

Update on Estate Planning and Probate Administration

**Presented by
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a Professional Corporation**

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- **USC B.S.** - Business Finance (Real Estate Emphasis).
- **USC B.A.** - Political Science.
- **Southwestern Law School** - J.D. - Law Review Honor Program.
- **University of Miami** – LL.M. in Estate Planning.
- **California State Bar** Licensed in 2002.
- **Law Offices of Gerard V. Kassabian**, a Prof. Corp. in Beverly Hills, CA since 2010.
- Specialize in:
 - Trusts & Estates, Probate, Estate & Trust Administration;
 - Family Law;
 - Real Estate Law;
 - Business Law; and
 - Commercial and Civil Litigation.
- No financial disclosures for this presentation.

Estate Plan

- Basic Estate Plan Documents Categories:
- Alive but Unable to Act:
 - Power of Attorney for Finances.
 - Power of Attorney for Healthcare / Advance Health Care Directive.
 - Trustee of Trust for Assets in Trust.
- Post-Death:
 - Will / Living Will / Pour-over Will / Testamentary Document.
 - Revocable Trust / Living Trust / Family Trust.
 - Related Documents:
 - Certificate of Trust;
 - General Assignment; and
 - Guardianship Agreement.

Current Estate & Gift Taxes

2018 Estate, Gift/GST Tax Rates (2018 Tax Reform Act):

a. US Citizens:

- i. \$11,200,000 per individual (\$22.4 million for married couple) exclusion for Estate and/or lifetime Gift/GST Taxes – Annual gift \$15,000;
- ii. 40% maximum federal estate tax rate; and
- ii. Spouse may carryover unused exemption.
- iii. Sunset in 2025 reverts to what the 2017 amount would have been with inflation index applied

b. Non-US Citizens (Green card or non-resident aliens):

- i. \$60,000.00 per individual total exclusion;
- ii. Qualified Domestic Trust; and
- iii. No marital deduction.

Current Estate & Gift Taxes

- 2017 Medi-Cal (Medicaid for California) rules prevent asset recovery from trust estates but allows recovery from probate estates.
- WHAT DOES THIS MEAN? If someone passes away after January 1, 2017 without a proper estate plan, their assets will be subject to probate and, therefore, will be subject to recovery from the California Dept. of Health Care Services (DHCS).
- GOT ESTATE PLANNING? A properly drafted and executed estate plan that will avoid probate and, therefore, avoid the Medi-Cal recovery by DHCS.

Ten Reasons to Plan Your Estate *Now!*

1. What If You Become Incompetent?

Without a plan

- The courts pick the successor manager of your affairs.
- Health care decisions about you may not be made by the most appropriate person.
- If you have a business, an inappropriate person may gain control.

With a plan

- You choose the successor manager of your affairs.
- You choose whom you feel is best suited.
- You choose the successor manager you prefer.

2. Who Raises Your Children?

Without a plan

- A judge decides without the benefit of your insight.
- Increased chance of litigation.

With a plan

- You nominate the guardian of the person and the guardian of the estate.
- Decreased chance of litigation.

3. How Does Your Family Inherit Your Assets?

Without a plan

- Your state's intestacy statute effectively writes your will: Assets pass according to state laws.
- Beneficiaries receive your assets without the benefit of your direction.
- State law does not take into account problem marriages, substance abuse, spendthrift heirs or immaturity.

With a plan

- Your family members enjoy the benefits of the plan you set up for responsible management of your assets .
- Your plan can take all these family issues into account.
- Your Decide distribution
 - WHO
 - WHEN
 - HOW

4. You Have a “Blended”- Multiple Marriage - Family

Without a Plan

- Your wishes/priorities are not considered.
- Children from different marriages may not be treated according to your wishes.
- Your surviving spouse and your children may become adversarial.
- Higher chance of litigation.

With a Plan

- Your wishes/priorities prevail:
- You decide what goes to your current spouse and to children from different marriages.
- You decide where, when and how each member of your family receives assets.
- Lower chance of litigation.

5. You Have a Special Needs Child

Without a Plan

- Medicaid (Medical) and SSI benefits are at risk:
 - Your child may be disqualified from receiving Medicaid and SSI benefits and forced to use your assets for basic care.
- What is left to your special needs child may be claimed by the state.

With a Plan

- Medicaid* and SSI benefits can be preserved:
 - A Special Needs Trust can hold assets f/b/o of child so that the child can qualify for Medicaid and SSI benefits.
 - Assets remain available for child's other non-covered expenses.

6. You Want Your Money to Stay in Your Family

Without a Plan

- Your child's spouse may benefit from your assets.
 - If your child passes away prematurely, your daughter/son-in-law and a new spouse may receive your assets.
- Your spouse's new husband or wife may receive assets that were yours.

With a Plan

- Your child can direct assets and benefit from asset protection.
 - A trust can ensure that your assets stay in your family, e.g., pass to grandchildren.
- You protect your spouse and your children from dangers arising from the re-marriage of your spouse.

