

Probate

This is a court supervised transfer of title of assets from the name of the person who died to the names of the beneficiaries if there is a Will, or heirs at law if there is no Will. A probate of your estate will be necessary if the value of your combined probate assets (generally assets held in your name alone or with no beneficiary designation) is over \$100,000.

An executor or administrator is appointed by the court.

The process takes 6 months to 2 years or longer for final distribution of your assets.

It is public record, therefore, anyone can see what you own and to whom it will be distributed.

If real property is owned in other states, then an ancillary probate will be required.

Probate Fees

Currently, California statutory probate fees are as follows:

<u>Value of Estate</u>	<u>Percent Paid as Fees/Commissions</u>
\$100,000	4%
Next \$100,000	3%
Next \$800,000	2%
Next \$9,000,000	1%
Next \$15,000,000	½%

Example: The statutory probate fee on a \$500,000 estate is \$13,000 figured as follows:

4% on the first	\$100,000	4,000
3% on the next	\$100,000	3,000
2% on the next	<u>\$300,000</u>	<u>6,000</u>
	\$500,000	\$13,000

Note – these are the fees entitled to the attorney AND the executor. Thus, a \$500,000 estate would yield \$26,000 in statutory fees. Note, these fees do not include court filing fees and administration costs.

Avoiding Probate

Hold assets in joint tenancy with right of survivorship. However, if joint owners die at the same time, then the asset held in joint tenancy would have to go through probate.

Designate a beneficiary on life insurance policies and IRA accounts. Almost all checking, savings and brokerage accounts, have beneficiary designation features which are also called TOD or POD which means “transfer on death” or “payable on death.”

Trust – A properly drafted and funded Trust has title to the assets. Because a Trust continues in force when the maker of the Trust dies, there is no need for probate. The successor trustee takes over management of the Trust estate and pays bills and taxes, and distributes the Trust assets to the beneficiaries, without court supervision, if the Trust agreement gives the trustee that power.

Advantages to having a trust

Avoids delays and expense of probate.

Confidential – The Trust is not filed with the court and does not become a matter of public record.

To avoid a conservatorship – If property is held in a Trust, the appointed successor trustee can step in and take over management, without the delay and expense of going to court to appoint a “conservator” to manage the property, if the maker of the Trust becomes disabled or incapacitated.

If you are married, a trust can be designed to take maximum advantage of the marital deduction provisions as well as each spouse’s applicable credit exemption (this is the amount of each person’s estate that is not subject to estate taxes) to minimize or eliminate estate taxes on the death of the first spouse.

Disadvantages to having a trust

More expensive than a Will to create.

No court supervision of trustee.

Other documents for an estate plan

Pour-over Will (used only in conjunction with a Trust)

To “pour-over” to the Trust upon your death any assets which, for whatever reason, were not transferred to the Trust during your lifetime. Such assets may be subject to probate.

The Pour-Over Will also names an executor to administer the probate of your property not included in Trust. Also names guardians to care for your minor children and their assets.

The Pour-Over Will is filed with the court, however, because the distribution provisions are contained within the Trust, the public does not have knowledge of your assets and the manner in which you want your assets to be distributed.

General Durable Power of Attorney for Asset Management – you designate a person to act for you and handle financial matters should you be unable or perhaps unavailable to do so. This document is only effective while you are alive.

Advance Directive – you designate a person to make decisions regarding your health care treatment in the event that you are unable to do so yourself. An advance directive gives doctors and hospitals your instructions regarding the nature and extent of the care you want should you suffer permanent incapacity, such as an irreversible coma. This document also indicates your wishes with respect to end of life decisions and life support and spares your loved ones from agonizing over what you would have wanted in those circumstances.

Things to think about in planning your estate:

To whom (your beneficiaries) do you want to your assets distributed after you die.

Do you want your assets distributed to your children, and if so, at what ages.

Do you want your beneficiaries to meet conditions before they are able to have your assets.

Do you have children or dependents with special needs.

If married, do you need to minimize estate taxes.

Do you have enough assets to provide for your spouse and/or minor children if you were to die.

Who do you want to serve as **executor** of your Will, this is the person who will administer your estate, after your death.

Who do you want to step into your shoes as successor **trustee** of your Trust, this is the person who will manage your assets if in your trust if you become incapacitated or upon your death. Note – the executor and trustee are often the same person.

Who do you want to make your health care decisions for you if you are unable to do so.

Who do you want to make your financial decisions about assets outside of your trust, if you are unable to do so.

If you have minor children, **who do you want to take care of your children** if something should happen to you and your child's other parent (guardian of the person). In addition, who would you want to handle your children's financial assets while they are minors (guardian of the estate of the minor). Note – the guardian of the person and the guardian of the estate of the minor do not have to be the same person. In some instances, it is better that they are not the same person.

In considering the above questions, it is emphasized that you give special and deliberate thought about those people to whom you are entrusting to manage your finances, your health care and the upbringing of your children. It is advisable to have a discussion with potential guardians that they would be willing and able to take care of your children if you were unable to do so. The same holds true for those to whom you entrust making your health care and financial decisions.

In determining who will administer your trust and estate, it is advisable that you select one or two alternate individuals in the event your first selection is unable or unwilling to serve in the capacity you have appointed him/her. If you have many kids, say more than two, you may want to consider not naming any of your children as successor trustees. Name a trusted financial advisor, name a life-long friend, name another relative or name a corporate trustee to manage the trust to ensure that your wishes will be carried out.

Estate planning is a must if:

1. You have minor children.
2. You have remarried and you want your separate property assets to go to someone else other than your current spouse.
3. You own real property and want to give it to someone specific.
4. You want to give your all or a portion of your assets to charity instead of family members.
5. You do not have family members or children and you want to give your assets to friends or neighbors.
6. You want to designate who should care for your finances if you become incapacitated or unable to do so.
7. You want to state what your end of life decisions are and choose who should make health care decisions for you.

If you answered “Yes” to any of the questions below, you should consider estate planning.

- | Yes | No | n/a | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have minor children. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | The value of my estate is over \$100,000. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have recently married. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have recently divorced. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have a same sex relationship, but we are not registered domestic partners. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I am not married nor have children, but I do not want my assets to go to my parents. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I want to give some of my assets to my favorite charities when I die, but I have not designated this in a Will or Trust. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I want my separate property to go to my children from my first marriage, but I have not designated this in a Will or Trust. |

If you answer “No” to any of the questions below, you should consider estate planning.

- | Yes | No | n/a | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have designated in a Will who will take care of my minor children if I should die unexpectedly. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have designated in my Will who will take care of my pets. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have designated in a Will or Trust to whom and in what manner my assets will be distributed. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have designated in an Advance Health Care Directive who I want to make my health care decisions for me if I am unable to do so. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have designated in a General Durable Power of Attorney who I want to handle my financial matters if I am unable to do so. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My Advance Health Care Directive was signed within the last 7 years. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My General Durable Power of Attorney was signed within the last 7 years. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | I have designated in a Will or Trust to whom and in what manner my assets will be distributed. |