

**Essentials of Estate  
Planning:  
What You Need to Know  
Without Paying Expensive  
Legal Fees to Learn It**

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Part One

**Planning to Take Care of  
Yourself While You are Alive  
(in case of disability)**

**Why is this information  
important?**

For your personal use

For the use of your parents, children or other  
family members

To understand what your charity's donors need to  
consider before they include a bequest to you

**Powers of Attorney**

This allows a "principal" to appoint an "attorney in  
fact" to take action on his or her behalf.

Springing Power of Attorney: takes effect only in  
the event of disability.

Durable Power of Attorney: effective immediately  
and continues after disability.

**Three Purposes of Estate  
Planning**

- Planning to take care of yourself
- Beneficiary planning
- Tax planning

A power of attorney is a very powerful tool.

You can give someone the power to:

Do anything you would do.

Take very specific actions, like sign the papers  
to sell a property if you will be out of town at  
the closing.

Be sure you trust the person you name.

Some banks require their own form.

## Powers of Attorney

### Questions

Do you have a signed general power of attorney form?

Yes  No  I'm not sure

If yes, who is your attorney-in-fact?

\_\_\_\_\_

If no, do you need one?

Yes  No  I'm not sure

## Two other typical trusts

- You are the trustor, the trustee and first beneficiary. When you die, a successor trustee takes over and distributes the trust assets to the other beneficiaries.

Note: the trust must be funded (the title to all property must be registered in the name of the trust).

- A testamentary trust, created under a will, for the benefit of a minor child.

### Questions

Who besides you has signature authority over your checking account?

\_\_\_\_\_

Who besides you has signature authority over your savings account?

\_\_\_\_\_

Should you go to your bank to put someone else's name on your account?

Yes  No

## Reasons to Create a Revocable Living Trust

- Management assistance
- Postponement of benefits for beneficiaries
- Probate avoidance
- Privacy
- And...

## Trusts

- A "settlor" gives assets to a "trustee" to hold for the benefit of a "beneficiary."
- Sally wants to help her 14 year old niece Barbara pay for college. She gives \$14,000 to her brother Tom, to hold in trust until Barbara needs the money for tuition.

- If you hold property in a living trust, in the case of disability, your successor trustee can take over while you are still alive and handle your affairs relating to trust assets.

### Questions

Do you have a living trust?

Yes  No

If no, have you made plans for someone to manage your economic affairs?

Yes  No

Should you create a living trust for the purpose of providing for your disability?

Yes  No  I'm not sure

## Advance Health Care Directive

This allows you to state what your intentions are relating to extraordinary medical procedures.

You appoint someone to "speak" for you when you are not able to speak for yourself.

## Conservatorship

If you become disabled and have made no provisions for someone to control your assets, then a court can appoint a conservator...of the person or the estate.

It can be a complicated procedure.

It can be expensive.

Nominate your own conservator.

## Where to Get the Form

Very simplified form created by a UCSF doctor:

<http://www.iha4health.org/>

CA Attorney General Form:

<http://ag.ca.gov/consumers/pdf/AHCDS1.pdf>

Kit from California Medical Association

<http://www.cmanet.org/resource-library/detail?item=advance-health-care-directive-kit-english>

### Questions

Have you thought about who should be your conservator if the need arises?

Yes  No

Do you have a document that nominates a conservator?

Yes  No

Should you create a document nominating a conservator?

Yes  No

### Questions

Do you have a current Advance Care Directive for Health Care?

Yes  No  I'm not sure

If yes, where is it stored?

\_\_\_\_\_

If no, should you create such a document?

Yes  No  I'm not sure

Part Two

## Beneficiary Planning

### Title

- Community Property: all property acquired during marriage other than by gift or inheritance (spouses living in CP states).  
Each spouse is the current owner and can control one-half of all community property.
- Quasi Community Property: property acquired in another state that would have been CP if the couple had been living in California.

