ESTATE PLANNING

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I WHAT IS ESTATE PLANNING?

Estate Planning is essentially the process of:

1. Setting and implementing goals under which you can preserve, grow, manage, use, and enjoy your assets during your lifetime;

2. Establishing a mechanism to protect and transfer your property to your loved ones and/or charities at the specific times and in just the manner you wish;

3. Ensuring that your estate is not diminished unnecessarily as a result of unnecessary taxes and estate administration costs;

4. Eliminating (for your loved ones) unnecessary inconvenience, frustration, uncertainty, delay, and court intervention in administering your estate; and

5. Having appropriate documents prepared and executed to carry out the above.

II WHY SHOULD YOU INVEST IN AN ESTATE PLAN?

Creating an Estate Plan is a proactive way for you to help yourself achieve meaningful goals with respect to your finances, family, and lifestyle. A carefully considered, customized Estate Plan serves as a powerful, lasting asset preservation vehicle and succession plan. It should provide you with the comfort and happiness that comes with controlling your financial affairs and providing for your loved ones in precisely the manner you wish.

According to an old adage, "if you fail to plan, you are planning to fail". The simple truth is that if you die without a will or living trust, you forego the opportunity to choose to whom, when, and in what manner your assets are distributed. The State of California will make these determinations by applicable statutes. Furthermore, by failing to plan, or failing to do so properly, your heirs will almost surely receive significantly less as a result of unnecessary taxes and/or estate administration fees and costs.

III WHAT DOCUMENTS WILL BE INCLUDED IN YOUR ESTATE PLAN?

Of course, many factors are involved in determining which documents are appropriate for a given individual or married couple; however, generally, I prepare the following documents, each of which is accompanied by my advice and guidance in both of several client conferences:

1. Living Trust - Serves as a "Will substitute" in most respects, including directing the distribution of your assets when you're gone. A Living Trust also designates trustees and successor trustees; sets out standards under which the trustee(s) manage your financial affairs during your life; (for married couples) sets up a structure under which estate tax savings may be realized; and (for married couples) may enable assets that were owned by the spouse who dies first to be accessible to the surviving spouse yet controlled for the benefit of children, loved ones and/or charities on the death of the surviving spouse.

2. "Pour-over" Will - Provides a safety net for any assets that are not transferred to the trustee of your Living Trust by directing that these assets be poured over into the trust and distributed according to its terms. For those who have minor children/dependents, it is also the appropriate document for designating a guardian.

3. Durable Power of Attorney for Management - You appoint a trusted person as your agent (called your "attorney-in-fact") to handle your financial affairs and sign documents on your behalf. This can supplement the powers held by the trustee of your Living Trust (often the "attorney-in-fact" and successor trustee of your living trust is the same person) in that your agent can even transact business for you as to *non-trust* assets. You can choose to make these powers effective immediately or make the powers "springing" - spring into effect only if and when you are temporarily or permanently incapacitated.

4. Advance Health Care Directive - You appoint a person as your agent to make health care decisions on your behalf if and when you are unable to make these decisions for yourself. Besides appointing an agent, this document provides a valuable opportunity for you to make your wishes known about matters such as when life support systems should be used or discontinued, and whether organ donations are authorized.

5. Assignment - A practical method of assigning to the trustee of your Living Trust assets that have no formal ownership registration or title procedures, such as tangible personal property and sole proprietorship business interests.

6. Certification of Trust - Essentially, an "abstract" of the trust that you can provide to financial institutions in lieu of a copy of your private Living Trust document. This provides the financial institution with just the key details of the trust needed to change registration of your accounts from you, individually, to you as trustee of your Living Trust.

7. Estate Planning Instructions - A practical tool that helps you understand the importance of observing various formalities and following certain procedures, primarily in connection with executing, administering, changing, and funding (transferring assets into) the trust.

8. Sample Funding Letters - Various sample funding letters make it simple for you to write to the financial institutions serving you to request the transfer of your bank and securities accounts to the trustee of your trust, and to change the beneficiaries of your life insurance policies and retirement plans as appropriate.

9. Trust Transfer Deeds - Formal document that serves to transfer your real property from yourself, individually, to you as trustee(s) of your trust.

IV WHY DO YOU NEED TO ESTABLISH AN ESTATE PLAN NOW?

