

# FOUNDATIONS LAW OFFICE

Probate, Wills, Trusts, Estate Planning and Landlord/Tenant Law

## **ESTATE PLANNING 101**

### ***What is estate planning?***

Your estate consists of all of the assets you own at the time you pass away, including your house, money, jewelry, and furniture. Estate planning is a process of determining what will happen to those assets after you die. You can determine:

- Who will manage your assets for your benefit during your lifetime if you ever become unable to manage them yourself.
- When and under what circumstances it makes sense to distribute your assets during your lifetime.
- Who will manage your personal care and how health care decisions will be made during your lifetime if you become unable to care for yourself.
- Who will receive your assets after your death and how the assets will be distributed.

### ***Why do you need estate planning?***

You need an estate plan because if you die without having made a proper estate plan, the probate laws of California may determine how your assets will be distributed. If your estate is subject to probate laws, your family and relatives will have to figure out how to transfer and inherit your property after you die. To do this, they usually must go to probate court.

The probate court:

- Decides whether a will is valid or not, if you have a will.
- Appoints an administrator and an attorney if your will does not designate an executor.
- Determines who your heirs and beneficiaries are and what assets are to be given to them, if you don't have a will.
- Takes care of your financial responsibilities and pays any creditors, debts, taxes, and fees by using money from your estate, and
- Transfers your assets to heirs or beneficiaries.

You want to avoid probate because it can be costly, lengthy and intrusive since the court will appoint an administrator and an attorney who will be paid from the assets in your estate before the assets are distributed to your heirs. In addition, the documents and information used in the probate process become available as public record.

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## ***How is your estate planning affected by your will?***

If you have a will, the executor appointed in your will files a petition in court and seeks appointment to manage your asset.

If you do not have a will, the probate court appoints an administrator to handle your estate.

## ***When does your estate go to probate?***

There are many factors which determine whether an estate needs to go to probate court but mainly, the amount of money, the type of property involved, and the identity of claimants determine if probate court is needed.

- In general, your estate will go to probate if you do not have a will or if you have a will but not a trust.
- If your ***personal property*** is worth \$150,000 or less, then you may not have to go to court. Instead, you may use the simplified process to transfer your personal assets.
- If your ***real property*** is worth \$150,000 or less, then you may be able use a form called *Petition to Determine Succession to Real Property*. Along with the petition, you must also file an *Inventory and Appraisal* and provide notice of hearing.
- Talk to a lawyer to see if you can use these simplified processes for your estate.

## ***How can you avoid going to the probate court?***

- **Hold property in Joint Tenancy.**
- **Designate death beneficiaries.** You can designate beneficiaries by using different types of financial assets and instruments to give away your property which takes effect at the time you pass away. Upon your death, the assets become the property of the person you designate as the beneficiary, and are no longer a part of your estate, thus reducing your estate's total value. Probate can be avoided entirely if the remaining assets in your estate total less than \$150,000 at the time of your death.
- **Create revocable living trusts.**
- **Give lifetime gifts**

For more in-depth information regarding estate planning, please contact us at [Info@FoundationsLaw.com](mailto:Info@FoundationsLaw.com) or (916) 778-0789 for a consultation.