### Who are your beneficiaries?

- Are your children old enough to inherit property?
- Do you want your spouse to have complete control over your assets?
- Do you want to benefit someone other than your spouse and children?
- Do you want to make a charitable bequest?
- Are you in a non-marital relationship?

- Married couples often change the status of previously owned separate property to community property by commingling it or registering it in both names.
- An asset can be community property even if it is held in only one name.
- Couples can agree to turn community property into separate property.

### How do you get property to your beneficiaries? or, What property do you have the right to distribute at death?

- All property you own in your own name
- Some property you own with others

Look at the title of the property.

- Separate property: property held in your own name.
- Joint Tenancy Property: property held with another person. When the first joint tenant dies, her half of the property goes automatically to the surviving joint tenant.
- Tenants-in-Common: property held by two or more people.

### Questions

Do you own any property with someone else?  
\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ I'm not sure

Do you know how title reads to each of those assets?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If you are married, how much of your property is community property?  
\_\_\_\_\_ All \_\_\_\_\_ Some \_\_\_\_\_ I'm not sure

### Questions

How many retirement fund accounts do you have?  
\_\_\_\_\_

Do you know who you have named as the beneficiary(ies) of each of those accounts?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

Do you need to update any of your retirement fund beneficiary designations?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

### Does all your property go according to your will?

#### Property distributed under your will:

- Your half of the community property
  - All of your separate property
  - Your portion of property held as tenants-in-common
- Only these assets are subject to probate*

#### Property NOT distributed under your will:

- Joint tenancy property (when the first joint tenant dies)
- Property held under contracts

### Questions

How many insurance accounts or other contracts retirement do you have?  
\_\_\_\_\_

Do you know who you have named as the beneficiary(ies) of each of those contracts?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

Do you need to update any of your beneficiary designations?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

### Property distributed pursuant to a contract (and not subject to your will)

- Life insurance death benefits
- Assets remaining in retirement plans
- Assets in IRAs

SPECIAL NOTE: *Make sure the designations are up to date and consistent with the rest of your estate plan*

- Assets held in trust

## Types of Wills

### Formal Will

Prepared by attorney or computer program  
Many requirements for proper execution with witnesses

### Holographic Will

Entirely in handwriting  
No witnesses  
Valid in 30 states including California

### Questions

Do you have a will?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, in what year was it written? \_\_\_\_\_

If yes, is it up to date?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Do you need to write a new will?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ I'm not sure

### Alternatives to Probate if You Have Few “Probate Assets”

- If those assets are valued at less than \$150,000 and don't include real property, your assets can be transferred to beneficiaries with a simple affidavit.
  - This can be complicated if there are several beneficiaries.
  - The recipients are still responsible for your debts.
- If all of your property is community property and passing to a surviving spouse, there is a simpler court proceeding available.

### When a person dies...

- Assets subject to contract are distributed according to the contract.
- Joint Tenancy property goes to the surviving joint tenant.
- All other assets are subject to court administration and distributed:
  - By the terms of your will.
  - By the laws of intestate succession (depends on the state of residence).

### Where will your probate property go?

If you have a will, to the beneficiaries you have named in that document.

If you don't have a will, to the the beneficiaries identified by the state of your residency. (You don't have a choice!)

### ■ Probate

A personal representative is appointed by the court (executor who is named in a will, or administrator who is not named in a will) to

- Collect all assets
- Pay all debts including death taxes
- File lots of papers with the courts
- Distribute the remaining assets to appropriate beneficiaries

### California Intestate Succession

Where your probate property goes if you have no will:

If you are not married, your probate estate will go to:

Your children and children of deceased children

If none, to your parents

If none, to the issue of your parents (siblings and their children)

If none, to the issue of your grandparents

(your aunts and uncles and your cousins)

If none, to your “next of kin”

If you are married, your probate estate will go to:  
Your half of the **community property** to your spouse.

But your **separate property** will be distributed:

If you are married with children:

If you have one child, 1/2 to your spouse, 1/2 to your child.

