

# Kimball, Tirey & St. John LLP

## Estate Planning Overview

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There are many reasons why people don't have estate plans. Some people believe that they don't need an estate plan because they don't have many assets. Some people don't want to think about death or incapacity. Many people have a limited understanding of estate planning. While people often don't want to think about their own mortality. The very name itself, *estate* planning, can be confusing or misleading. One comment I hear often is "I don't have an estate" or "I'm not a wealthy person". This article is meant to provide basic information about estate planning and its importance.

### **WHAT IS ESTATE PLANNING?**

Estate planning can involve much more than the preparation of a simple will. It may involve financial, tax, medical and business planning. The type of planning will depend on the nature, value and extent of your assets. It also involves planning for family harmony after your death and relieving your loved ones of the burden, time, cost and emotional expense of having to deal with the absence of a plan.

Estate planning also involves planning for the management and the administration of your property during your lifetime if you become incapacitated, and the orderly disposition of your property after your death. It involves making healthcare decisions, and designating an agent to make sure your wishes are honored if you become incapacitated, and your medical care and funeral arrangements.

For parents of minor children, estate planning involves identifying the people you trust most to raise and care for your children, attending to both their financial and nonfinancial needs. It can involve providing for your children to receive a college or vocational degree and to better themselves through education.

### **WHAT IS INVOLVED IN ESTATE PLANNING?**

Your estate plan will be based upon your particular circumstances, your goals for your family and its financial needs, and the nature and extent of your property. Major questions concern who will receive your property upon your death and how your property will be distributed. You should determine:

- Who should administer your estate after your death?
- Who should be the guardian of your children?
- How can federal estate (death) and other taxes be minimized?
- How will your executor or trustee pay for death taxes if any are due?
- How should you and your spouse hold title to your assets?
- If you cannot care for yourself, who do you want to take care of you?
- If you cannot manage your estate, who do you want to do so?
- Who should receive the proceeds of your estate?

## **WHAT IS INCLUDED IN MY ESTATE?**

Your estate consists of all property you own, including your home, personal possessions, vehicles, tangible items, money held in bank accounts, stocks or bonds, life insurance or retirement benefits.

The value of your estate is important in determining whether, and to what extent, your estate will be taxed after your death. For the overwhelming majority of Americans, there will be no federal or state estate taxes due, because estate tax only applies to estates in excess of \$11.4 million. There is currently no estate tax imposed by California. For most clients, estate planning involves the need to avoid probate and to plan for the orderly distribution of their assets as opposed to minimizing or avoiding the imposition of an estate tax upon their death.

Your attorney will need to know what property you own and its current net value. Additionally, your lawyer will want to know about your current savings, income, and how your financial status might change in the future after you retire.

## **WHO NEEDS ESTATE PLANNING?**

Everyone, regardless of the value of their estate, needs estate planning. At a minimum, every person should have at least a will, a durable power of attorney and an advance healthcare directive or living will. You will want to designate who will manage your financial and personal affairs and to care for you and make health care decisions if you become incapacitated.

If your estate has a small value, your estate planning may only focus upon who is to receive your property after your death through a basic will. If your estate is larger, or if you own a home, a revocable living trust may help avoid probate proceedings.

## **WHO SHOULD HELP ME WITH MY ESTATE PLANNING DOCUMENTS?**

Wills and trusts are legal documents which should be prepared by a qualified attorney. The cost of estate planning depends upon your individual circumstances and the type of estate planning. The cost generally will include the attorney's charges for discussing your estate plan with you and for preparing any will, trust agreement or other legal documents for you.

## **WHAT IS A WILL?**

A will is a legal document in which you identify who will receive your property and possessions after your death. In a will, you appoint an "executor". An executor is usually a trusted friend, relative, or institution. After your death, your will has to go through Court proceedings (probate) if the value of your estate is more than \$150,000. The Court and the executor will ensure that your property is distributed in accordance your will. In a will, you also may name the "guardian(s)" of the person or estates of your minor children, make specific gifts to individuals or charities, or even include burial instructions.

For some people, a California Statutory Will may be appropriate. The California Statutory Will is a fill-in-the-blank form which can be used by any California resident competent to make a will. For other people, a more comprehensive will is appropriate, particularly when a trust is also a part of an estate plan.

You may handwrite your will. A handwritten will is also known as a "holographic will". Holographic wills usually must be completely in your handwriting, dated and signed.

Holographic wills are not recommended, as they are often unclear or ambiguous. Holographic wills are often subject to attack after death.

In most circumstances, a will does not avoid having an estate pass through the Probate Court.

### **WHAT IS A REVOCABLE INTER VIVOS OR LIVING TRUST?**

A revocable *inter vivos* trust is also commonly referred to as a "living trust" or a "family trust." A revocable living trust may be amended or totally revoked at any time during your lifetime, as long as you remain competent.

A trust is created through a signed, written agreement. You are the "settlor", the person who creates and controls the trust. In the written agreement, you give the "trustee" the legal right to manage or control your property when you die, become incapacitated, or no longer wish to manage your own property. The "beneficiaries" receive the benefits of the trust. The trust agreement sets forth the provisions which will guide the trustee in the management and distribution of the trust property.

Generally, the major purpose of a revocable living trust is to avoid probate, which can be time consuming, expensive and stressful. With only a few exceptions, title to all of a settlor's assets must be transferred to the trustee of the revocable living trust to avoid probate. For example, a deed is used to transfer title to real property to the trustee. Other assets, such as those that are held in joint tenancy or which pass by beneficiary designation, do not have to be transferred to the trustee to avoid probate.

*Kimball, Tirey & St. John LLP's estate planning attorneys can help you identify and implement the best estate planning options. Feel free to contact us with any questions at (800) 574-5587.*

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