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An Estate Planning & Corporate Law Firm

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What is an estate plan?

A “comprehensive estate plan” includes a trust, will, durable power of attorney for management of property and personal affairs and an advance health care directive (also known as a living will). Estate plans enable you to do the following:

- Plan for your incapacity. Executing a durable power of attorney for management of property and personal affairs enables you, while you have capacity, to nominate individuals you trust to act on your behalf in the event of future incapacity (e.g., car accident, dementia, etc.). During your incapacity, which may be temporary or permanent, your attorney in fact will have several powers, including but not limited to, the power to file your federal and state income taxes, file a lawsuit on your behalf (which may be the cause of your incapacity), inherit on your behalf, ensure your health care premiums are paid (to ensure you do not lose your existing health care coverage), fund your trust by titling non-trust assets into the name of your trust to avoid probate.
- Nominate individuals to make your health care decisions when you are unable to make them. Executing an advance health care directive, also known as a living will, enables you, while you have capacity, to nominate individuals you trust to act on your behalf to make your health care decisions. This document enables you to specify certain health care wishes in advance (e.g., your burial preference (burial or cremation), anatomical gift preference (donate organs and tissues for transplant purposes or donate your body as a cadaver or only donate organs and tissues to family members or no anatomical donations), life sustaining treatment preference (do you want to be on life support if you are in a permanent vegetative state, have no brain activity or are terminally ill and life sustaining treatment is only prolonging your death). Any and all decisions you do not specify in this document, your health care agent will have the discretion to make.
- Executing and funding a trust. There are multiple reasons to execute a trust. Some of the reasons include giving your successor trustee the power to manage and control your trust assets if you are incapacitated, probate avoidance and estate tax avoidance. Probate is the process of a judge supervising the changing of title from your name to your beneficiary’s name upon your death. Probate is typically a slow process. Because there is only one sitting probate judge in San Diego County, the process can last up to two years to complete. Court fees and filing fees are hundreds of dollars. Attorney fees are based on the gross value of your assets. For example, if you purchased a home that is not titled in the name of a trust, it will go through probate. An attorney is paid between 1 to 5% of the gross value of the home depending upon the size of your estate. If you purchased a home for \$500,000 and had no equitable interest in the home, an attorney may be paid up to \$20,000 in fees in probate to change title of the home. Alternatively, if your home was titled in the name of a trust, your successor trustee would pay between \$7.00 to \$25.00 to change title. Probate should always be avoided whenever you own real property due to

these unnecessary expenses.

WILLS

What happens if I don't have a will?

If you die without having a will in State of California, the State of California has devised a distribution scheme dictating the distribution of your assets. Priority of distribution typically is as follows:

- Surviving spouse*
- Children
- Grandchildren (great grandchildren, etc.)
- Parents
- Siblings
- Nieces and nephews
- The search continues through your ancestral tree for a living heir and if no living relative is located, the State of California inherits 100% of your estate.

**If you are married, your surviving spouse will only receive a portion of any separate property you own. They will have to share it with your other relatives.*

If you die without a will, your assets will go through probate! (Remember, probate is unnecessary, time consuming, public and very expensive!)

What if I don't have a will and have step children?

If you are a stepparent with step children and your spouse (your step children's biological parent) dies first and then you die without a will, your stepchildren will be **DISINHERITED**. This is an honest but common mistake in California due to community property laws. You must have an estate plan if you are a blended family!

What happens if I have a will?

If you have a will, your assets will still go through probate! By having a will, you enjoy the privilege of telling the State of California the beneficiaries you intend to inherit your estate, but your executor still has to navigate the lengthy and costly probate process. (Remember, probate is unnecessary, time consuming, public and very expensive!)

Guardians for minor children

If you have minor children, you need to nominate the guardians you would want to raise your minor children in the event you died unexpectedly. Your guardian should be someone with similar values, ethics, morals, and life experiences. You nominate your guardian choices in your will.

What is wrong with probate?

Probate is the judicially supervised process of changing title of your assets from your name to your beneficiary's name. Typical complaints regarding probate include:

Minor Beneficiaries. If any beneficiary is under the age of eighteen, their monies are held in an account and distributed to the minor outright on the minor's 18th birthday. (Would your life be

different if you received a large sum of money on your 18th birthday? Would you have gone to college if you received one million dollars on your 18th birthday? Would you have started your own business if you received one million dollars on your 18th birthday?) Titling your assets in a trust avoids probate and enables you to choose the dates of distribution for minors (e.g., a distribution of 5% upon attainment of a bachelor degree from an accredited four year university or college or when the beneficiary reaches the age of 25, whichever occurs first, a distribution of ½ at age 30 and final distribution of the trust principal and interest outright at age 40).

