

Estate Planning (Disclaimer I am not an attorney !)

Why Do We Need an Estate Plan?

Provide for management of our affairs if we are incapacitated
Designate to whom our assets will go when we die, and under what circumstances
Appoint guardians for minor children; Provide for beneficiaries with special needs
Fulfill philanthropic desires; Decide whether or not to probate an estate; Minimize taxes

Property ownership

Joint tenancy with rights of survivorship, JTWROS: Must be equal shares
Cannot be willed; passes by operation of law to survivor(s) outside probate
Only half the property receives a step-up in cost basis on death of first spouse
Tenancy in common, TIC: Can be unequal shares
Distributed by will or trust
Only the interest owned by the deceased co-tenant gets a step-up in basis
Separate property: Anything acquired by a spouse before the marriage, during the marriage as a gift or bequest, or after the parties separated
Community property: Anything acquired during the marriage from earnings or salary
Cannot be sold or gifted by one spouse without the consent of the other spouse
Will be split equally between spouses unless there is an agreement to the contrary
Surviving spouse gets a full step-up in basis to the fair market value at the death of other spouse

Answer these **key questions** before you retain an attorney

Who should handle my financial affairs if I should become incapacitated?
Who should make life-sustaining decisions for me if I cannot?
What have I decided about organ donation?
Who should inherit my assets? How should they be divided?
Who should administer the estate and distribute the assets?
Who should care for minor or special needs children?

Will: Legal document expressing a person's wishes regarding distribution of property at death

Nominates an executor to oversee the distribution
May state who is to care for minor or special needs children
Effective on death; therefore cannot provide for incapacity.
Must be probated unless estate is below a minimum value (\$150,000 in California)

Probate: Judicial process of administering the estate of a decedent

Judge determines the validity of the will, and appoints an executor to manage the estate
Probate estate includes the gross value of all property owned by the decedent, except ...
... property held in joint tenancy, JTWROS
... property which passes by contract, e.g. life insurance, retirement accounts, POD accounts
... property held in a trust
Statutory legal fees are high, e.g. \$23,000 for a \$1M estate, \$113,000 for a \$10M estate.

Duties of an executor

File petition with Superior Court asking to be appointed executor, and open probate case
Create inventory of probate assets, with appraisals if necessary
Locate creditors and pay all bills; File tax returns; Manage estate assets
Petition court to allow distribution of assets to heirs; File final tax returns.

Advantages of probate: Court supervises the process and distribution of assets

Creditors must file claims within 4 months; Transfers clear title to property to heirs
Court can settle disputes between heirs, executor.

Disadvantages of probate: Costly; see statutory fees above

Complexity: Petitions, accountings, hearings, etc.

... continued overleaf

Lack of privacy; anyone can view the documents

Time consuming; can take a few months to several years.

California intestate law: Everyone has a will. You may not like it if you don't write it yourself!

Revocable Living Trust, RLT: Written agreement to distribute assets and care for minor children

Typically more flexible than a will; can accommodate incapacity

Particularly useful when there are children from a previous marriage

More expensive initially than a simple will, but avoids probate and its costs

Practical aspects of a trust: Must transfer title of assets into the trust

Usually includes a "pour-over will" to transfer assets at death if not done already

May be necessary to temporarily remove a home from the trust when refinancing a mortgage

Usually during the trustor's lifetime he/she acts as trustee

After death or incapacity of the primary trustee the successor trustee(s) manage the trust

Duties of a Trustee

Pre-need considerations: Great honor but hard work, time consuming, possible legal liability

Immediate tasks at death: Death certificate, burial/cremation documents, notify SSA, banks, etc.

Legal issues: Retain estate attorney, file for new tax ID for trust

Financial issues: Collect/sort/store financial documents, file affidavits to open new trust accounts

Sale of home: Interview realtors, stage property, estate sale, hold open house, close of escrow

Accounting issues: Accounting reports to all % beneficiaries, tax returns for 3 years, close estate.

Durable Power of Attorney (DPA): Power of attorney (poa) for financial/legal matters

Nominates your agent (attorney-in-fact) to manage your affairs if you are unable to do so

Write checks, pay bills, access your online accounts, manage your investments, etc.

Can be effective immediately, or springing (effective on determination of incapacity by 2 doctors)

Terminates on death. Then the successor trustee (may be the same person) takes over.

Who should you pick as POA agent or successor trustee?

Relative or trusted friend; Financial institution/bank (may require their own DPA form)

Should be trustworthy, competent and knowledgeable

Should understand and respect your philosophy

Power of Attorney for Health Care: Advance Directive

Authorizes an agent to make medical decisions for you if you are unable to do so yourself

Preferable to name at least one alternative agent

Typically activated when 2 doctors affirm you are no longer capable of making decisions yourself

Should include a HIPPA release. Terminates on death.

An advance directive typically includes a living will:

Allows you to specify what care you want, or don't want, if incapacitated

e.g. Resuscitation / DNR, artificial respiration, forced feeding, pain relief, etc.

Your wishes on organ donation are also typically included in an advanced directive.

Letter of Intent: not a legal document

Covers practical details, access to online accounts, funeral preferences, pre-need arrangements, etc.

Estate/Inheritance taxes

Tax Cuts and Jobs Act of 2017; sunsets on December 31, 2025

\$11.4M exemption per spouse (portable), then 40% tax rate on balance.

Most states, including California, have no estate tax, but a few tax an inheritance.

June 12th, 2019: **Philanthropy and Wrap-up Review**

My email: fred.svaaii@gmail.com

Chapter website: www.siliconvalleyaaii.org