

How To Save Your Family From Deep Financial Mistakes With Proper Estate Planning

Wills, Living Trusts, and How To Avoid
Time Consuming and Expensive Probates.

By:
Brian Willie, Attorney At Law
Orange County Estate Planning Law Center
4695 MacArthur Court, 11th Floor
Newport Beach, CA 92660
949-798-6186
www.OrangeCountyEstatePlans.com

QUESTION: I know you may have probably been thinking for
some time now about putting in place an Estate Plan. You

may have even started to take the necessary steps to move this forward. But now I want to ask you a pointed (and perhaps undiplomatic) question:

"Are you satisfied with what you have done about it?"

Don't let the state of California or the courts tell you where your assets should go. I'm going to show you how you can easily take control of your assets and protect your loved ones.

Wouldn't it be nice to not lay awake at night worrying if you have everything in place?...Worrying if you have done the right thing to protect your family?

You have worked hard your whole life. Very hard. Take a look around you. You have done well and in turn, may have accumulated things like:

- **A home. You may even own more than one home, or land**
- **Cars**
- **Life Insurance**
- **Investments like stocks, bonds, and mutual funds**
- **Bank Accounts. Sometimes multiple accounts.**

What if one day all of this were gone?

What if you wanted to make sure all of these things you have worked so hard for went to the people you truly care about in your life, but the courts or the government instead decides where it will go?

What if all of your assets were tied up in probate for months or years before they could be passed on to your loved ones?

For instance, your house would have to remain unsold until probate was finalized. In the meantime there may be mortgages and property taxes due, month after month that someone must pay for...

What if 40% or more of your estate went to the government in estate taxes?

Wouldn't it give you peace of mind to know that there is a solution to these problems? Did you know there is a way you can:

- Avoid Probate? (More on what probate is and how it works later...)
- Pass on property to the person or people of your choice?
- Greatly minimize or avoid estate taxes all together?
- Put restrictions on when and under what circumstances a child or grandchild can receive property? For instance restrictions such as attending college and maintaining a certain Grade Point Average to inherit part of your estate? Or maybe you want to make sure an 18 year old isn't driving around in a new Corvette because he or she blew their entire inheritance while driving past the Chevy dealership!

There is a solution. The solution is planning. Estate Planning to be exact. Estate Planning will ensure that your hard earned assets and property pass smoothly and easily to your loved ones. If done right, it can be done without the hassle and expense of probate and potentially avoiding or limiting estate taxes.

WHAT IS AN ESTATE?

Let's start with the basics of what exactly an estate consists of. The term "estate" consists of all the property a person owns or controls at their death. It does not matter if it's held as your own property, community property, or some form of joint ownership. It includes things like:

- Real property such as houses, condos, and land
- Personal property such as cars, home furnishings, and bank accounts
- Collectibles such as art, antiques, and jewelry
- Life insurance
- Investment accounts such as 401k, IRA, and brokerage accounts
- Business interests such as corporations, partnerships etc.

...and the list goes on.

As you can see—really anything you have is part of your estate.

IF EVERYTHING IS A PART OF MY ESTATE, THEN WHAT EXACTLY IS AN ESTATE PLAN?

Estate planning is really just a process of setting up several types of very fact specific documents to help you determine where your hard earned assets will go and who will help control them.

It is a way to determine a series of "what if" scenarios and working through those scenarios. Then, everything is simply laid out in writing, so that when you are gone, or if you have become incapacitated in some way, someone you have named to handle your estate can clearly, and easily understand your wishes.

That person can then step into action and handle your affairs, taking care of you according to your wishes while you are alive, and then, when you have died, passing your property on to your loved ones with minimal hassle. If done properly, this can be done with no interference from the courts or the government.

So often however, people think that a proper estate plan only takes care of "what happens to my property when I die?" The larger question, and one that most attorneys are unprepared to deal with is "what happens if I outlive my assets?"

Both questions must be answered, and it is critical that your wishes are clearly spelled out in your estate planning documents of what you would want if you became incapacitated. That's what sets Orange County Estate Planning Law Center apart. We view estate planning from all perspectives and focus on making sure you are comfortable and taken care of while you are alive.

DO I JUST NEED A WILL?

An estate plan is typically more than just setting up a will. While a will is often a great start and can provide some level of planning as to where your property will go, it is still an invitation to a probate proceeding. A will does not avoid probate.

Of course, a will is better than no planning at all. With no planning at all and no will, your estate would still have to go through probate.

However, the State of California would decide where your property goes based on the laws of what's called "intestate succession." This just means you died without a will, and the state has predetermined the succession of your loved ones to whom your property will go.

