California Wills & Trusts

"Your Complete Online Estate Planning Resource."

These brochures are designed to provide a summary explanation of the various Estate Planning options available for the different circumstances of life. Because your circumstances may change before you die, we recommend you read this entire brochure before deciding which Estate Plan you would like us to create for you and your loved ones.

If, however, you would prefer to receive the "cliff-notes" version of what plan fits your *current* circumstances best, then simply skip to the bottom of this informational brochure. Depending on which online brochure link you have picked (and are now reading), you will find a recommended Estate Plan that best fits your individual circumstances at the end of this page.

After further dialogue via our online Consultation, we may decide to alter this general recommendation; however, those changes will usually be made within the planning documents recommended at the end of this online brochure. Therefore your preferred planning option will not likely be significantly different from this brochure's "Recommended Estate Plan," found at the end of this page.

ESSENTIAL ESTATE PLANNING DOCUMENTS

The most important element of every estate plan is a Will. Not only does a Will direct your property upon your death, it also serves other vital purposes that only a Will can do … naming a Guardian for minor children, for example.

The California State Bar Association offers an informative, online pamphlet describing the importance of having an appropriately drafted Will; you may access it by **clicking here**.

The most obvious benefits of a Will are its simplicity and finality. A Will is fairly simple to create and understand and, if properly drafted, will govern not only the property you currently own, but all future property you have yet to acquire (unlike Trusts, in which all newly acquired property must be transferred into trust).

However, there are some drawbacks associated with a Will, including a Will's inability to shield your assets from probate and taxes. If you want your loved ones to avoid the delays and costs often associated with Probate, or if you would like to minimize your estate's tax liability, then other, more complicated estate plans should be considered (see Trusts page of our website, or read on).

If you worry about who will manage your assets or healthcare decisions if you become incapacitated, then two routine documents will help put your mind at ease: Medical Directive and Financial Durable Power of Attorney. By having these appropriately drafted and executed documents, you can rest assured that your medical and financial decisions will be taken care of without the need for your loved ones to seek a court-ordered conservator.

So, the most important element of any Estate Plan is a properly drafted and executed Will. A Financial Durable Power of Attorney and Medical Directive should also be included in every Estate Plan.

For further information about essential Estate Planning documents, please refer to the California State

Bar Association's **"Estate Planning" pamphlet.**
Let's now turn our attention to other creative Estate Planning options, namely revocable and irrevocable Trusts.

YOU MAY NOT NEED A LIVING TRUST

Recently, many tax and financial advisers have turned to Living Trusts as the foremost estate planning document. These *financial* planners recommend that everyone should have one, regardless of income or assets. Before you take the legal advice of tax/financial experts, you should consider the legalities underlying Trusts, and consider creative, legal alternatives … you may discover that the "Living Trust" phenomena isn't *legally* best for you.

You may already be convinced that you want to avoid probate or save on estate taxes, but you may not need to be concerned about these goals, at least right now. Or you may be able to accomplish them without a Trust. Before you plunge ahead with a Trust, read on.

You may not need a Living Trust if:

You're young and healthy. Your estate planning goals are probably simple. You want to make sure that in the unlikely event of your early death, your property will go to the people or institutions you want to get it and, if you have young children, that they are well cared for. You can accomplish those goals by writing a Will (in which you name a guardian to raise the children), and perhaps buying some life insurance. If you do want to take some probate-avoidance steps now, check out simpler methods, such as payable-on-death bank accounts.

You own your big assets jointly with someone else. If you're married or in a long-term relationship, you probably own many, if not all, of your valuable assets together with your mate. If you hold title in joint tenancy the property will go to the survivor, without probate, when the first owner dies. You may decide to wait to create a Trust, which will avoid probate at the second death, until later.

You can name beneficiaries outside of your Will for most of your assets. You don't need a trust to avoid probate for bank or retirement accounts; all you have to do is fill out a form provided by the bank or account custodian, naming the beneficiary. You can usually do the same thing for stocks and bonds, but you should speak with your broker.

