# HAVE YOU DONE PROPER ESTATE PLANNING?

Everyone has an estate plan, whether intentionally or by default. If you *think* you have no plan because you have not created a will or a trust, you still have a plan – the laws of your state are going to decide how your estate is distributed upon your death. You have one of the following types of estate plans:

**Intestacy**: dying without a will or trust
- state law dictates distribution of your estate, which you may not want
- usually requires probate court proceeding

**Will**: written instruction to court regarding distribution of your estate
- you select your distribution
- usually still requires probate court proceeding

**Living Trust**: integrated set of documents you use to manage the distribution of your estate and your own finances and health care towards the end of your life
- usually avoids probate court proceeding
- provides benefit while you are alive

## BENEFITS OF A PROPER ESTATE PLAN

- Greatly reduced administrative costs at time of death or incapacity
- Immediate access to assets without court intervention
- Minimizes and may even avoid burdensome estate taxes
- Allows your choice of Guardians to protect your children
- Provides Guardians immediate authority over children's inheritance
- Provides asset protection for children

## WHO NEEDS AN ESTATE PLAN?

Any competent person over age 18 should have an estate plan. How extensive a plan should be depends on assets a person holds, and the number and age of any dependent children. A well-crafted plan is especially important for families caring for a special needs dependent or aging loved one.

## PROPER ESTATE PLANNING

Proper estate planning involves an integrated set of documents that are carefully designed to meet your goals. These documents plan for life's contingencies (potential disability, absence and ultimately death) and benefit your family members and loved ones, not only by providing long-term protection but also by facilitating a speedy and efficient resolution of your estate. Good estate planning requires a cooperative effort between you, your attorney, and appropriate members of your estate planning "team," such as a financial planner, a life insurance agent, and a CPA. The plan should not be thought of as a product-oriented series of individual transactions, but rather a "team effort" to provide a comprehensive evaluation and subsequent development of a plan to protect you and your loved ones into the future.

The development of your estate plan is an ongoing process that evolves as your needs, goals, and family change, as the laws change, and as new estate planning tools and techniques are developed. It is a process of continually evolving entrance, growth, maintenance, and exit strategies. Proper planning requires professional thoroughness that respects the overall well-being of you and your family. Your goals should include the following:

- Avoiding probate, which is often lengthy and costly.
- Control of your assets during your life.
- A business exit strategy if you have an ownership interest in a business.
- Instructions for your care and the management of your assets for you and your family if you become incapacitated.
- Protecting the assets you leave your spouse, children or other beneficiaries from creditors and unscrupulous persons.
- A plan of distribution that will leave your assets to whom you want, when you want, and with whatever controls you want.
- Saving the greatest amount of taxes and post-death administrative costs possible - not only in your own estate, but in the estates of your spouse and your descendants.

## WHAT IS THE BENEFIT TO AVOIDING PROBATE?

What part of my estate would be subject to probate?

NO TRUST: Titled assets in your name with gross value over the amount determined by your state's laws. (see Probate/Cost chart, next page)

*TRUST: None (for any property held in trust)*

How long will it take to settle the estate?

NO TRUST: The duration can be difficult to predict and vary by state, but a good estimate is 1-2 years for a medium-sized estate, longer for larger estates. During this time, assets may be frozen and nothing can be distributed or sold without court approval. Delays can cause forced sale of small business/professional practice and reduce inheritance for all beneficiaries.

*TRUST: Trust administration can take more than a year, but most distributions of funds can take place much earlier; assets can be sold immediately*

How much will it cost to settle the estate?

NO TRUST: Up to 10% of the gross value of the estate in attorney and executor fees, court costs and other expenses. See the Probate/Cost chart for information specific to your state. For example, in CA, probate fees on a $500,000 house alone would come to approximately $50,000.

*TRUST: The fee to prepare a well-crafted estate plan is generally $2,000-$3,000. Administration of the estate by an attorney after death ranges between $1,500-$5,000.*

Aside from financial considerations, what are some other drawbacks of the probate process?

