

# **Estate Planning Basics**

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# The Law Offices of Brian S. Mandel

- Personally Drafted Over 1500 Estate Plans
- Member of Speaker's Bureau of the State Bar
- Recognized by the State Bar as a **Certified Specialist** in Estate Planning



# What is an "Estate"?



CRC40	6 380	18401	↗ + 1,86%
SBF120	4 315	18401	↗ + 1,69%
SBF 250	4 042	18401	↗ + 1,55%
MIDCRC	2 667	18401	↗ + 0,10%
INDICE RM	4 450	18401	↘ - 0,66%



# Why Do Estate Planning?

- At Incapacity:

- Avoid Conservatorship
- Medical Decisions

- At Death:

- Control Who Receives Assets and When
- Pay Minimum Legal Fees and Taxes

# Six Types of Estate Plans



**Will**



Beneficiary Designations  
(Insurance, Annuities, Pensions)



Do Nothing



Joint Ownership



Give it All Away



**LIVING TRUST**

# Plan #1 – Will

- Express Wishes
- Only Controls Assets in Your Name **at Death**
- Holographic, Statutory, Formal
- Administered by PROBATE COURT



# What is Probate?



- Public Legal Process
- Will Validated
- Debts and Taxes are Paid
- Assets Distributed
- Only Legal Way to Change Title
- \$184,500 Threshold

# Probate Costs and Delays



- Estimated Costs/Fees: 3-8% of **Gross Estate**
- Average Length: 18 Months



# Probate is Public

- No Privacy
- Easy to Contest
- Notice Filed in Newspapers
- Exposure to Solicitors and Salespeople



# Probate Court Controls – Not Your Family!



- Costs
- Delay
- Lack of Privacy

# Wills and Incapacity



- Will is No Help
- Conservatorship
  - Expensive
  - Time Consuming
  - Intrusive
  - Does Not Avoid Probate

# Groucho Marx / Brittney Spears

## Spears

- Declared Incompetent by Court
- Lost Control of:
  - Assets
  - Personal Decisions
  - Privacy
  - Costs



# Plan #2: Beneficiary Designations



- NO PROBATE
- For IRA's: Children can take "Stretch Distributions" (sometimes a trust is used for large IRA's)
- DO NOT NAME "My Estate" as Beneficiary!!

# Plan # 3: Do Nothing



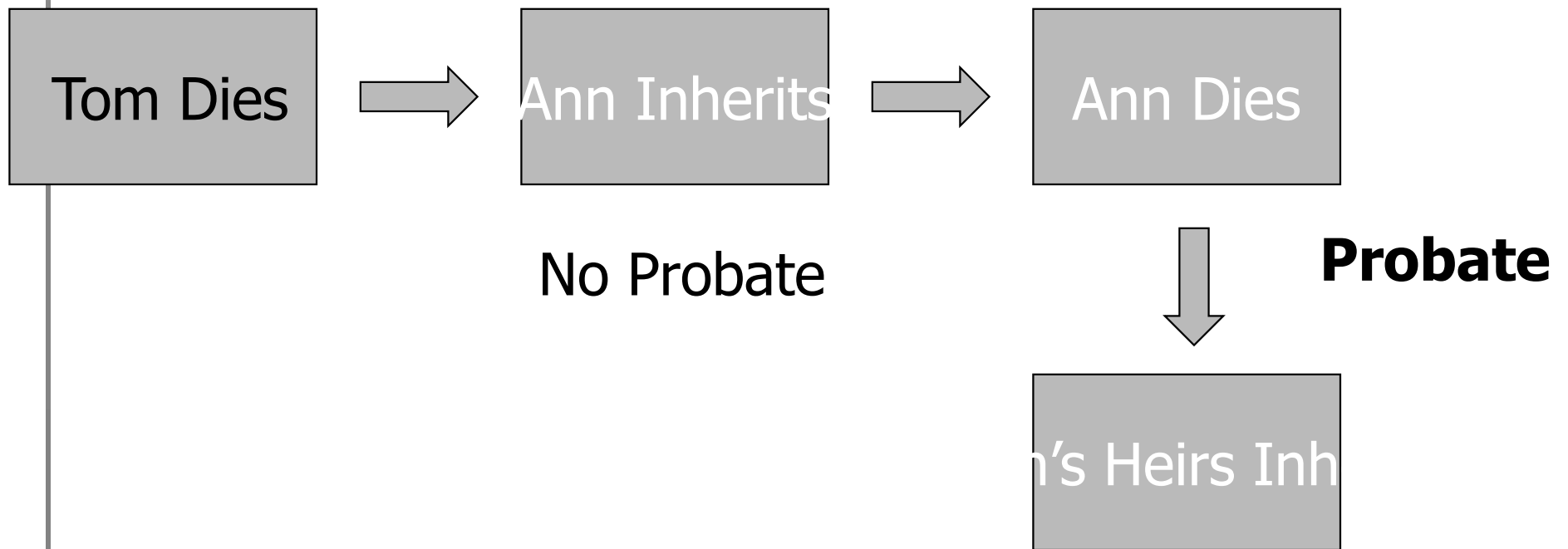
- Probate Guaranteed
- Distribute Assets According to State Laws of **Intestate Succession**
- Incapacity: Conservatorship

