

Estate Planning and COVID-19

Presented by

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COVID-19 and Estate Planning

- In-Person Meetings
 - Social Distancing
 - Masks Required
 - House calls
- Remote meetings
 - Effectiveness varies
 - Internet quality and security
 - Multiple documents
 - Low tech clients
 - Execution of Documents
 - Originals required
 - Notarization required
 - No remote notary service in California
 - Notary must be physically present

COVID-19 and Estate Planning

Scenario with a COVID-19 infected person

- Legal Capacity
 - With valid estate plan
 - Quickly review plan; and
 - Amend plan if needed.
 - No estate plan
 - Rush to prepare new estate plan; and
 - Execute documents with extreme preventative precautions.
- No Legal Capacity
 - With valid estate plan
 - Quickly review plan; and
 - Notify agents and successor trustees.
 - No estate plan
 - Determine if conservatorship necessary;
 - Rush to prepare and file conservatorship petition in probate court; and
 - Court closures and limited ex-parte filings (emergency filings).
- Death
 - With proper estate plan avoids probate administration;
 - Without estate plan, probate administration.

Basics of Estate Planning

- GOAL: Avoid Probate Court
 - INCAPACITY - Alive but legally unable to make decisions or manage affairs:
 - Requires Conservatorship - state probate court petition to appoint one or more personal representatives (Conservators) to act as agents on behalf of Conservatee on a limited or full basis.
 - Required if no estate plan; and
 - Costly, lengthy and public state court petition.
 - Avoid Conservatorship with power of attorney and trust (documents included in a basic estate plan):
 - Durable Power of Attorney (for finances);
 - Power of Attorney for Health aka Advance Healthcare Directive; and
 - Trust to manage assets titled in a Trust.

Basics of Estate Planning

- GOAL: Avoid Probate Court (Cont'd)
 - DEATH:
 - Requires Probate Administration – petition filed in state probate court to appoint a personal representative (executor (masc.)/executrix (fem.) if named in will / administrator if not named in will) for the estate of the deceased to handle disposition of remains and distribute property.
 - Avoid Probate Administration with transfers through a trust (documents included in a basic estate plan):
 - Revocable Trust aka Living Trust aka Family Trust (any transfers via Trust will avoid probate).
 - Will aka Living Will aka Pour-over Will aka Testamentary Document coupled with a Trust.
 - CAUTION: a will alone does not avoid Probate Administration in California

Basics of Estate Planning

- GOAL: Avoid Probate Court (Cont'd)
 - DEATH:
 - Alternate ways to Avoid Probate Administration:
 - Beneficiary designation, transfer on death or pay on death.
 - Joint Tenancy.

Current Estate & Gift Taxes

2020 Estate, Gift/GST Tax Rates:

a. US Citizen:

- i. \$11,580,000 exclusion per person for Estate or lifetime Gift/GST Taxes(unified);
- ii. \$15,000 annual gift tax exclusion;
- iii. 40% maximum federal estate tax rate; and
- iv. Spouse may carryover unused exemption.

b. Non-US Domiciliary/Non-Citizen (Green card or non-resident aliens):

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

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 (basic care for child)
- You nominate the guardian of the estate (manage finances for child)
- Decreased chance of litigation.

3. How Does Your Family Inherit Your Assets?

Without a plan

- Assets pass according to state probate intestacy 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.
- You 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 (Medi-Cal) 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.
- Assets inherited by 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**
- Fee - Percentage of Estate's Gross Value:
 - 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.

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THANK YOU!

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