7. Can Your Spouse and Children Survive Financially?

Without a Plan

- Non-Liquid Estate (Assets that do not have an income stream).
- Forced sale of assets, if any; or
- Forced downscale of lifestyle because family may not have the funds to maintain their current standard of living.

With a Plan

- Plan for Non-Liquid Estate Assets (Assets that do not have an income stream).
- Prevent forced sale or downscale of lifestyle.
- Life Insurance and Annuities are an option in this case.

8. You Have an IRA

Without a Plan

- Your beneficiary designation form may not effectively reflect your current wishes
- Your beneficiary may experience burdensome income tax consequences because of large required distributions within a short time frame
- You and your beneficiary may not gain the advantages created by new IRA distribution rules.

With a Plan

- You choose the optimal beneficiary based on advice and counsel of your Financial Advisor, Attorney and CPA
- Your beneficiary may be able to minimize the income tax bite by “stretching” out distributions over time and enjoying the benefits of tax-deferred compounding
- You and your beneficiary can take maximum advantage of new distribution rules.

8. You Have an IRA (cont.)

Without a Plan

- There may be no cash to pay estate taxes, so the IRA must be liquidated and cannot be stretched out
- Your beneficiary may waste the IRA assets

With a Plan

- You can plan for stretch out of the IRA
- You can ensure that the beneficiary cannot waste the IRA

9. You Own a Business

Without a Plan

- There is no succession planning .
- No successor is named.
- Your children could be forced out of the business.
- The business may have to be sold to pay estate tax or to equalize your other children.
- Your “husband-in-law” may assume control of the business.

With a Plan

- You plan succession.
- You choose the successor.
- You prevent unwanted results.

10. Estate Administration Process

Without a Plan

- Probate Administration - your estate will be subject to delays and fees.
- Your assets become a matter of public record.
- If you own real estate in a state other than your state of residence, there will be multiple state probate proceedings.

With a Plan

- Your assets may avoid probate entirely.
- Your family may save time, money (fees) and family privacy.

10. Estate Admin. Process (cont.)

Without a Plan

- **Probate Personal Rep. Ordinary Fees**
- Fees based on Percentage of Gross Value of Estate:
 - 4% on the first \$100,000; (\$4k)
 - 3% on the next \$100,000; (\$3k/\$7k)
 - 2% on the next \$800,000; (\$16k/\$23k)
 - 1% on the next \$9,000,000; (\$90k/\$113k)
 - 1/2% on the next \$15,000,000; (\$75k/\$188k) and
 - A reasonable fee on the excess over \$25,000,000.
- Probate Attorney Ordinary Fees – Same fee schedule as above.

With a Plan

- Trustee negotiates Attorney fees for Trust Admin.
- Attorney fees for Trust Admin. are not based on estate value.
- Trustee compensated if trust allows.
- Trustee compensation is not based on estate value.

10. Estate Admin. Process (cont.)

Example of Ordinary Fees for Personal Representative and Probate Attorney

Estate Value	PR's Fee	Atty's Fee	Total Fees	% of Estate
\$100,000	\$4,000	\$4,000	\$8,000	8%
\$250,000	\$8,000	\$8,000	\$16,000	6.4%
\$500,000	\$13,000	\$13,000	\$26,000	5.2%
\$1 million	\$23,000	\$23,000	\$46,000	4.6%
\$2.5 million	\$38,000	\$38,000	\$76,000	3.0%
\$5 million	\$63,000	\$63,000	\$126,000	2.5%
\$10 million	\$113,000	\$113,000	\$226,000	2.3%

10. Estate Admin. Process (cont.)

Without a Plan

- **Extraordinary Fees** payable for any services rendered by either the Personal Representative and/or Attorney that are not ordinarily rendered in a probate estate
- Court determines amount.
- Typically paid for services such as:
 - Carrying on and managing business.
 - Selling property in the estate.
 - Preparing and filing income or estate tax returns.
 - Engaging in litigation on behalf of the estate.

With a Plan

- Trustee and Attorney negotiate fees.
- Trustee compensated if trust allows.

General Business Issues

- Take steps to Protect Your Assets.
- Business Succession Planning.
- Include assets in Estate Plan at the minimum.

Professional Corporations

- Standard formation of corporation.
- Register Corp. with respective prof. board.
- Receive similar tax benefits commonly available to corporations and employees.
- All Business and Professional Rules of Conduct still apply to activity under Corp. umbrella.
- Offers no protection for Professional Negligence or Malpractice.

Succession and Business Ownership Changes

- Buy-sell agreement (with optional life insurance or reserve funds)
- Issues with additional shareholder or merger with other company.

Winding up Business

- Business Valuations for
 - Sale of Business;
 - Divorce forcing sale; and
 - Death forcing sale.

Questions? Contact Me.

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THANK YOU!