NO TRUST: Costly and/or time-consuming process in the court system to settle estate. Greater likelihood of relatives to contest or have conflict over the wishes of the deceased. Complicated, multi-state probate for any clients who may own or inherit property in a state other than their own.

*TRUST: Much less costly process that is handled out of court smoothly and simply with your attorney's help. You will have a knowledgeable advocate for any unforeseen issues that may arise.*

## PROBATE/COST CHART

| State | What is subject to probate? | How much can probate cost? |
|---|---|---|
| Arizona | $100,000 equity in real property; or<br>$75,000 total assets; or<br>$5,000 or more in wages due | 10% of gross (total) value of estate |
| California | $50,000 gross value of real property; or<br>$150,000 total assets<br>(gross value NOT equity) | 10% of gross (total) value of estate<br>(i.e, home valued at $500,000 would generate approx $50,000 in probate fees; inability of beneficiaries to pay would force a sale) |

## WHAT KIND OF ESTATE PLAN IS RIGHT FOR ME?

For persons of at least moderate means, a REVOCABLE LIVING TRUST is the appropriate estate planning tool for avoiding probate. In most cases, living trusts are a vital foundation to provide maximum asset preservation. Some examples of situations in which a Revocable Living Trust is advised are the following:

- Married or single individuals with minor children.
- Families caring for a special needs individual or an aging loved one
- Anyone owning real estate.
- Anyone with a gross estate above their state probate threshold.
- Anyone who desires that assets be held, managed and used for the benefit of a beneficiary, and not distributed immediately (e.g., beneficiary receives funds at a certain age other than 18, future disbursement for educational expenses, etc.)
- Anyone who has been married more than once who wants to allocate certain funds or assets for their children from a previous marriage.
- Any owner of a small business.

A Revocable Living Trust will fulfill a vital role throughout your life, in any time of disability, at death, and after death for your loved ones. The trust itself will be accompanied by a will and other supporting documents that work together to accomplish the intended effect.

In cases where a Revocable Living Trust is not advised, a simple estate plan is still important and would usually include the following:

- A simple Last Will and Testament (including provisions for the care of minor children, if necessary).
- Durable Power of Attorney for asset management and personal affairs.
- Power of Attorney for Health Care.

# TRUST VS. WILL

*Will only nominates a fiduciary*

Trust gives fiduciary immediate authority without court intervention

*Will only selects beneficiaries, then court must protect*

Trust gives immediate protection without delay and cost of court intervention

*Will provides for NO management or control when a client becomes incapacitated*

Trust gives immediate authority to make decisions for an incapacitated person

*Bottom Line:*

A trust accomplishes things a will CANNOT do — OR it accomplishes those same things at a significantly lower cost!

## WHAT ABOUT USING JOINT TENANCY OR DESIGNATED BENEFICIARIES FOR ESTATE PLANNING?

Joint Tenancy

- joint tenancy does not avoid probate altogether, it only delays it
- joint tenancy may have many unintended and unfavorable consequences
- joint tenancy can create significant estate, gift and income tax problems

Many people plan by putting their assets in joint tenancy for the purpose of avoiding probate. However, joint tenancy only avoids probate when there is a surviving joint tenant. When the last joint tenant dies, the property will be probated unless it has been transferred to a trust. The joint tenancy form of ownership may also have many unintended and unfavorable consequences. For example, if a person places a home in joint tenancy with a son or daughter the entire property is usually subject to attachment by a creditor of any one of the joint tenants. Once the asset passes to the surviving joint tenant he or she owns the property outright, so not only is the property subject to attachment by that person's creditors, but also the survivor has absolute control over the property. If the surviving joint tenant is a surviving spouse who remarries, it is quite possible that the property may never end up in the hands of the decedent's children. There are also significant estate, gift, and income tax problems that can arise from joint tenancy.