You don't own much. Small estates don't have to go through regular probate; streamlined procedures are available. And if you're considering an AB Trust, keep in mind that only estates worth more than $1 million owe estate tax (this estate threshold gradually rises over the next decade, thereby exempting larger and larger estates from death taxes). In 2010, the estate tax is scheduled to be repealed, although for only one year. Unless Congress extends the scheduled repeal, beginning in 2011 the estate tax threshold will return to $1 million.

WHEN LIVING TRUSTS MAKE SENSE

Like a Will, a basic revocable Living Trust lets you leave your property to the people you want to inherit it. The advantage of a Living Trust is that your assets don't have to go through probate at your death.

California's Bar Association has an informative pamphlet on Living Trusts that you can access online by **clicking here**.

Consider a Living Trust if:

You're middle-aged or older, or in poor health. As you get older, you'll want to think more about sparing your family the expense and delay of probate.

Simpler probate-avoidance methods aren't available. A Living Trust is an excellent way to avoid probate for real estate that you own alone, and many other miscellaneous assets. But if your money is in bank, brokerage or retirement accounts, it's simpler and equally effective just to name payable-on-death beneficiaries for each account. These methods don't offer all the features of a Living Trust; most important, you probably won't be able to name an alternate beneficiary. But especially for younger people, that drawback may be outweighed by convenience.

Your estate probably won't qualify for simplified probate. California allows certain amounts or types of property to be transferred without probate, or by a streamlined court procedure, even if it's left by a Will. If your estate is eligible for a simple transfer procedure, you may not need to create a Trust. Simplified probate is available in California under three circumstances: (1) a "Community Property Petition" will allow all property left to a surviving spouse to be transferred by summary probate; (2) an "Affidavit of Right" may be filed that will allow *personal property* worth less than $100,000 to be transferred by affidavit entirely outside of probate; and (3) up to $20,000 of *real estate* may be transferred by filing an affidavit first with probate court, then with the County Recorder. Given California real estate values, the third option is usually a moot issue; therefore, if there is less than $100,000 of personal property in your estate or you plan on leaving all of your property to your spouse, then your beneficiaries will likely be able to take advantage of these streamlined probate procedures.

You own out-of-state real estate. Using a Living Trust can let you avoid probate proceedings in that state, saving your family a big headache.

You aren't worried about big creditors' claims. If you own a business that has many creditors, you may want your assets to go through probate, so that creditors' claims are cut off after a certain period. If creditors don't make their claims by the deadline, your inheritors can take your property free of concern that creditors will surface later and attempt to claim a share.

You're concerned about privacy. A Will is filed with the probate court after you die, and becomes a matter of public record. A Living Trust, on the other hand, is not, so what you leave to whom remains private. There is one exception: Records of real estate transfers are always public, as they must all be publicly recorded.

You don't mind some extra paperwork. Drafting a Trust document is no harder than making a Will. There is, however, one more essential step to making a Living Trust effective. You must make sure that ownership of all the property you listed in the Trust document is legally transferred to you as trustee of the Trust. With real property, this requires notarized deed transfer documents to be filed with the County Recorders office.

You're concerned about incapacity. A Living Trust can be useful if you become incapable, because of injury or illness, of taking care of your financial affairs. With a Trust, the person named to serve as trustee after your death can take over management of the Trust assets. Without a Trust or other arrangements (such as a Medical Directive or Financial DPA), a court must appoint someone to take over.

AVOIDING ESTATE TAXES

A basic Living Trust does nothing to reduce federal estate taxes; for that, you need an AB Trust. But should you even be concerned about estate tax? Most people don't need to worry about it; only a tiny fraction -- less than 2%of estates owe estate tax, even under the stricter rules that preceded the big changes that took effect in 2002. These sweeping legal changes have made it difficult for some people to know whether they should even try to plan for avoiding estate tax.

If you are among the highest income earners in America, then you should strongly consider the tax avoidance benefits of AB Trusts. However, if you do not have assets in excess of $1 million and don't anticipate every acquiring this level of assets, then you shouldn't concern yourself with estate tax avoidance planning.

