

# Shaping the Future: Estate Planning

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## Workshop Objectives

To provide an overview of planning tools needed to ensure all of your objectives are met.

# Why Plan Your Estate?



## Workshop Schedule

Introduction • September 16, 2014

Estate Planning Basics • September 23, 2014

Advanced Healthcare Directives (and more) • September 30, 2014

Advanced Estate Planning • October 7, 2014

Charitable Income and Tax Planning • October 14, 2014

IRA, 401K, 403B and 457 Plan Distributions • October 21, 2014

Role of the Executor and Trustee • October 28, 2014

Review • November 4, 2014



# Estate Planning



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## Estate Planning Tools

A Simple Full Plan Includes

- Pour-Over Will
- Revocable Trust
- Advanced Health Care Directive
- Durable Power of Attorney

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# No Documents in Place

## Intestate succession



high costs

no control

public process

separate property issues

long court process

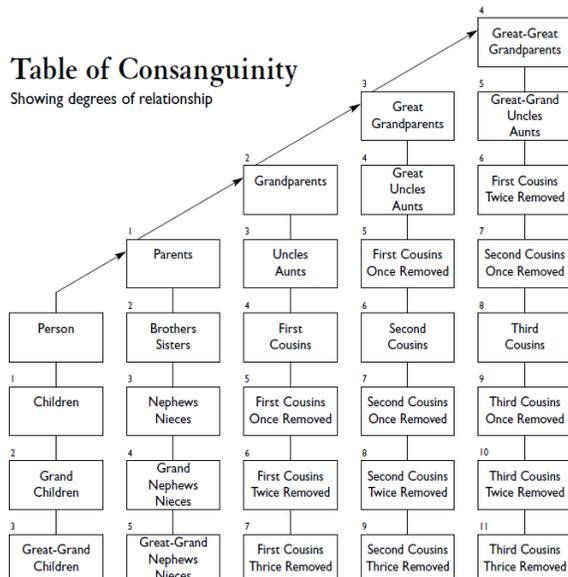
unexpected distributions



# No Documents in Place

## Table of Consanguinity

Showing degrees of relationship



## A Case of Consanguinity



## What is a Will?

**A Will is a legal document which:**

Names beneficiaries of your estate, e.g. individuals or charities.

Names executor who pays your debts, expenses, and taxes.

Distributes your assets according to the instructions in your will.

Nominates guardians for your minor children.

**A Will alone does not avoid probate!**

Distribution of your assets is done under court supervision.



# What is Probate?

**Probate** is the first step in the legal process of administering the estate of a deceased person, resolving all claims and distributing the deceased person's property under a **will**. A probate court decides the legal validity of a testator's will and grants its approval by granting probate to the executor.



# Probate Estate

## **I have a small estate. Does it have to be probated?**

In California, estates that are valued at more than \$150,000 (including only probate assets) generally have to be probated. There are exceptions made if the decedent is survived by a spouse. See the [small estates page](#) for more information.

## **What is a probate asset?**

Assets held only in the name of the decedent are generally probate assets. An asset is not counted as a probate asset if it is owned in [joint tenancy](#) (but not if it is owned in [tenancy in common](#)) or if there is another means of determining who receives the asset after death of the owner, such as beneficiary designations for life insurance and IRAs. If those designations have been made, the asset avoids probate, otherwise it will be added to the estate and probated. If there is a surviving spouse, a formal probate can usually be avoided with a [spousal property petition](#).



# Probate Estate

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## Probate Assets Can Include:

- Bank Accounts
- Investment Accounts
- Stocks and Bonds
- Business interests
- Real estate
- Beneficiary assets with no designated beneficiary

## Non Probate assets include:

- Retirement Accounts
- Paid on Death Accounts (P.O.D.)
- Life Insurance
- Joint Tennancy

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# Last Will and Testament



**high costs**

**public process**

**long court process**

**no control**

**unexpected distributions**

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# Probate Fees

**How much does probate cost?** The table below shows the fees for attorneys and executors, as provided by the California Probate Code.