Beneficiary Designations

- beneficiary designations make no provision for estate tax planning
- beneficiary designations do not protect from creditors or unscrupulous people

Beneficiary designation is another form of estate planning for insurance and retirement plans. In this area, the problems arise from a failure to coordinate beneficiary choices with the rest of the estate plan. This area is too complex to discuss fully, but keep in mind that you should always ask your advisors about coordinating beneficiary designations with the rest of the plan. In any case, you should almost never designate your estate as a beneficiary.

As you can see, unintended and unfortunate results can occur without proper planning.

## WHY DO I NEED A CUSTOM ESTATE PLAN?
## WHY NOT USE SELF-HELP WEBSITES OR SOFTWARE?

One of the main functions of an estate plan is to minimize expense and effort when a person becomes incapacitated or dies. Minimizing expense and effort means avoiding the Probate court, if possible. Nothing will place a person or their assets in Probate court faster than a poorly written estate plan. Individuals often force websites or software to insert words or phrases which they do not realize will destroy the ability of the document to do its job. Even when these documents are 'correct' on their face, they are never able to handle all the contingency plans that must be written into a good estate plan. Any element of a written estate plan that is misaligned with the other elements threatens to destroy the efficacy of the entire plan. Even the best designed website or program is no substitute for the benefits of an ongoing, personal relationship with your own attorney.

## WHAT IS THE COST OF A QUALITY ESTATE PLAN?

Fees vary significantly depending on issues like the size of the estate, the amount of tax planning needed, the complexity of the plan and its distribution scheme, and the existence of children or grandchildren from different marriages or beneficiaries with special needs. The expertise of the attorney, the amount of counsel offered, geographic area, and whether or not the attorney's office handles the trust funding also affect the cost of an estate plan.

Estimating the cost of an estate plan prior to consulting with a client is like estimating what it will cost to cure an illness before the doctor has seen the patient. However, it is important for clients to have a realistic expectation of what good planning involves.

In very general terms, you should anticipate fees for estates under $2.5 million to be in the range of $1200-1700 for a will package and $2200-2800 for a Revocable Living Trust. In our firm, changes requested within one year are included in the cost. If you have legal plan coverage through your employer, your legal plan will cover all or part of the cost of your estate plan.

Additional fees may apply in estate plans that require complex tax planning, life insurance trusts, charitable trusts, deeding multiple properties, or planning for generation skipping. For larger estates, it is difficult to give a range, because of the varying complexities of each situation, but the fees can be considerably more. With the right attorney, you will get what you pay for -- customization of a plan to fit your particular needs, advice and counseling regarding your individual situation, and advisement regarding funding.

# WHAT IS MY ROLE IN THE ESTATE PLANNING PROCESS?

Providing Information

You can assist in the development of your estate plan by providing information in a timely manner to your attorney. This information is crucial to getting your estate plan completed efficiently and accurately.

• Initial Meeting: please bring the Trust & Will Preliminary Information Packet (provided to you by our office and also available under the "Documents" tab on our website) filled out as completely as possible. This will help the attorney understand your needs and will help you identify what questions to ask during your meeting.

• Upon Request: please respond to any request for further information from our office as soon as possible. This will ensure the timely completion of your estate documents and minimize repeated contacts by our attorney/office that slow down the completion of your estate plan..

Funding the Trust: IMPORTANT

If your estate plan includes a Revocable Living Trust, the trust must be properly funded as soon as possible. That is, assets must be transferred to the trust. If this is not done, you will have wasted your time and money as your assets will have to be probated and your wishes may not be protected. When you sign your documents, we will provide you with guidelines regarding funding your trust and answer any questions you may have. We work closely with financial planners who are trained in walking a client through the funding process.

Plan Maintenance

Once your plan has been created and completed, it must be maintained. We recommend estate plan review conferences every five years to update your documents. In addition, if there are changes in your family, your desires, or your financial situation, you should always contact your attorney to see if your plan should be revised.

**Since 1997, The Law Offices of Mark E. Lewis & Associates has been here to help protect you and your family into the future!**

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