# Plan # 4: Joint Ownership



- Tom and Ann, Husband and Wife
- Form of title can be Separate Property, Tenants-in-Common, Community Property\*, Joint Tenancy with Right of Survivorship (JTWROS), or in Trust

# Problems with Joint Tenancy:



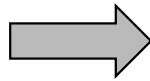
Joint Tenancy only **Postpones** Probate



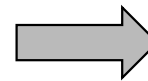
# Problems with Joint Tenancy:



Ann Marries  
Dan



Ann Dies



Inherits Ho

Tom and Ann's Kids are Disinherited!

# Joint Tenancy Summary

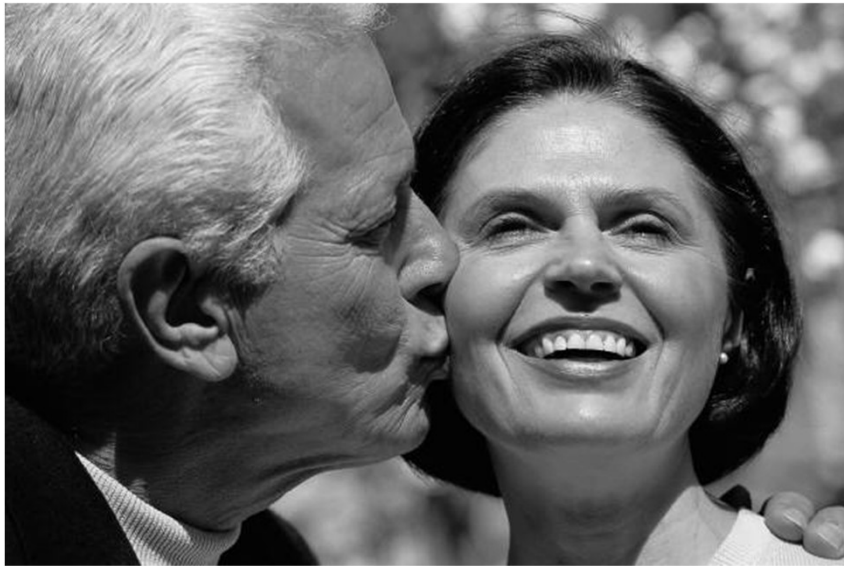
- Only Postpones Probate, Doesn't Avoid It
- Unintentional Disinheriting
- Difficult to Un-Do
- Lawsuit Exposure
- Capital Gains Tax Problem

# Plan #5: Give it Away



- You Lose Control
- “Look Back” Period of Ineligibility
- You Give a Capital Gains Tax Problem to Your Beneficiary
- No Step-Up in Basis

# Plan #6: Keeping Control with a Living Trust



## Wills

## Trusts

Used for 100s of  
Years

Yes

Yes

Names Someone  
to Handle  
Finances

Yes

Yes

Names  
Beneficiaries

Yes

Yes

**Avoids  
Probate**

No

Yes

Avoids  
Conservatorship

No

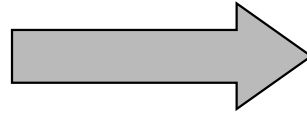
Yes

# With a Trust You Keep Control



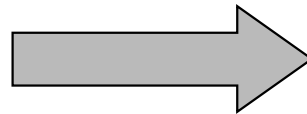
- Buy and Sell
- Change or Cancel
- Trust Contains Your Specific Instructions

Settlor(s)



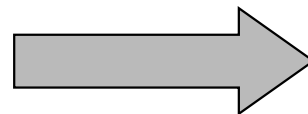
Sets Up and Controls the Trust

Trustee



Manages the Trust

Successor Trustee



Steps in at Death or Incapacity

Beneficiaries



Receive Remaining Assets when You Die

# Living Trust Summary

- Avoids Probate at Both Deaths
- Prevents Court Control if Incapacitated
- Provides Maximum Privacy
- Allows for Quick Distributions to Beneficiaries
- Prevents Unintentional Disinheriting
- Reduces Estate Taxes



# **NEW LAWS**

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- Proposition 19
- Transfer on Death Deeds
- Federal Estate Tax
- New Rules for Medi-Cal Nursing Home Eligibility

# Proposition 19

- Effective February 2021
- Changed Prop 13 regarding “Parent-Child Transfers” (among other things)
- No property tax reassessment for:
  - Transfers of Parents “primary residence” are exempt **but only**:
    - If Child lives in primary residence
    - \$1M limit plus current value

# Prop 19

- Not available for any properties other than the primary residence
- Must file “Homeowner Exemption” within 1 year
- Must file “Claim for Exemption” within 3 years of transfer