At least with a will, you decide where your property will go. But, a will is still an invitation to probate. More on probate later...

Wouldn't it be better if you decided?

WHAT ABOUT A LIVING TRUST?

If you own a house or other property, or if you have really any level of assets, you may want to consider a living trust.

What is a living trust you might ask? It is sometimes also called an inter vivos trust (which means "within one's life").

This is just a fancy term for a legal agreement between the individual creating the trust and a person or entity established to manage assets within the trust (the "Trustee").

Most of the time, if you or you and your spouse establish a trust, you would be the initial trustees of the trust.

If you die or become incapacitated and can no longer serve as trustee, you would simply name a series of successor trustees to continue to manage the property in the trust and carry out the objective of the trust. These successor trustees can be anyone, but usually people put in place family members who they trust.

In a living trust agreement:

- The trustee is given the legal right to manage, control and invest the assets held in the trust.
- The trust names people or institutions, such as charities("beneficiaries") who are to receive the income and principal on or after the death of the person or people establishing the trust (the "Settlor/s")
- The trustee has a fiduciary obligation which means they have a position of trust and confidence and are subject to standards of performance. Without the settlor's express written permission, the trustee cannot use

trust property for the trustee's own personal use, benefit or self-interest. One must hold the trust property solely for the benefit of the beneficiaries of the trust.

A living trust can be a very important part of an estate plan, and in many cases it is the most important part.

So let's review briefly. There are three parties to a trust:

1. The settlor. This is the person or persons setting up the trust. Sometimes they are referred to as "trustor."
2. The trustee. This is a person or entity (such as a bank) put in charge of managing the trust assets and eventually distributing those assets to your loved ones.
3. The beneficiary/ies. These are the people who receive the benefit of the trust assets. These are your loved ones to whom you would want your property to go.

WHAT ARE THE BENEFITS OF A LIVING TRUST?

The number one benefit of having a living trust is that it will **spare your loved ones the hardship and heartache of having to go through a probate proceeding.**

What is probate you may ask? This is the legal process by which a person's estate is settled. It is during this process that the deceased person's debts are settled and their property is distributed.

The problem with probate is that the national average length of a probate proceeding is 18 months! Even if it takes less time (3-8 months), it can still be too long.

It can also be very expensive. Typically, an attorney would have to be hired and could charge thousands of dollars for his or her time.

In fact, in California, the law entitles attorneys to charge a percentage of the estate. By way of example, for an estate worth \$1 million, the attorney fees alone could be up to \$23,000.

Think \$1 million sounds like a big estate? It's not uncommon at all for people to die with a million dollar estate. Remember, that everything is considered part of your estate. So if you add up the value of real property, bank accounts, IRA's, 401ks etc, your estate would have to pay potentially very large attorneys fees.

Additionally, the person appointed as executor, would be entitled to compensation as well.

And, in the meantime, all of your property is tied up in probate.

This means that if you have a house or other property that you would want to go to your loved ones, they would have to wait to take possession of it or sell it. Meanwhile, there could still be a mortgage and taxes due that must be paid, even though your loved ones could do nothing with the house.

But with a living trust, because you have transferred title to your assets into the trust, you no longer legally own the assets. Your trust legally owns the assets.

Of course, you still have complete control over the assets and can change, amend or revoke your trust or any part of it at any time.

The result? You end up with a very flexible document where you have named trustees, who are responsible for managing the property in the trust, and also in charge of making sure your property is transitioned smoothly and efficiently to your loved ones (your beneficiaries)without the need for probate. **Doesn't that sound like a win-win? 😊**

It also makes your estate plan a private event, rather than a public affair. If probate is involved, it becomes public record, inviting every creditor to file against your estate.

DOES THIS MEAN THAT EVERYONE NEEDS A LIVING TRUST?

No. But there are a few factors to look at when determining whether a trust is appropriate. If the person is at risk to become incapacitated (e.g. they have a degenerative disease) or the risk of death is higher (i.e. cancer or heart disease runs in the family), then no matter what the person's age, a trust very well may be appropriate.

The other factor to look at is the level of assets you have. The greater the value of your assets, specifically if they include real estate, then there is a greater need for a living trust.

Therefore, a young, healthy person, with very little assets probably does not need a trust right now. That does not mean that a young person does not need estate planning such as a will and other documents like a power of attorney.

But, as someone ages, particularly as they get into their 50s and beyond, it is very important to consider whether a trust makes sense. As people get older, they tend to have more, rather than less assets. The risk of death also goes up.

With that said, more and more younger people are setting up trusts, because they recognize that a trust can help protect them against an uncertain future, such as sudden death, an accident, or should they become incapacitated.