If you have more than one child,  
1/3 to your spouse, 2/3 to your children

### Questions

Do you have any property that would be distributed under the California law of intestacy?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ I'm not sure

Do you know who would receive that property?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ I'm not sure

If yes, are you satisfied with those beneficiaries?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ I'm not sure

If you have no children:

If you have living parents or siblings (or their children), 1/2 to your spouse, and 1/2 to your parents or siblings or their children.

### If you have minor children...

- Do you need a trust that will protect the assets for your kids until they are old enough to manage them?
- Do you need to appoint a guardian?

### If you are in a non-marital relationship...

You **NEED** an estate plan. You and your partner have **NO** legal rights to any of the property owned by the other under the law of intestacy. Your partner will receive **no** property under the intestate laws of California.

### Questions

If you have minor children, have you appointed a guardian for them?

\_\_\_\_\_ **Yes** \_\_\_\_\_ **No**

Are your beneficiaries old enough to manage their inheritance now?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If no, have you created a trust for their benefit?

\_\_\_\_\_ Yes \_\_\_\_\_ No

### **Revocable Living Trust**

- An alternative way to own your property. Give it to yourself as the trustee, and appoint a successor to manage it and distribute it to your beneficiaries when you die.
- In itself, it is not a way to avoid estate taxes.

### **Disadvantages to a Living Trust**

- It is more expensive to create than a will.
- The document is significantly longer and more complex than a will.
- You must transfer all of your property into the trust by reregistering the title into your name as trustee of the trust. This can be a lot of work.
- If you have creditor issues, a trust does not provide the same protections as probate would.

### **Benefits of a Living Trust**

- You are treated as the owner of the property for all purposes while you are alive.
- It is very flexible in terms of beneficiary planning. (Just like a will.)
- It is revocable and changeable while you are alive.
- The assets in the trust are not subject to probate when you die and get passed to beneficiaries quicker.

- If you have a living will, you also would have a “pour over will.”
  - Only applies to assets that you forgot to put into the trust.
  - Directs those assets to go into the trust.
  - An executor would only be appointed if there are any assets that would be subject to probate.

### **More benefits**

- The assets are not subject to court probate fees. (But there are still some administrative costs.)
- There is more privacy at the time of your death. An inventory is not filed with the court to become a public document.
- It is relatively easy for your successor trustee to take over the management of your affairs either if you become disabled or die.

Part Three

### **Tax Planning**



### **The Job of Tax Planning is Simple for Most People Now**

- The estate and gift tax law was made simpler with the tax law that passed in January 2013.
- Your estate generally includes your half of the community property, your half of joint tenancy assets, your part of property held as a tenant in common, all of your retirement funds, property held in revocable trusts, and any other contracts.

### **Eight Other Issues**

- Your estate is subject to federal estate tax only if the assets are valued at \$5.25 million or more in 2013, and \$5.34 million in 2014.
- This amount does not include any property passing to a surviving spouse or to a charity.
- You are only subject to federal gift tax if you make lifetime gifts of \$5 million or more.

### **Issue No. 1: Taxes if you receive a bequest**

- If you are the beneficiary of a bequest, you generally do not pay any income taxes on that money.
  - The exception is that you do pay tax on “Income in Respect of a Decedent (IRD) like an IRA distribution.
- If the decedent was a resident of a state where there was a state inheritance tax, you do pay taxes then.

### **California Inheritance Tax**

- There is no state inheritance tax if you are a resident of California.
- Some other states do impose an inheritance tax. For example, New York’s tax is 16% on the amount over \$1 million that does not pass to a surviving spouse or charity.

### **Issue No. 2: Stepped Up Basis**

- “Basis”: generally, what you paid for an asset.
- When you sell an asset, you must pay capital gains tax on the difference between your adjusted basis and the sales price.
- If you inherit property you get a stepped-up basis equal to the date of death value.
- If there are no estate tax issues, a person may decide to wait to transfer assets until death.