Probate is Typically an Extremely Slow Process. There is one probate judge for all of San Diego County. Probate typically takes nine months to two years to complete. If anyone contests your estate, probate may be infinite. Titling your assets in the name of a trust avoids probate.

Probate is a Public Process. Anyone may pull your file and obtain private information about your loved ones, including their names, addresses, telephone and social security numbers, and your financial situation, including your assets and debts. There are private companies in the business of manipulating your loved ones into buying bogus items you “allegedly were in the process of buying for their benefit before you died.” They pull new files at the probate court (remember these files contain your loved ones names, addresses, telephone and social security numbers). They contact your loved one, who is vulnerable and grieving, telling them you were in the process of funding a bogus life insurance policy before you died and then manipulate your loved one into funding it in honor of your memory! You can protect your loved ones and avoid this scam by avoiding probate!

Probate is VERY Expensive. Probate is expensive due to court costs, court filing fees and attorney fees. Court and attorney fees are determined based on the value of your assets. For example, if your home has an equitable value of \$120,000.00 and a fair market value of \$500,000.00, an attorney may legally charge between 1 to 5% of the fair market value depending upon the size of your estate. This may cost as much as \$20,000.00! Titling your home in the name of a trust avoids this process and costs between \$7.00-\$25.00.

TRUST

What is a trust?

A trust is a document that is similar to a contract. You nominate someone you know and trust as your “successor trustee” who will manage and control your trust assets upon your incapacity and/or death.

Why are trusts beneficial to my loved ones?

Trust assets avoid probate! By titling your assets in the name of your trust, all trust assets avoid probate. Your loved ones need not lose their inheritance by paying unnecessary court costs, filing fees and attorney fees. The terms of the trust empower your successor trustee to pay and file your state and federal income taxes, any federal estate taxes, pay any and all creditors claims and debts owed by your estate, and distribute the remaining trust assets to your loved ones.

Minor children and/or Grandchildren. If you have minor children, you may distribute trust funds to them for their basic needs, e.g., health, education, maintenance and support, at any time regardless of their age. You may further provide at what ages you want your children to receive distributions of trust principal, e.g., ½ of their trust principal at age 25 and the balance and interest at age 30. Unlike probate, your children will not inherit at age 18.

Children and loved ones with special needs. If you have children or loved ones with special needs who are receiving state and/or federal subsidies, you may provide monies for them at your death by holding monies in a special trust for their benefit. The State of California and federal government automatically terminate state funding for special need recipients if that individual has more than a specific sum of money titled in their name at any given time (typically no more than \$2,000.00). A special needs trust enables your successor trustee to pay monies to that individual for expenses the state and/or federal subsidy do not provide for while enabling that individual to continue receiving state and/or federal aid.

Special children provisions. You may provide in death for your children and/or grandchildren what you would have provided them if you were living, e.g., special gifts such as high school and/or college graduation gifts, wedding gifts, a new car for college, a down payment on their first home, etc.

Pets. You may direct your successor trustee to distribute monies to a family member or friend to ensure your animals are taken care of when you die. The purpose of this distribution, is to pay for the animal's basic expenses, including but not limited to food, grooming, veterinary care, dental care, etc., and most importantly, to ensure your animal is not euthanized unless medically necessary. If your family and friends are unable to care for your animals, you may direct your trustee to place your animals for adoption with a "no-kill" animal shelter.

Do I lose control of my assets by titling them in my trust?

If you fund a revocable trust with your assets, you retain control over those assets while you are alive and have capacity. This means while you are alive and have capacity, you are in charge of your trust assets (you may sell them, encumber them, give them away, acquire more assets, etc.). Your trust assets are still your personal assets. The only thing that has changed is legal title of your assets. (A revocable trust is a trust that can be changed or revoked at any time and for any reason so long as you have capacity.) Alternatively, if you title your assets into an irrevocable trust, you surrender ownership, control and management of those assets. Typically irrevocable trusts are funded for larger estates that will incur a federal estate tax.

DURABLE POWER OF ATTORNEY FOR FINANCES & PERSONAL AFFAIRS

What is a durable power of attorney for finances & personal affairs?

A durable power of attorney for management of property and personal affairs enables you, while you have capacity, to select individuals you know and trust to act on your behalf during any incapacity, regardless if your incapacity is temporary or permanent. Some of the powers included in this document are the powers to file your state and federal income taxes, file a lawsuit on your behalf (this may be the cause of your incapacity), inherit on your behalf, title your assets in the name of your trust.