DOES A LIVING TRUST HELP ME IF I BECOME INCAPACITATED?

With a trust in place, you have named successor trustees. Their job is to not only act in the event of your death, but also should you become incapacitated. That successor trustee would take over your responsibility and would begin managing your trust assets for you.

If you have not set up a trust or other power of attorney document naming someone to act on your behalf should you become incapacitated, a court would have to name a person to act on your behalf in a conservatorship proceeding.

This can be a long, drawn out, expensive process. There is substantial, and on-going court intervention into your financial affairs. This can be avoided by setting up a trust (for trust assets) and power of attorney documents, naming an agent to act for you, for non-trust assets.

HOW DOES A LIVING TRUST BENEFIT ME WHEN I DIE?

Assets held in your living trust at your death can be managed by the trustee of your living trust and distributed in accordance with your directions in the trust. The trustee is also accountable to your beneficiaries for the trust assets held for their benefit after your death. Trust assets would not be required to go through probate, and therefore can be distributed quickly, smoothly and without court intervention.

Additionally, a trust would not become public record. This provides for a smooth transition of your property, without court intervention.

The cost of setting up and managing a living trust is often far less than the cost of going through probate.

WHO SHOULD BE THE TRUSTEE OF MY LIVING TRUST?

Most people are their own initial trustees of their trust. In the case of couples, both may serve together as initial trustees. When one has died or can no longer act, the other person simply takes over as sole trustee.

Then, once both people have died or can no longer act, successor trustees would have been named in the trust, who would act to carry out your wishes as established in the trust.

There are many important factors to consider when selecting successor trustees. For instance, do you trust the person to make sound financial decisions? Are they located in an area where it would be easy for them to act on your behalf?

You should meet with an experienced estate planning attorney for advice on how to choose successor trustees.

Choice of trustees can be one of the most important decisions of any good estate plan.

ARE THERE DISADVANTAGES TO SETTING UP A LIVING TRUST?

As long as you choose your trustees wisely, there really is no downside to having a trust. The initial cost of setting one up will be higher than a will, depending on how complex the estate is. But, the advantages of not having to deal with the hassles and headaches (not to mention the very high cost) of probate for your family is worth the extra expense up front.

IF I SET UP A LIVING TRUST, WOULD I STILL NEED A WILL?

Yes. You would need what's called a "pour-over will." Your trust would only control assets to which you made subject to the trust.

If for some reason you forgot to transfer a piece of property into the trust, the will would act to sweep up those assets and "pour-over" those assets into the trust, to be administered and distributed according to the terms of the trust.

You always want to have one plan of distribution, not multiple plans. By pouring over assets into the trust, this ensures that a trustee can distribute all of your property according to the plan you outlined in your trust.

Of course, it's important to remember that you would not avoid probate for the items that did not make their way into your trust. Probate may still be required. So it's particularly important to make sure any substantial assets acquired during your lifetime, find their way into your trust.

Also important to note is that a will is the place where you can name a guardian for your minor children should you die. If you don't name a guardian, the court would intervene and name one for you. This may not be the person you would have wanted. So it's very important to set up a will as a part of any estate plan.

I'VE HEARD THAT I CAN SAVE ON INCOME TAXES BY SETTING UP A LIVING TRUST. IS THAT TRUE?

No. You can not avoid or minimize income taxes by setting up a trust. You can however reduce or eliminate estate taxes. See below.

DOES A LIVING TRUST SAVE ON ESTATE TAXES?

It can. For a single person, it is difficult to minimize or eliminate taxes. However, for married people, certain types of tax planning can be done within the context of a living trust which can postpone, reduce or eliminate estate taxes.

Estate taxes can be substantial (over 40%) and would come off the top of your estate before your loved ones get anything. See a qualified estate planning attorney to discuss your options.

WHAT OTHER ESTATE PLANNING DOCUMENTS SHOULD I HAVE?

Critically important to any good estate plan are power of attorney documents. There are two such documents. One is a Statutory Durable Power of Attorney for financial decision making. The other is an Advance Directive for medical decision making and end of life decisions.

In each of these documents, you name an agent to act on your behalf to make decisions should you become incapacitated.

For example, let's assume that you developed Alzheimer's Disease, and could no longer make decisions for yourself. These documents would allow someone you have named to act on your behalf as your agent to make decisions for you.

These documents are particularly important, because without them, a court would have to name a conservator to act for you. As discussed above, a conservatorship is a very long, drawn out process, with substantial court intervention and frequent reporting required. It can be very expensive.

Of course, these documents are no substitute for a living trust, which controls your property upon your death.

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