IT'S YOUR ESTATE

WEEK 3-WILLS & TRUSTS

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Fullerton Community Center
340 W. Commonwealth Ave.

Presented by
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IMPORTANT TAX TERMS

GROSS ESTATE - The grand total of everything you own on your date of death, without subtracting any debt. In probate, your probate fee will be a percentage of your gross estate. (Note: life insurance, retirement accounts – anything that has a named beneficiary – will not be part of probate. BUT for estate tax purposes, the IRS will include life insurance and retirement accounts to calculate your gross estate)

ESTATE TAX - This is a one-time tax on your estate when you die. The tax applies only to the portion of your estate that exceeds the Federal Estate Tax Exemption amount.

TAXABLE ESTATE - The portion of your estate that the IRS can tax for estate tax ("death tax"). Calculated: gross estate **minus** debt **minus** the federal estate tax Exemption amount

COST BASIS - Essentially, the purchase price you paid when you acquired property that has appreciated in value (your house, stock) Talk to your CPA about calculating the cost basis of your home to include major improvements and subtract allowable depreciation.

CAPITAL GAINS - The profit you make when you sell appreciated property. Calculated: sale price **minus** your cost basis

STEPPED-UP BASIS - If you inherit an asset from someone after they die, your cost basis in that asset is its fair market value as of the deceased person's date of death. If you give the asset away as a gift during life, the person who receives it takes your original cost basis. Note: Putting a child on title to your house as a joint tenant = a lifetime gift.

FEDERAL ESTATE TAX EXEMPTION - The amount you can pass on to your family with no estate tax. Currently $13,610,000 for an individual and $27,220,000 for a couple. Scheduled to go down to $5,000,000 in 2026 per person if Congress does not act.

ANNUAL GIFT TAX EXCLUSION - Amount you can gift each year per person with no tax consequences. You and your spouse can each gift $18,000 per person ($36,000 as a couple) to as many people as you like. A good way to reduce the size of your taxable estate.

1. What's your "estate"?

Everything you own

2. What are you planning for?

A. For two events – incapacity and death

B. To minimize Estate Taxes and Capital Gains Taxes

C. To Avoid Probate, because it is: Expensive, Time-Consuming, and Public

3. What does "planning" consist of?

A. Preparing legally enforceable documents that contain your INSTRUCTIONS about what you want to happen with your estate in the event of your incapacity and in the event of your death.

(1) Will (death only)

(2) Living Trust (death & incapacity)

(3) Durable Power of Attorney (incapacity only)

(4) Advance Health Care Directive (incapacity & handling remains)

B. Holding TITLE to your property in a way that will:

(1) avoid probate

(2) give legal authority to people you have chosen so they can handle your estate when you're incapacitated and after you die.

4. Why do I need a will AND a trust?

A. Will alone is not enough

(1) $166,250 limit on a will – won't keep you out of probate

(2) Doesn't handle incapacity planning while you're alive

(3) Can't control money for children after your death

B. Will is useful to do the following:

(1) Establish your intent to leave everything to your trust

(2) Pass tangible personal property after you die

(3) Name Guardians for minor children

5. What is a "living"trust?

A. Legally enforceable written instructions that you create that:

(1) tells how your estate will be managed to take care of you if you are incapacitated

(2) tells how it will be managed and distributed after you die

(3) appoints the people who will have legal authority to carry out your instructions

B. Is enforced by the state of California

C. Is revocable – can be amended and revoked while you are alive

D. As of Jan.1, 2017, new Medi-Cal Estate Recovery Rules. Anything owned in your trust when you die cannot be reached by Med-Cal to pay Medi-Cal back for any benefits you received from Med-Cal

6. **The "players" in a revocable trust**

A. Trustor - the person who made the trust and owns the property in the trust. You are the trustor - that never changes.

B. Trustee - the manager of the Trust - the person who has legal authority to do business with the property that is in the trust
   (1) Original trustee - you are trustee while you are alive and capable of doing the job
   (2) Successor trustee(s) - person or people you nominate to take over the trustee job if you are incapacitated and when you die

C. Beneficiaries
   (1) people who have the right to get the benefits of the property that in the trust (income, principal)
   (2) While you are alive, you are the only beneficiaries of the trust.
   (3) Remainder beneficiaries - The people you name who will inherit your estate when you die. Remainder beneficiaries get what's left, if anything, when you die.