Estate Value	Statutory Fee
\$100,000	\$4,000
\$200,000	\$7,000
\$300,000	\$9,000
\$400,000	\$11,000
\$500,000	\$13,000
\$600,000	\$15,000
\$700,000	\$17,000
\$800,000	\$19,000
\$900,000	\$21,000
\$1,000,000	\$23,000
\$1,500,000	\$28,000
\$2,000,000	\$33,000
\$3,000,000	\$43,000
\$4,000,000	\$53,000
\$5,000,000	\$63,000
\$6,000,000	\$73,000
\$7,000,000	\$83,000
\$8,000,000	\$93,000
\$9,000,000	\$103,000
\$10,000,000	\$113,000
\$15,000,000	\$138,000
\$20,000,000	\$163,000

**FEES CAN GO HIGHER:** In probates that are complicated by lawsuits or tax problems, the attorney and executor can ask the judge to approve fees that are higher than those set by state law.



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# What is a Trust?

**A trust is a legal document which:**

- Names individuals (or charities) who will receive your assets after your death.
- Nominates a trustee to manage your assets held in trust.
- Distributes your estate according to your trust instructions.

Common objectives for trusts include:

- to avoid probate
- to reduce the estate tax liability
- to direct how distributions should be made to beneficiaries

Think of a trust as a special place in which ordinary property from your estate goes in and, as the result of some type of transformation that occurs, takes on a sort of new identity and often is bestowed with super powers: immunity from estate taxes, resistance to probate, and so on.

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## Living Trust and Pour-Over Will



**low cost**

**total control**

**private process**

**contingencies  
planned for**

**no court process**

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## Trust Estate

Almost anything can be placed in Trust:

- Bank Accounts
- Investment Accounts
- Stocks and Bonds
- Vehicles (cars, boats, scooters etc.)
- Business interests
- Real estate

Because Trust are recognized as separate legal entities, distributions can be made by the trustee without any involvement of the courts.

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## Income in Respect of a Decedent

**Income in Respect of a Decedent (IRD)** – Assets that were not subject to income tax during a person’s life and income to which a person was entitled but failed to receive before their death. IRD assets are not eligible for the “step up in basis.”

Examples include:

- Retirement Accounts (IRAs, 401(k)s, 403(b)s, 457s)
- Last paychecks

As these assets are typically acquired on a pre-taxed basis, they may be subject to double taxes—income tax and estate tax.



## Transfer Taxes Overview

### Three Types of Taxes Imposed on Transfers:

1. **Gift Tax:** Transfers made during one’s life
2. **Estate Tax:** Transfers made at one’s death
3. **Generation Skipping Transfer (GST) Tax:** Transfers made during life or at death that skip the children’s generation and pass to “skip persons,” i.e. grandchildren



# Gift Tax Overview

## Current Gift Tax Law

- **Lifetime Gift Tax Exemption** - Each individual has the ability to transfer \$5.25M of assets during his or her lifetime without incurring a gift tax
- **\$14K annual gift tax exclusion per donor, per recipient, per calendar year**
- **Above the \$14K gift, an individual will use a portion of his or her lifetime gift tax exemption or pay gift tax**
- **Gifts of tuition and for medical expenses not counted against the lifetime gift tax exemption**



# Estate Tax Overview

## Current Estate Tax Law

- **Estate Tax Exemption** - Each individual has the ability to transfer \$5.25M of assets at his or her death without incurring an estate tax
- **Portability Provision** - Unused portion of estate tax exemption of deceased spouse may be transferred to surviving spouse (must be a US Citizen)



## Lifetime Gift Tax Exemption and Estate Tax Exemption

- **Estate Tax Exemption and the Lifetime Gift Tax Exemption are not mutually exclusive transfer taxes**
- **If a portion of the Lifetime Gift Tax Exemption is used, then that corresponding amount is also used from the Estate Tax Exemption**



## Generation Skipping Transfer Tax Overview

### Current GST Tax Law

- **GST Tax Exemption** - Each individual has the ability to transfer \$5.25M of assets during his or her lifetime or at his or her death without incurring a GST tax
- **\$14K annual GST gift tax exclusion per donor, per grandchild, per calendar year**
- **Above the \$14K gift to a grandchild, an individual will use a portion of his or her GST tax exemption**
- **Gifts of tuition and for medical expenses not counted against the GST tax exemption**



# Transfer Tax

- **\$5.25M Gift and Estate Tax Exemption (per person)**
  - Anything over this amount is subject to the highest rate of 40%
- **\$5.25M+ GST Tax Exemption (per person)**
  - Indexed for inflation

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## DISCLOSURE

**The information contained in this presentation and any handouts is intended for educational and informational purposes only and may involve some simplifications. Individuals should consult with their tax and legal advisors before implementing any of the vehicles and/or techniques discussed. Information contained in this presentation or any handouts that are provided should not be construed as tax or legal advice.**

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