Why do I need a durable power of attorney for finances & personal affairs?

If you do not have a durable power of attorney for management of property and personal affairs, your loved ones would need to be court appointed to act on your behalf. A court appointed individual is called a conservator. A conservatorship is a public process so anyone will have access to your current mental health status. It typically costs between \$2,500 to \$6,000.00.

ADVANCE HEALTH CARE DIRECTIVE

What is an advance health care directive or living will?

An advance health care directive, sometimes called a living will, enables you to choose while you have capacity individuals you know and trust to make your health care decisions when you are unable to make them. This is a loving document! By executing this document, you are relieving your loved ones having to make extremely difficult decisions during a highly stressful and emotional time. You ease their burdens by specifying certain health care decisions, e.g., your burial preferences, anatomical gift preferences, life sustaining treatment, etc.

COMMON ESTATE PLANNING MISTAKES

Parents owning real property in common with their children to avoid estate planning. If you intend for your children to own your real property when you pass, your children should inherit your property through a will or trust and NOT own it in common with you while you are alive. State law enables your children to receive a "step up basis" on the property value if they inherit property at your death. For example, if you purchased your home in 1950 for a value of \$15,000.00 and today the fair market value is \$500,00.00, if your children inherit this property at your death, they realize ZERO capital gains. If you own your property in common with your children, they WILL realize capital gains depending upon the appreciation value of the real property and how title was held.

Parents of minor children need an estate plan. Parents with minor children need an estate plan to ensure guardians have been selected to care for minor children if mom and/or dad die suddenly. An estate plan is also needed to avoid probate to ensure your children do not inherit everything outright at the young age of 18.

Blended families always need an estate plan to avoid unintentional disinheritance of stepchildren. At a minimum, you and your spouse should have a will to ensure stepchildren are acknowledged to avoid disinheritance. Your surviving spouse can always revoke a will upon your death so a trust is preferable for maximum protection!

People who have \$150,000.00 or more of assets need an estate plan. If the net value of your estate is \$150,000.00 or more and if you do not have a trust, your assets will go through probate! Your loved ones will lose substantial monies in court fees, court costs and attorney fees that could have been completely avoided if the property was titled in the name of a trust!

People who own real estate in California need an estate plan. If you own real estate in California and if you do not have your real estate titled in a trust (or a corporation assigning your corporate interest to your trust), your assets will go through probate! Your loved ones will lose substantial monies in court fees, court costs and attorney fees which could have been completely avoided if the property was titled in the name of a trust!

People who have a trust but failed to title their assets into the name of the trust. Your trust is only as valuable as the assets titled in the name of the trust. To avoid probate and save time and money by avoiding probate, you must title all of your assets into the name of your trust. Ensure you update your beneficiary designations on your life insurance, annuities and/or tax deferred accounts. It is prudent to check title on all of your assets to ensure they are titled in your name as trustee of your trust.

Can I Pick A New Attorney to Update My Estate Plan?

People who have an estate plan drawn up by another attorney. You can have any other attorney review and amend your estate plan. You do not have to return to the original attorney who drafted the documents.

LAW OFFICE OF HEIDI KLIPPEL, A PROFESSIONAL LAW CORPORATION

Law Office of Heidi Klippel, A Professional Law Corporation is located in La Jolla and focuses on all aspects of estate planning and administration, as well as some aspects of corporate and family law. Our staff attorneys have comprehensive estate planning backgrounds and practice in the areas of both drafting estate planning documents and administering them. We offer assistance with drafting revocable trusts, durable powers of attorney, healthcare powers of attorney, irrevocable life insurance trusts, stretch IRA trusts, probate and trust administration.

Please feel free to give your loved ones, family members, friends and colleagues, our contact information to ensure their estate plan is properly established, funded and in order. If your loved ones or friends have named you as guardian of their children, please have them contact our firm to ensure their estate plan is in proper order, current, and funded.

Estate planning is one aspect of life planning. You should ensure you have a professional, competent, "team" reviewing your affairs, including but not limited to, a certified financial planner, a certified public accountant for tax planning, an insurance agent or broker to ensure you have adequate insurance, and other core professionals. If you would like the contact information of professional "team members" our firm trusts and utilizes, please feel free to inquire. If you have other legal needs and would like the contact information for a competent attorney specializing in that area of law, please feel free to inquire. Our professional goal and dedication to you is to ensure you plan now so your loved ones do not pay later!

The information contained in this handout is not intended to be construed as legal advice but is intended for educational purposes. You should consult with an estate planning attorney for individual legal advice.