Wills & Trusts

Attorney Kathleen Castro & Attorney Shawn Wachter
Castro Law PC
Placentia California
1 (888) 560-2743

Introduction to Trusts & Estates

- Estate Planning: The process of organizing your assets and making decisions about what will happen after death.

- Key Terms
  - Trust: A legal entity that holds assets for the benefit of beneficiaries.
  - Probate: The legal process of validating a will and distributing assets.
  - Intestate: Dying without a will; state laws determine how assets are distributed.

What Happens If You Don't have a Will?

- Intestate Succession:
  - If you die without a will, California law decides how your assets are distributed.
  - Assets go to spouse, children, and other relatives in a set order of priority.
- Loss of Control: You have no say in who inherits your assets.
- State Control: If no eligible relatives are found, your estate may go to the state.

Why Should You Avoid Probate

- **Time-Consuming:** Probate in California can take 9 months to 2 years, depending on complexity.
- **Expensive:**
  - Statutory attorney fees based on estate value (e.g., 4% of the first $100,000).
  - Probate court fees also apply, cutting into the estate's value.
- **Public Process:** Probate records are public, meaning anyone can access details of your estate.

How a Trust Avoids Probate

- **Trust Assets:** Assets placed in a trust do not go through probate.

- **Private Transfer:** The distribution of trust assets is done privately, without court involvement.

- **Immediate Effect:** Trusts take effect during your lifetime and continue after death, allowing seamless transfer of assets.

Revocable Living Trusts: Key Benefits

- **Avoid Probate:** Assets in a revocable living trust pass directly to beneficiaries, skipping the probate process.

- **Flexibility:** You can change, add, or remove assets, and even cancel the trust at any time.

- **Control During Life:** You manage the trust as the trustee while alive, and appoint a successor trustee to handle it after death.

Irrevocable Trusts in California

- **Protecting Assets:** Irrevocable trusts safeguard assets from creditors and estate taxes.

- **Cannot Be Changed:** Once created, this type of trust cannot be altered or revoked.

- **Estate Tax Shield:** It helps reduce estate taxes and provides additional security for your assets.

Steps to Set Up a Trust

1. **Identify Assets:** Make a list of all your assets (homes, bank accounts, investments).
2. **Choose a Trustee:** Select a reliable trustee (often yourself, with a successor for after your death).
3. **Draft the Trust:** Work with a California estate planning attorney to create the trust.
4. **Fund the Trust:** Transfer titles of your assets (property, bank accounts) into the trust's name.
5. **Regular Updates:** Review and update the trust regularly to reflect any changes in your assets or wishes.

Differences Between a Will and a Trust

- Probate:
  - A will must go through probate; a trust avoids it.
- Control:
  - A trust allows you to control asset distribution while you are alive; a will only takes effect after death.
- Cost:
  - Trusts require upfront legal fees to establish but save money by avoiding probate, while a will might cost less to set up but lead to higher probate costs later.

Why Avoid Probate?

- **Statutory Fees:** Attorney fees can be 4% of the estate's first $100,000, decreasing as the value increases but still costly.

- **Delays:** Complex estates can be tied up for over a year in probate court.

- **Public Scrutiny:** Probate records are open to the public, making your estate vulnerable to public viewing.

Other Ways to Avoid Probate

- **Joint Ownership:** Assets held in joint tenancy pass directly to the surviving owner, avoiding probate

- **Beneficiary Designations:** Life insurance, retirement accounts, and “pay-on-death” accounts bypass probate when beneficiaries are named.

- **Small Estate:** California’s small estate threshold (currently $184,500) allows for a simplified process, avoiding probate for smaller estates.

Times You Should Review Your Estate Plan

1. You are having your first child (name guardians, trustee for their trust)
2. You are thinking about divorce (do it before you file or can’t change it until d is final)
3. You have gotten divorced (update bene design’s, name change)
4. Your child gets married (create trust for child, protect assets from divorce)
5. Your bene develops creditor or substance abuse problems (trustee discretion)
6. Your named executor/successor trustee or benes die
7. Your young family member becomes a responsible adult (reevaluate trustees)
8. New legislation is passed (estate tax laws change all the time)
9. You come into a windfall or inheritance
10. You can’t find your original trust/will
11. You buy property in another country or move to another country/state
12. Your family and friends become enemies (include no-contest provisions)
13. You are thinking about getting remarried
14. Every 3-5 years (good practice)
15. Your spouse passes away

Common Estate Planning Mistakes

1. Not having an estate plan
2. DIY’ing your estate plan
3. Not funding your assets into the trust
4. Not naming contingent benes
5. Not planning for disability
6. Not pre-planning or nursing home care
7. Choose the wrong person to handle your estate
8. Not transferring your life insurance to a life insurance trust
9. Not making gifts to reduce your estate tax
10. Procrastinating until it’s too late
11. Neglecting to review and update your plan regularly
12. Naming co-agents to serve
13. Leaving loved ones in the dark
14. Telling loved ones too much (or giving them copies of your ep docs)
15. Keeping EP docs in a safe deposit box or safe (no one can access)
16. Not taking steps to protect children’s inheritance in blended families
17. Joint accounts: adding kids to your bank accounts (creditors, ownership issues)
18. Putting your kids on title to your home/real property during your lifetime
19. Overlooking digital assets

Things You Should Do

1. Consider restating any pre-2013 AB Trusts
2. Carefully evaluate whether to have Trust as IRA bene (stretch IRA rules/Secure Act)
3. Revisit all bene designations (primary and contingent)-and elections for issue of predeceased benes
4. ERISA (401k/employee retirement plans)
5. Beware “affluenza”: (divide and distribute vs. leave in trust)-discretionary/incentive trusts
6. Be cautious of late-state EP changes (capacity issues, certificates of independent review)
7. Portability; 706 filing at death of first trustor
8. Digital estate planning: (pswds, log-ins, social media accts, crypto, contacts, email, cloud, fin’l)
9. Consider professional trustees on larger estates
10. Leaving kids/gkids inheritance in irrevocable trusts: preservation of wealth, asset protection, divorce, remarriage, disability, business failures, creditor issues, lawsuits/liability,

Conclusion: Why Set Up a Trust

- **Avoid Probate:** Save your loved ones time, money, and stress.

- **Ensure Privacy:** Keep your estate and financial details private.

- **Maintain Control:** Dictate how and when your assets are distributed with full control during your life.