Currently, the amount that you can leave that is exempt from estate tax is scheduled to rise steadily until 2010, at which time the estate tax will no longer be imposed at all. But unless Congress extends the estate tax repeal, the tax will pop up again in 2011 (with a $1 million exemption). That raises the possibility that someone who dies on December 31, 2010 will not owe estate tax, but someone with the same amount of assets who lives until the next day could owe hundreds of thousands of dollars.

Consider an AB Trust only if:

You expect to owe estate tax when the second spouse dies. If you and your spouse have combined assets worth more than the amount that is exempt from estate tax, your family may be in for a hefty estate tax bill when the second spouse dies. But as the exemption amount increases in the next few years, that scenario becomes more and more remote for most people. Unless you expect to leave a very large amount of property at your death, you don't need an AB Trust or other estate tax-saving plan.

If you think your wealth may exceed the amount that is exempt from estate tax, it's a tough call. Whether or not you want to make an AB Trust to try to avoid possible eventual tax may depend on two unknowable things: how long you will live and what Congress does in the next few years.

You can always make an AB Trust and revoke it, if the estate tax exemption reaches a level at which you no longer need to worry about estate taxes. But you can't revoke the whole Trust after one spouse dies; part of it becomes irrevocable then. The deceased spouse's share of the Trust property will be tied up for the rest of the surviving spouse's life, and there's nothing you can do about it.

Another equally rational strategy might be to postpone making an AB Trust until the future of the estate tax is decided by Congress. If the tax comes back in 2011-- and depending on the exemption amount set by Congress -- you may need an AB Trust after all.

Estate Tax exemptions are on the rise … here's the scheduled, rising levels for "death tax" exemptions:

YEAR	ESTATE TAX EXEMPTION
2003	$1 million*
2004, 2005	$1.5 million
2006, 2007, 2008	$2 million
2009	$3.5 million
2010	Estate tax repealed (for this year, only!)
2011	$1 million (unless Congress extends repeal)

*There is a special $1.3 million exemption for family farms and other businesses that stay in the family;

it will become superfluous when the individual exemption hits $1.5 million in 2004.

You're married. The AB Trust designed by our firm works best for married couples; however, there are ways of providing non-married couples and individuals similar tax savings through more complicated estate plans (which we can discuss as we learn more about your circumstances, your assets and the loved ones you intend on making beneficiaries of your estate).

You and your spouse are in your 50s, 60s or older. If one or both of you expects to live many more years, you can leave everything directly to your spouse, who can inherit an unlimited amount without paying tax (as long as the surviving spouse is a U.S. citizen). The survivor would have a long time to use the money, and to plan for reducing eventual estate taxes.

You don't mind restricting the surviving spouse's use of trust property. With an AB Trust, the surviving spouse does not have unlimited access to the property she inherits from the deceased spouse. Although the AB Trusts designed by our firm provide the survivor as much control as the IRS will allow (and still get the tax break), there are restrictions. The survivor gets only the income from the deceased spouse's half of the property, and can spend principal only for health, education, support and maintenance, in accord with his or her accustomed manner of living.

Family members get along well. You should be confident that the surviving spouse and the children (or other final beneficiaries) won't quarrel over management of the Trust property. Until the surviving spouse dies, he and the children will essentially share ownership of the Trust assets. Children hoping to inherit big sums have been known to resent the parent's use of Trust property -- forgetting that the parents didn't have to set up the Trust, and took the trouble to do so solely to benefit the children.

AVOIDING ESTATE TAX IF YOU'RE SINGLE

The AB Trust designed by our firm works best for married couples. But you can use other tax-saving strategies, such as making tax-free gifts and using other kinds of Trusts. If you are single and have assets in excess of the estate tax threshold, let’s discuss your options via an online Consultation (begin with the Wills Consultation).

The IRS offers an informative Publication on “Estate and Gift Taxes” that you can access online at this address:

http://www.irs.gov/pub/irs-pdf/p950.pdf

SHARED AND SEPARATE PROPERTY CONCERNS

If you're married and decide to make a basic probate-avoidance Trust, you can make one Trust together or make separate Trusts (If you make an AB Trust, you must make one shared trust.) Most couples prefer to make one shared Trust, because that way they don't have to divide property they own together.