7. **Funding your Trust - TITLE!** (Title = legal ownership)

A. After you create your trust and sign it, you must CHANGE TITLE on real estate and accounts to make the trust the "owner"
   (1) Your Trust is used as a "straw man" to be the legal owner of your property
   (2) When you die, the owner of your property has not died. The trust still owns the property. All that is needed is for your successor trustee to become the new manager
   (3) Same for incapacity – your successor trustee will step in to take over management duties and will manage the trust to take care of you

B. Assets that will be owned by your trust:
  (1) Real Property (your house, rentals)
  (2) Investment Accounts
  (3) Cash Accounts
  (4) Stock
  (5) Business interests (LLC membership, partnership interest)

C. Assets that will not be owned by your revocable trust
  (1) Retirement Accounts
  (2) Life insurance (you can make the trust the beneficiary of a life insurance policy, but it won't be the "owner" of the policy. (But see life insurance trust, below)

8. Federal EstateTax Law

A. Exclusion Amount - the amount each person can leave at death with no estate tax. Estate tax will apply to anything you leave at your death over the exclusion amount

B. Old Estate Tax Law before recent changes
  (1) lower exclusion amount
  (2) "use it or lose it" exclusion amount

C. Recent Changes in Estate Tax Law
  (1) Much larger exclusion amount – $13,610,000 per person
  (2) Portability - Unused exclusion of one spouse is portable to surviving spouse ($27,220,000 for a couple)
  (3) Exclusion amount set to go back to $5,000,000 per person in 2026 ($10,000,000 for a couple)

9. Different kinds of revocable trusts:

A. A-B Trust for married couples
  (1) Very popular under old estate tax law before portability
  (2) At death of 1st spouse, trust is required to be split into 2 sub-trusts: A Trust for the Surviving Spouse's half of the trust, and B Trust for the Deceased Spouse
  (3) If you have an old A-B trust – check with an attorney to see if it still makes sense for you.

B. Disclaimer Trust
   (1) At first death, the whole trust stays with the surviving spouse, remains revocable
   (2) Surviving Spouse has option of disclaiming a portion of the trust and creating the A-B Trust

10. A-B Trust - Advantages & Disadvantages:

A. Advantages
   (1) B Trust is irrevocable - cannot be changed by surviving spouse
   (2) Can "lock" money up for children of one spouse in a blended family
   (3) Money in B Trust can never be looked at again for estate tax purposes after death of first spouse

B. Disadvantages
   (1) B Trust is irrevocable and is a separate taxpayer - Surviving Spouse has significant management duties
      (a) New Tax ID Number for B Trust
      (b) Must file income tax return for B Trust each year
      (c) Must account to beneficiaries of the B Trust
   (2) Capital assets in B Trust get limited step-up in basis - only as of the death of the 1st spouse
      (a) Can result in increased capital gains tax when B Trust asset is sold
      (b) Before new estate tax law, increased capital gains tax was considered a good trade-off for avoiding estate tax.

11. Disclaimer Trust - Advantages & Disadvantages

A. Advantages
   (1) easier to administer for surviving spouse
   (2) get full step-up in cost basis - reduces capital gains tax

B. Disadvantages
   (1) Deceased Spouse loses control. Surviving spouse can change the trust
   (2) In blended family, surviving spouse could cut out children of deceased spouse
   (3) If Surviving Spouse re-marries, new spouse could influence Surviving Spouse to change trust to the detriment of deceased spouse's children.

12. Irrevocable Trusts

A. Irrevocable Life Insurance Trust ("ILIT")

(1) Used to reduce the size of your gross estate for estate tax purposes

(2) Can use annual gift exclusion to pay for premiums

(3) Significant Administrative duties for Trustors

(4) Trust must purchase the insurance policy

(5) If you already have a large life insurance policy and you want to put it into an ILIT, you can do that but the estate tax protection won't kick in for 3 years after the transfer

B. Medi-Cal Qualifying Trust

(1) You permanently give up your ownership of your property to make you "poor enough" to qualify for Medi-Cal

(2) Restrictions on your ability to get money out of the trust. Easy to make a mistake. Check with Carl Lachman about his experience with this type of trust

(3) I don't do this kind of trust, but I can refer you to an attorney who does.

Some Risks of Owning Property in Joint Tenancy

1. **Only Delays Probate.** When either joint tenant dies, the survivor – usually a spouse or a child – immediately becomes the owner of the entire property. But when the survivor dies, the property still must go through probate. Joint Tenancy doesn't avoid probate; it simply delays it.

2. **Two Probates When Joint Tenants Die Together.** If both of the joint tenants die at the same time, such as in a car accident, there will be two probate administrations, one for the share of each joint tenant in the Joint Tenancy property as well as any other property they each may own.