# Transfer on Death Deed

- Simple way to transfer residence (up to 4 units) at death without the problems of Joint tenancy; Revocable
- Changes as of 2022:
  - Must be witnessed by 2 people and recorded within 60 days
  - Beneficiary must send notice to your heirs and record an affidavit confirming such notice

# Special Laguna Woods Rules

- Laguna Woods Mutual (Co-ops)
  - Stock Certificate (not a Deed)
  - Must arrange with VMS to change to trust or to children
  - No Transfer on Death Deeds
- Third Laguna
  - Condos
  - Grant Deed like any other real estate
- TODD is okay

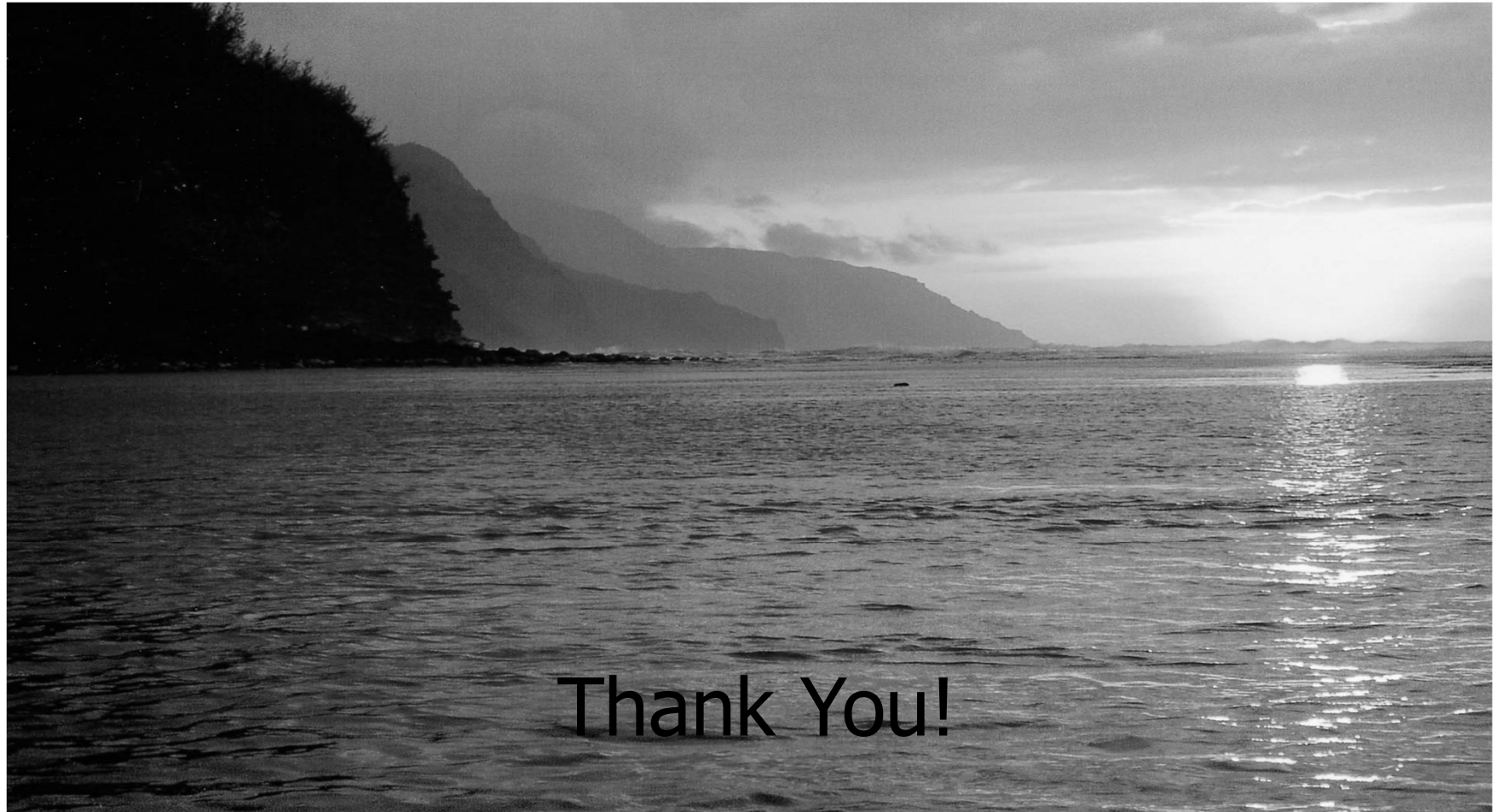
# Federal Estate Tax

- “Exclusion Amount” is set to Sunset as of December 31, 2024
- Will change from \$12M to about \$7M per person
- Pursuant to the tax law changes effective back in 2017
- Only affects 1% of population

# **New Rules for Medi-Cal Long Term Care**

- No limits on ASSETS to qualify!
- No “Look-Back” period!
- Income counts to “Share the Cost”
- No “Recovery Lien” for NON-PROBATE ASSETS:
  - Living Trusts
  - Designated Beneficiary assets
  - Jointly owned assets

# Questions & Answers



Thank You!