If, however, you and your spouse each own substantial amounts of separate property and want to keep it separate, you may prefer to make individual Living Trusts. It's increasingly common for couples, especially if they are older and have children from a prior marriage, to sign an agreement (before or during the marriage) to own property separately. Or they may not make a formal agreement, but carefully avoid mixing their property together.

Another reason to make separate Trusts is if each spouse wants to keep sole control over his or her own Trust property. With a shared Trust, either spouse has authority over all trust property while both

spouses are alive.

Your decision may be affected by the marital status of your relationship and California's community property laws.

Common law marriages. In some states, a couple can become legally married by living together, intending to be married and presenting themselves to the world as a married couple. California does NOT recognize so-called "common-law" marriages, and therefore unless you were legally wedded, you will not be considered *married* in California.

Same-sex couples. No state allows marriage between two people of the same sex, even if a religious ceremony has been performed. Vermont offers same-sex couples the option of a "civil union," which is much like a marriage, but federal tax law does not treat couples joined this way as married. However, California has recently altered probate law to allow same-sex couples to inherit property from one another, under limited circumstances. If you would like further details about these recent changes, please Consult with our office online.

Community Property State. California is a Community Property state, meaning spouses share everything 50-50, so it usually makes sense to make one shared marital Trust, especially if you have been married for a number of years. All property earned or otherwise acquired by either spouse during the marriage, regardless of whose name is on the title slip, is community property. Each spouse owns a one-half interest in it. Property acquired by one spouse by gift or inheritance, however, or before marriage, is not community property; it is the separate property of that spouse, but will only remain separate in so far as it is not commingled with community property/funds.

Example: Rich and Donna live in California. They have been married for 20 years. Except for some bonds that Donna inherited from her parents, virtually all their valuable property -- house, stocks, car -- is owned together. The money they brought to the marriage in separate bank accounts has long since been mixed with community property, making it community property too. Rich and Donna decide to make a shared Living Trust.

Making two individual Living Trusts would require splitting ownership of the co-owned assets, which can be a clumsy process. For example, to hold a co-owned house in two separate Trusts would require the spouses to sign and record a deed transferring a half-interest in the house to each spouse as trustee. And to transfer household furnishings to separate Trusts, spouses would have to allocate each item to a Trust -- or end up transferring a half-interest in a couch to separate Trusts.

There is another advantage to making a shared Trust if you and your spouse want to leave significant trust property to each other. With a shared Trust, property left by one spouse to the survivor stays in the Living Trust when the first spouse dies; no transfer is necessary when the first spouse dies. With separate Trusts, property left to the surviving spouse must usually be transferred first from the Trust to the surviving spouse, and then (to avoid probate) to the surviving spouse's Living Trust.

If you and your spouse own most of your property together but each of you has some separate property, a shared marital trust is fine. You can transfer all of it to the trust, and each spouse can name beneficiaries (including each other) to receive his or her separate property.

If, however, you and your spouse own most of your property separately, you may want to make individual Trusts. Most couples in this situation fit one of these profiles:

You and your spouse signed an agreement stating that each spouse's earnings and other income are

separate, not community property, and you have kept your property separate.

You are recently married and have little or no community property.

You each own mostly separate property acquired before your marriage (or by gift or inheritance), which you conscientiously keep from being mixed with community property. Couples who marry later in life and no longer work may also fit into this category. Not only is the property they owned before the marriage separate, but federal Social Security benefits and certain retirement plan benefits are also separate, not community, property.

If you and your spouse decide on separate Living Trusts, each of you will transfer your separately owned property to your individual Trust. If you own some property -- a house, for example -- together, you can each transfer your portion to your Trust.

RECOMMENDED ESTATE PLAN

You have chosen the brochure most relevant to your current circumstances. If you are a *PROSPEROUS YOUNG/MIDDLE-AGED COUPLE**, then the following documents are recommended to complete your Estate Plan:

Will□
Living Trust□
AB Trust□
Certification of Trust□
Transfer Documents□
Medical Directive□
Financial DPA

*Prosperous means having combined assets exceeding the Federal Tax□ Exemption of $1.5 million