### **Example**

Your uncle bought stock in 1995 for \$10,000. If he sold it while he was alive when it is worth \$50,000, his basis would be \$10,000 and he would have paid tax on the \$40,000 capital gain. If he dies and leaves that stock to you when it is worth \$50,000, you would receive it with a “stepped up basis” of \$50,000. If you sell it later for \$60,000, you only must pay tax on capital gain of \$10,000.

A better estate plan (often for married couples who have large estates) creates a Bypass Trust. It is usually funded with the maximum amount of assets that can pass free of federal estate tax.

Husband puts \$5.25 million into a Bypass Trust, gives \$750,000 directly to Wife.  
The result: No federal estate tax on Husband’s death.

### **Issue No. 3: How You Should Hold the Title to your Home**

- Joint Tenancy: Basis is stepped up only for the Deceased Spouse’s half. But no court proceeding required.
- Community Property: Both halves receive a stepped up basis. But there is a court proceeding to transfer the title to the survivor.
- Community Property with Survivorship: Both halves receive a stepped up basis AND no court proceeding required.

The Bypass Trust can benefit anyone.

Often it provides income and, if necessary, principal to the Surviving Spouse.

But if the Surviving Spouse has enough assets, especially after receiving the balance of the Deceased Spouse’s estate, the Bypass Trust could be distributed to children or other heirs directly.

### **Issue No. 4: The Bypass Trust**

Example: Husband and Wife own \$12 million in community property.

If Husband dies first, he could pass all of his \$6 million to Wife. There will be no estate tax.

When Wife later dies, she will own \$12 million in assets. She will get the \$5.25 million exemption but her estate will pay taxes on \$6.75 million.

Wife is not the owner of the Bypass Trust even if it benefits her.

When Wife dies, her estate is only worth \$6.75 million. She gets the \$5 million exemption. Her estate only pays taxes on \$1.50 million.

This saves the couple \$2.1 million in estate taxes.

#### **Issue No. 4: Minimize Estate Taxes**

- Annual Gifts of \$14,000 to as many people as you can. Every gift saves \$5,600 in estate taxes.
- Charitable Gifts
- Pass everything directly to or for the benefit of a spouse (this does not help unmarried gay or straight couples).
- Make sure both take advantage of whatever exemption is available, perhaps with a Bypass Trust.

#### **Issue No. 7: If You or Your Spouse is not an American Citizen**

Special rules may apply, especially if your estate is above the exemption amount.

Not all property passing to a surviving spouse may qualify for the marital deduction.

#### **Issue No. 5: IRAs and Retirement Funds**

Many people have large amounts in their retirement funds, more than they need.

At least through 2013, people over 70-1/2 can receive income tax benefits from making a direct distribution to charity.

Remember that, in most cases, you have to pay income tax on the money you withdraw from your IRA or retirement fund.

#### **Issue No. 8: Portability**

- If the deceased spouse does not need to use all of his/her exclusion (\$5.25 million in 2013), the surviving spouse can use the balance if certain requirements are met.

Assets remaining in your retirement plans when you die are subject to both estate tax and income tax (paid by your beneficiary). This can be up to 70%.

If you are thinking about supporting both a charity and family members or other beneficiaries, it is often a good idea to name the charity the beneficiary of your IRA and let your other beneficiaries receive other assets. This avoids the income taxes.

#### **If you want to prepare to revise your estate plan**

- Make a list of all your assets
  - Type of asset
  - Approximate value
  - Any outstanding debt on that asset
  - Names owning that asset
  - How title is held

- Determine who should be the beneficiaries of your assets.
  - Can they receive them outright or should you create a trust for asset management?
- Check your current retirement and insurance beneficiary designations.
- Determine if you need a power of attorney.
- Determine if you need an Advance Directive for Health Care.

- Determine who should be
  - Your executor if you have a will
  - Your successor trustee if you have a living trust
  - the guardian of your children if they are minors
  - your conservator if you need one

**What do our donors need to consider when they decide to leave a charitable bequest?**