Putting it bluntly, because you are not immortal! Unfortunately, there are no guarantees that any of us will not die prematurely. Nevertheless, many people procrastinate - often because they are either uncomfortable discussing their mortality; or, they proceed under denial – by blindly assuring themselves that their age and health are such that "nothing will happen". Sadly, I have been involved in all too many cases where a person died prematurely - suddenly and/or accidentally - who often had good intentions to establish an estate plan, but never did; and their failure to establish an estate plan cost their loved ones tens or hundreds of thousands of dollars, not to mention creating otherwise avoidable cost and inconvenience (and sometimes family dissension).

Besides securing a smooth, orderly asset succession plan when you're gone, a Living Trust (unlike a simple Will) operates immediately upon execution. This can be very valuable if you ever become temporarily or permanently incapacitated. The simple fact is that the only way to secure continuity of financial management, be certain your assets will be distributed to your loved ones how and when you desire, avoid estate diminution from unnecessary estate administration costs and taxes, and minimize inconvenience and delay for your loved ones upon your demise, is to "do it now".

V HOW MUCH CAN AN ESTATE PLAN REALLY SAVE YOU?

Most people are shocked and pleasantly surprised at how much can be saved by investing in an estate plan. Primarily, the savings comes in the form of Probate Avoidance.

1. Probate Avoidance

Residents of California, who die with or without a Will (but no Living Trust), and whose assets are valued at more than $150,000 (excluding certain kinds of assets, such as automobiles, P.O.D. accounts, joint tenancy property, and insurance and retirement accounts with named beneficiaries), are subject to probate. *In certain situations, (e.g. often on the death of the first spouse), a summary/expedited court process is available in lieu of formal probate proceedings.* Probate is a statutorily imposed estate administration court process, in which the local judge supervises the administration of one's estate to ensure that the Will (if there is one) is valid, creditors are paid, and the assets are distributed to beneficiaries who are entitled to them.

An attorney is generally hired to represent the personal representative (Executor or Administrator) and assist him or her with voluminous paperwork, counsel him or her as to the detailed requirements, and otherwise shepherd the estate through the tedious court process over a period of approximately a year or more. The probate attorney is entitled to compensation (attorneys' fees) for "ordinary services" in an amount based on the **gross**[1] value of the decedent's assets. This valuation is determined by an appraisal of the assets performed by a neutral, court-appointed Probate Referee. The personal representative is entitled to statutory compensation equivalent to the probate attorney.

[1] Gross value means that, for the purpose of calculating statutory compensation, the amount of loans (e.g. mortgages) are not deducted from the assets' fair market value.

Statutory compensation for ordinary services is based on a formula - a graduated rate (percentage) is multiplied by the gross value of assets subject to probate as follows:
4% of first $100,000; 3% of next $100,000; 2% of next $800,000; and 1% on next $9,000,000. The table below better illustrates statutory compensation[2] payable.

Gross Value	Attorney's Fee[3]	Personal Rep Fee	Total Fee[4]
$100,000	$4,000	$4,000	**$8,000**
$200,000	$7,000	$7,000	**$14,000**
$300,000	$9,000	$9,000	**$18,000**
$400,000	$11,000	$11,000	**$22,000**
$500,000	$13,000	$13,000	**$26,000**
$600,000	$15,000	$15,000	**$30,000**
$700,000	$17,000	$17,000	**$34,000**
$800,000	$19,000	$19,000	**$38,000**
$900,000	$21,000	$21,000	**$42,000**
$1,000,000	$23,000	$23,000	**$46,000**

If you add up the gross value of your home and other assets that would be subject to probate, and find the applicable "Total Fee" in the table on the previous page, you can estimate the probate fees that would be payable on your death to an attorney and personal representative instead of being available to your heirs/Will beneficiaries. While there will typically be some attorneys' fees associated with administering your Living Trust, these fees are generally substantially less than the above-referenced probate fees. The "bottom line" is that for most people who live in the Bay Area (particularly for those who own their own home here), creating an estate plan can enable you to achieve dramatic savings through probate avoidance alone.

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[2] These fees do **not** include probate costs – which typically total a few thousand dollars or more, such as court filing fees; required publication costs; Probate Referee fees; and bond premiums)

[3] These fees do not include compensation for "extraordinary services", if any, rendered by the attorney (and/or personal representative), that the court deems just and reasonable.

[4] Personal representatives sometimes waive their right to statutory compensation; when they do so, the total fee is therefore reduced by 50%.

