death, but typically less than probate.**

Funding the Trust
An Essential Step

- "Funding" a trust means assets must be re- titled from your name as an individual to your name as Trustee.
- If you do not fund the Trust, your heirs may have to administer your assets in a formal probate or other petition with the Court AND a Trust administration. This wastes time, money, and can be easily avoided.
- How to transfer title is different for each type of asset.

Real Property, Timeshares, and Co-ops

- **Real Property – Title to your home should be in your Trust. Your attorney can advise the best method to transfer to avoid real property tax reassessment and capital gains.**
- **Rental Properties – Consider creating a corporate entity to hold these properties to provide additional protections for the Trust and beneficiaries. Interest in the entity would be titled to the Trust.**
- **Timeshare Interests – Title to Trust. Each Timeshare Company is unique.**
- **Co-op – Title to Trust. An Attorney Opinion Letter may be needed to re-issue Co-op certificate.**

Bank and Brokerage Accounts

- **Should be retitled in your name as Trustee of the trust.**
- **If an account cannot be titled to the Trust, it should have a pay-on-death (POD) or transfer-on-death (TOD) beneficiary designation.**
- **Can name Co-Trustee as to one or more accounts.**
- **Household checking account.**

Other Common Assets

- **Business interests – Interest in sole proprietorship, corporation, professional corporation, limited liability company, and/or general or limited partnership should be issued or assigned to the Trust.**
- **Safe Deposit Boxes - Re-title in name of trust and/or add a joint owner.**
- **Promissory Notes – Sign assignment to trust.**
- **Paper Savings Bonds – Re-title in name of trust.**
- **Cars and Vessels – Assign to Trust or Pass free of probate using DMV Affidavit.**
- **Vessels Documented by the U.S. Coast Guard – Re-title in name of trust.**
- **Mobile Homes - Re-title in name of trust.**
- **Tangible Personal Property – Sign general assignment to trust. If you have specific items to be distributed, discuss it with your Attorney.**

Notable Exceptions: Retirement Plans and Life Insurance

- **Retirement plans and life insurance generally must be owned by an individual (except life insurance in an ILIT).**
- **You can name your trust as beneficiaries by properly executing and submitting a beneficiary designation form with the Retirement or Life Insurance Company. Discuss with your attorney the best way to handle the beneficiary designations.**

What happens if assets are not in Trust?

- **Power of Attorney – Agent can transfer assets to trust while Grantor is living.**
- **Small Estate Affidavit – Avoids probate for assets up to:**
  - **$166,250.00 for people that passed away prior to April 1, 2022;**
  - **$184,500 for people passing away between 4/1/2022 and 4/1/2025; or**
  - **$208,850 EXLCUDING up to $750,000 of the value of their residence for people passing away after 4/1/2025.**
- **Heggstad/Ukkestad/Spousal Property Petitions – Court petition process to avoid full probate at death.**
- **Pour Over Will – Pours over assets into the trust so they can be distributed according to the trust's terms. Requires a probate AND trust administration.**

Gift and Estate Tax

- **Federal Gift Taxes are due for any gifts over the annual exclusion (2025 is $19,000). A Gift Tax Return needs to be filed.**
- **Federal Estate Taxes are due upon your passing if your estate is over the exemption (2025 is $13,990,000). You may still want to file a return if the estate is under the exemption, discuss this with your Attorney.**
- **State Estate Tax may be due. California currently does not have an estate tax.**
- **Types of gifts generally exempt from gift tax:**
  - **Gifts to spouse and charities.**
  - **Gifts to any individual under the annual exclusion.**
  - **Direct payments for tuition or medical care for any individual.**

Basis Adjustment – Step Up or Step Down

- Joint Tenants – partial adjustment at first joint tenant's death
- Community Property – full adjustment at first spouse's death
- Solely Owned
  - Gift during life –Basis is set at time of gift and reported on gift tax return
  - Inherit at death – Full step up or step down
- From irrevocable trust – no adjustment

Marital Sub-trusts:

- **A Trust – Commonly referred to as Survivor's Trust (Revocable during surviving spouse's life).**
- **B Trust – Commonly referred to as Residual Trust, Bypass Trust, Credit Shelter Trust, and/or Exemption Trust. This Trust can hold up to deceased spouse's Estate Tax Exclusion Amount ($12,920,000 in 2023)**
- **C Trust – Also referred to as a QTIP Trust or Marital Trust. Used to control decedent's property after death.**

Sub-trust Considerations for Spouses – Simplicity vs Control

- **Sub-trust administration – Allocate assets between sub- trusts, obtain tax ID number for irrevocable trust, and prepare Form 1041 annually for irrevocable trust.**
- **Power of appointment – Can give the surviving spouse (or another person) power to change sections of the Trust. This can be broad or limited, discuss this with your Attorney.**
- **Allocation of assets - Determined after the first death. Discuss this with your Attorney.**

How do you want to distribute assets to your Children and Other Beneficiaries?

- **Outright**
- **At ages/stages:**
  - **Distributions for health, education, maintenance, and support**
  - **Principal at specific ages**
  - **Amounts for specific purposes**
  - **Special Needs**

Additional types of Trusts

- **Irrevocable Life Insurance Trusts (ILIT)**
- **Charitable Remainder Trusts (CRT, CRAT, CRUT)**
- **Grantor Retained Trusts (GRAT, GRUT)**
- **Qualified Personal Residence Trust (QPRT)**
- **Charitable Lead Trust (CLAT, CLUT)**
- **Irrevocable Trusts for Children/Grandchildren (Crummey Trusts)**
- **Intentionally Defective Grantor Trusts (IDGT)**

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