3. **Unintentional Disinheriting.** With children from previous marriages, here's what could happen: the husband dies and the wife becomes the owner of the property; when the wife dies, the property goes to her children, leaving nothing for the husband's children. Even if husband and wife, joint tenants, have children together, here's what could happen: wife dies, husband gets all the joint property; husband remarries and holds all property jointly with second wife; husband dies; second wife becomes owner of the joint property and has no obligation to leave it to husband's children

4. **Right to Sell or Encumber.** Joint Tenancy makes it more difficult to sell or mortgage property because it requires the agreement of both parties, which may not be easy to get.

5. **Financial Problems.** If either owner of Joint Tenancy property fails to pay income taxes, the IRS can place a tax lien on the property. If either owner files for bankruptcy, the trustee may be able to sell the property even though the other joint tenant is not otherwise involved in the bankruptcy.

6. **Court Judgments.** If either joint tenant has a money judgment from a lawsuit entered against them, such as from a car accident, business dealings, or unpaid credit card debts, the holder of the judgment can execute the judgment against the Joint Tenancy property.

7. **Incapacity.** If either joint owner becomes physically or mentally incapacitated and can no longer sign his name, the Court must give its approval before any jointly owned property can be sold or refinanced – even if the co-owner is the spouse.

8. **Divorce.** Assets held in Joint Tenancy may be community property, even when the joint owners are not spouses. For example, if a father is a joint tenant with his son, and the son goes through a divorce, the jointly held asset may be included in the son's property settlement with his wife.

9. **Capital Gains Tax.** If a joint owner sells an asset after the death of the other joint owner, there will be capital gains tax on a portion of any profit. If an heir sells an asset that has been inherited, there is no capital gains tax on profit from the sale.

10. **Gift Taxes.** When you place a non-spouse on your property as a joint tenant, you make a gift of an interest in the property. For example, when a mother re-titles her $80,000 home in Joint Tenancy with her son, she makes a gift to her son. If the value of the gift is more than the $12,000 annual exclusion, a federal gift tax return must be filed. This may not be the most efficient use of her $12,000 annual exclusion. The main point is that the gift is unintentional and not carefully planned.

"Ask First!"

This form is to be filled out by any person who is offering legal, financial, retirement, insurance, accounting, estate, long-term care or similar planning services. Respond to ALL categories completely; sign and date at the bottom of the page.

① **MY EDUCATION-** I have achieved the following level of education (check HIGHEST level achieved):

☐ Some High School	☐ High School Diploma	☐ Bachelors Degree
☐ GED	☐ Some College	☑ Masters or other Advanced Degree

② **MY CREDENTIAL(S)-** I have the following specialized credential(s) and training (examples: CFP, ChFC, CLU, CPA, JD, MBA, years of relevant experience):

JD from the USC Gould School of Law - 1990

③ **MY RELEVANT LICENSE(S)-** I have the following license(s) giving me the legal authority to provide the services I am offering to you (examples: bar license (attorney); securities license; insurance license):

License Type	Covers What Activities	Issued By	License No.
LAW	Practice of Law in California	State Bar of CA	Bar # 151119

④ **LEGAL SERVICES-** (Check ONE):

☐ I DO NOT practice law, and the services I am offering to you do not involve practicing law.

☑ I DO practice law, and have an active license to practice law in California.

☐ I DO practice law, but DO NOT have an active license to practice law in California. I am, however, under the supervision of the following attorney who has an active license to practice law in California:

Name of attorney:	Telephone:
Address:	

⑤ **OUR BUSINESS RELATIONSHIP-** Check TRUE or FALSE:

☑ True / ☐ False: In our business relationship, I will at all times serve as a fiduciary and put your interests before my interests and those of my employer.

⑥ **MY COMPENSATION-** I will be paid in the following way (commission, fee, salary, etc.), by the named person or company, in connection with the services I am offering to you:

Way(s) I'll Be Paid	Payment Will Be Made By (name each person or company)
Fee – hourly / flat fee for Estate Plan	

⑦ **FINANCIAL PRODUCTS / AFFILIATED ORGANIZATIONS-** Check TRUE or FALSE:

☐ True / ☑ False: I offer or sell annuities, insurance, mutual funds or other financial products; or I am, or my employer is, affiliated with a person or organization that offers or sells annuities, insurance, mutual funds or other financial products.

⑧ ***I certify under penalty of perjury that the responses herein are true to the best of my knowledge.***

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