2. Estate Tax Mitigation. Although the Estate Tax exemption now shields everything other than very substantial amounts of wealth from Federal Estate Tax, a threshold analysis of potential Estate Tax liability should be conducted. The Federal Estate and Gift Tax system and applicable rules are complex. The basics should nevertheless be explained by your estate planning attorney. Moreover, if your estate exceeds or may likely exceed the applicable exemption amount, many "advanced" strategies are available to help mitigate such potential liability.

If you are interested in the details of the Federal Estate Tax exemption and applicable tax rates (including historical exemption amounts and rates dating back to 2001), please see the table on the following page:

Year of Death	Applicable Exclusion Amount[5] (Transferrable Free of Estate Tax)	Top Estate Tax Rate
2001	$675,000	55%
2002	$1,000,000	50%
2003	$1,000,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	Tax repealed.	N.A.
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,430,000	40%
2015	$5,430,000	40%
2016	**$5,450,000[6]**	**40%**

[5] Estate tax is payable on the excess over the exclusion amount (less certain applicable deductions).

VI ARE THERE BENEFITS TO ESTATE PLANNING THAT CANNOT BE QUANTIFIED?

Absolutely! In addition to the many benefits that are quantifiable as described above, establishing a comprehensive Estate Plan offers a host of other benefits that cannot be quantified. Sometimes these non-quantifiable benefits are as important, if not even more important, to clients than those that can be calculated. These include:

1. Ensuring that your assets are distributed precisely when and as you wish;

2. Enabling your loved ones to avoid the extra inconvenience, uncertainty, and delay that are almost inevitable without a good plan;

3. Setting up a flexible, easy to change, private document that reflects your needs and interests as they change; and

4. Providing a smooth, practical mechanism for the management of your financial matters by someone you trust in the event you become unable to do so.

VII WHAT ARE SOME COMMON MYTHS ABOUT ESTATE PLANNING?

A considerable number of myths about Estate Planning (in particular, Living Trusts) have been propagated over the years. Although increased media coverage and consumer sophistication have helped to debunk many myths, I still periodically encounter some. A few of the more common myths of which I am aware are outlined below:

1. Myth: You have to be "rich" to justify having a Living Trust.

   Reality: Probate avoidance alone is usually more than enough justification for anyone with gross assets of $150,000 or more (e.g. if you own a home).

2. Myth: It is time-consuming, complicated and inconvenient to establish, fund, and manage a living trust.

   Reality: It takes little more time to establish than a Will; no more complicated than a comprehensive Will; generally quite straightforward to fund; virtually identical to managing non-trust property.

3. Myth: There are income tax implications and additional tax filing requirements when you establish a Living Trust.

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[6] Legislation enacted in January, 2013 established the then applicable exclusion amount and tax rate, which exclusion amount is indexed for inflation annually. Thus, the amount applicable in 2016 will be adjusted, as indexed, in subsequent years.

Reality: There are no additional income taxes to pay by virtue of establishing a Living Trust, and no additional tax filing requirements (except, in some instances, after the death of one or both spouses; however, these additional filing requirements are nearly always less costly and inconvenient than probate administration).

4. Myth: Putting real property in a living trust triggers property tax reassessment.

Reality: No reassessment; transfer of property to your own Living Trust is not considered a "change of ownership" and is thus exempt from reassessment.

VIII HOW MUCH WILL YOUR ESTATE PLAN COST?

Without knowing more about your situation, it is difficult to determine in advance, with certainty, an appropriate fee quote. However, in general, the flat fees specified below will be applicable absent certain "extenuating circumstances" that make planning more complex and time-consuming, and therefore more expensive.[7] These fees are inclusive of all routine related services and costs, including two client conferences; document drafting; preparation of one California real property trust transfer deed (e.g. your home); notary fees; deed recording fee; postage; estate planning binder; C.D. containing signed documents and forms; and telephone and photocopy charges.

NOTE: For clients who own more than one California property, deeds for any number of additional properties may be prepared for a fee of $300 each, including applicable recording fees; and if you own property in other states, we can facilitate the preparation, execution and recording of appropriate trust transfer documents via a reliable third party service).

1. Unmarried Individual: $2,700 [8]

2. Married Couple: $3,200 [9]

IX WHY SHOULD YOU CHOOSE TO WORK WITH ME AS YOUR ESTATE PLANNING ATTORNEY?

