

Estate Planning: Frequently Asked Questions

What is an estate plan?

An estate plan generally includes a will along with other documents working together to help maximize your control of the distribution of your assets, while minimizing taxes and strain on your family. It is a statement of what you want to happen to your assets once you are gone.

Is Estate Planning only for those with “big estates”?

No. In California any assets worth \$100,000 or more owned by a deceased person will pass through Probate in order for it to be distributed to his/her beneficiaries, if the deceased person died without a Revocable Living Trust, had only a Will, or died intestate (without a Will or Trust).

Who needs an estate plan?

Most people need some type of estate plan, even if it is only to help prepare a will and living will. However, anyone with children or assets or a business should consult an attorney about your specific needs for an estate plan.

What happens if I do not have an estate plan?

Without an estate plan your family will probably need to probate your estate. Probate is the legal process in which the state designates the disposition of your estate based state laws. Probate is expensive, complicated and time-consuming. Absence of an estate plan also allows the government to determine where your assets go, in a process known as intestate succession.

Will my family pay any taxes when I die?

Your family/estate will pay estate taxes if your estate is a taxable estate. Your estate is a taxable estate if the net value is more than the estate tax exclusion amount on the date of death. (See table under Estate Planning/Trusts). It is required to be paid by your estate within nine months from the date of death by the successor trustee filing an Estate Tax Return on Form 706. In addition, the fiduciary (Personal Representative, Executor, Administrator, Trustee, etc) is required to file a Fiduciary Income Tax Return on Form 1041, and a California Fiduciary Income Tax Return. This is a tax on the income of the deceased person's estate that is generated between the date of death and the date the estate/ trust terminates.

What is Intestate Succession?

If you die without a will the rules of intestate succession apply. They consist of a default distribution order of who gets your assets. Most people would prefer to designate the distribution of their assets, property, and guardianships themselves rather than have the government make those decisions for you after you're gone.

What documents are included in an estate plan?

Estate plans most often consist of a trust, will, living will, and typically a power of attorney. An estate plan also helps to coordinate retirement funds, IRA's, beneficiary designations on bank accounts and life insurance policies.

What is a Will?

A will is a legal document that outlines your wishes of asset distribution, guardianship preferences of your minor children and often your final plans. It also nominates an executor, the person in charge of carrying out your wishes, and determines how much discretion they will have.

What is a Holographic will?

A holographic will is not legal in most states, but California does allow them. They are informal wills in which the material terms must be all done in the testator's own handwriting, and must be signed by the testator. No witnesses are required. Most lawyers do not recommend the use of a holographic will.

What is a Trust?

In simple terms, a trust is a relationship in which a person, called a trustor, transfers something of value, called an asset, to another person, called a trustee. The trustee then manages and controls this asset for the benefit of a third person, called a beneficiary. An asset is any kind of property.

What is the Difference between a Trust and a Will?

The main difference is the fact that your property won't go through probate when you die. With a Will the transfer of property takes place at your death and will need to go through the court system (probate) to determine the legalities of the will and the properties being dispersed. When you create a Trust you transfer your properties to it while you are still alive and it continues on through your death.

What Are the Advantages of a Living Trust?

- Can be changed or canceled at any time,
- Avoids probate and related costs,
- Allows faster distribution of assets to beneficiaries,
- Provides maximum privacy (a will is a public document),
- Allows for Professional Asset Management with a corporate trustee.
- More difficult to contest; wills are much easier to contest.
- Lets you keep control while you are living,
- Helps avoid the necessity of a conservatorship upon your incapacity,
- Avoids problems of joint ownership,
- Protects minor children from court-imposed guardianships, and
- Can protect dependents with specific needs.

What kind of trusts are there?

There are many types of trusts to suit every situation. Trusts work in two ways. They can be *revocable* or *irrevocable*. Revocable trusts can be changed until death so you have the flexibility to make changes as tax and estate laws change. Irrevocable trusts cannot be changed. Before you establish an irrevocable trust, you should have legal advice to determine the best trust for you. Below are a few types of trusts:

Living trust—this is a trust you create and activate while you are living. The Latin term *inter vivos* (between people who are living) is applied to this kind of trust.

Testamentary trust—this type of trust becomes effective at your death. It is usually contained within a will. Because testamentary trusts take effect at death, they are irrevocable trusts. Common testamentary trusts include those that benefit a spouse, minor children, or a charity or other organization.

Credit shelter trust—one way married couples can reduce the burden of federal estate taxes is to leave property to a trust instead of the surviving spouse. This arrangement is commonly referred to as a *credit shelter trust*. The beneficiaries of such a trust are usually the children. However, the surviving spouse has the right to use the property for the remainder of his or her life, including any income generated by it. At the second person's death, the property transfers to the named beneficiaries without being considered part of the taxable estate.

Life insurance trust—this type of trust is included in some estate plans. A life insurance trust transfers ownership of a life insurance policy. If the trust owns the policy, you do not control it, and its value is not part of your taxable estate. This trust would be useful when you have no close relative to be the beneficiary of your policy. You can designate the estate as the beneficiary. Ownership by the trust would keep the value of the life insurance out of your estate tax calculation. However, it still provides money for liabilities to your estate.

Q-TIP trust (qualified terminable interest property trust)—this trust allows a married person to name the surviving spouse as the life beneficiary of the trust property. When the first spouse dies, all of the property in the trust is exempt from estate tax, no matter what value it has. The Q-TIP trust is a method of postponing estate taxes, not eliminating them. All of the income from the Q-TIP trust must be distributed annually to the surviving spouse. The principal of the trust cannot be used for anyone but the surviving spouse. In many respects the Q-TIP trust is similar to a life estate document, which allows use (but not ownership) of property by a beneficiary during his or her lifetime.

Other trusts in addition to the ones described above are available—charitable remainder trusts, generation skipping trusts, and crummy trusts, for example. All of them have advantages and disadvantages. Consult a knowledgeable professional on which trusts are best for your situation.

What Does the Trustee Do?

The trustee is the person who manages the trust, following the instructions specified in the trust document. Your selection of a trustee is a critical part of establishing the trust. Make sure to choose carefully.

A trustee should:

- Have the ability to manage money and other assets in such a way that they maintain or increase in value,
- Be sensitive to the needs of the beneficiaries of the trust,
- Be someone who is congenial with the beneficiaries,
- Not be in a position to take advantage of the beneficiaries through a conflict of interest.

What is probate and why would I want to avoid it?

Probate is the court-supervised process by which your assets are gathered up and inventoried, any debts you have are paid, and any remaining assets are distributed. Most people want to avoid it because it is expensive, time consuming and your documents become public record, allowing anyone to see them.

How expensive is Probate?

It varies but approximately 8% of your estate. Probate consists of court fees, fees for the attorney and fees for the executor. The attorney fees and executor fees are fixed by California law, which generally provides for a graduated fee depending upon the size of the gross estate.

How long does Probate take to complete?

A fast probate takes eight months, assuming the assets are fairly well organized and there are no challenges. Larger estates always take longer, typically, years.

How can Estate Planning protect my assets from creditors?

Many types of trust, usually irrevocable in nature, can be created to protect the transferred assets from creditors either of yourself or your intended beneficiary.

Can I create a trust to help support other members of my family?

Yes, Special Needs Trusts used to provide care for minor and adult children with disabilities. These types of trusts are highly specialized.

Who should I select to be my Executor or Trustee?

This is an important decision. Sometimes it is best to nominate a family member, but in other instances professionals are better suited. The most important characteristic is someone you trust, and as long as they have basic financial skills that is generally fine.

Have more questions about your specific situation? Contact us at info@ukohalaw.com