[7] Examples of "extenuating circumstances" include, but are not limited to, those in which clients: a) wish to customize their Living Trust (e.g. distribution scheme) in an unusually complex manner; or b) need provisions for a "Special Needs Trust" (usually for a child or grandchild) to be included within the Living Trust; or c) consist of a married couple with at least one spouse who is a non-U.S. Citizen, in which case special QDOT (Qualified Domestic Trust) provisions may need to be included; or d) have a "blended" family – second or subsequent marriage and/or children from different marriages/relationships.

[8] With extenuating circumstances, fees for an individual can increase to as much as $3,200, or more

[9] With extenuating circumstances, fees for a married couple can increase to as much as $4,200, or more

Most people understand they should not treat Estate Planning casually nor hire anyone other than a competent attorney whose practice emphasizes Estate Planning. The process should involve much more than downloading forms from the internet, having an inexperienced or narrowly focused attorney (or worse, a paralegal service or "trust mill") produce "canned"/"one size fits all" documents, or hiring someone who fails to provide expert counsel, guidance and trust funding assistance. Moreover, if you do not use a seasoned, careful Estate Planning attorney, you can easily make a mistake that could cost you and/or your loved ones dearly in any number of different ways.

Thoughtful, ongoing planning, in-depth client conferences and counsel, customized drafting of appropriate documents, execution of documents with proper formalities, tax analysis, and funding assistance, are all important aspects of an Estate Plan. For over twenty years, I have helped hundreds of clients by drafting, reviewing, amending, helping to administer, and advising them about their estate plans.

Also, Estate Planning cannot be done in a vacuum. Real estate, business, financial, and insurance matters frequently need to be identified, assessed and integrated with your Estate Plan. My substantial real estate and business experience allows me to bring a real "value added" component to my Estate Planning services. Given my Estate Planning experience, my extensive real estate and business background, my focus on building and maintaining long-term attorney-client relationships, and my keen desire to serve my clients as a trusted counselor, I am eager and well-equipped to serve your best interests.

Finally, my view is that Estate Planning is an ongoing, evolving process; not a one-time event. Accordingly, clients are usually best served by seeking to create a long-term attorney-client relationship. When clients take this approach, their attorney often becomes a trusted advisor on whom they confidently rely and feel comfortable. As a result, they are relieved and pleased with their ongoing ability to use and adapt their Estate Plan in a way that best suits their changing needs and those of their loved ones over a period of many years. I am not only anxious to develop a long-term professional relationship, but I am willing and able to work with your financial, business, insurance and/or tax professionals as part of your Estate Planning "team" whenever necessary or desirable. I also have excellent resources available in the community, enabling me to refer you to one or more such professionals when appropriate.

X WHAT DOES THE PROCESS INVOLVE & HOW DO YOU GET STARTED?

If you have not already started the process and you wish to get started, please call me for information and/or to schedule an introductory consultation. Generally, the introductory consultation consists of a telephone conversation or personal meeting of approximately 15-30 minutes, during which I start to learn a bit about you and your loved ones, determine your primary goals and needs, answer any of your preliminary questions, and give you an appropriate fee quote. This introductory consultation is free of charge.

After the introductory consultation, I (or Susan Carter, my assistant) send you an introductory letter, a "bio" containing information about my background and experience, a Confidential Client Estate Planning Questionnaire, and an Attorney-Client Fee Agreement; and

we schedule an appointment for our first planning conference, at which we will discuss your prospective Estate Plan at length.

The first conference involves: a) us getting to know each other; b) you sharing, and my listening to pertinent information you feel comfortable sharing about yourself and your loved ones, and generally what you hope to accomplish with your Estate Plan; c) my educating you further about the Estate Planning process, documents I propose to prepare for you, and applicable law; and d) my interviewing you and guiding you through the process of determining how you would like me to tailor your Estate Plan in a manner that is best suited to meet your specific needs and desires.

In the days or weeks following the first conference (depending on your timeline, your needs and my schedule), I prepare your documents, send them to you for your review, and schedule your second planning ("signing") conference. When the documents are in final form and meet with your approval, you will come in to my office for the signing conference, review the key provisions of each document, sign the documents while observing the required formalities (under notary public and witnesses, both arranged by me at no additional cost to you), and discuss trust "funding" – transferring of your assets into your Living Trust. Finally, my very capable staff and I am available as needed in the days and weeks following your signing appointment to assist you and/or the financial institutions with whom you do business, with trust funding and/or other Estate Planning-related questions or concerns.

I look forward to the opportunity to provide you with preliminary information, answer questions you may have, and help you develop and maintain an estate plan that will be meaningful and helpful for you and your loved ones.

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