

# THE GETTING STARTED PACKET

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I hope these materials prove useful to you as you prepare for your first meeting with me. Please rest assured that very few people arrive at that meeting with every single line of the questionnaire filled in. Most people have lots of questions as they work through this material, and that's a good thing: estate planning is really important and most people have never done it before. The purpose of our first meeting is to discuss all of your issues and concerns and simply begin the process. There's time to fill in the blanks as we move through it. Ideally, we should be able to complete your plan in 6 -8 weeks. I look forward to meeting with you.

Liza Hanks  
Finch, Montgomery, Wright & Emmer

*This packet contains four sections:*

- ▶ ***Basic Estate Planning Tools and Decisions***
  - A Brief Introduction to Wills*
  - A Brief Introduction to Living Trusts*
  - Choosing the Right Approach for You*
  
- ▶ ***Understanding Your Estate Plan***
  - Components of a Comprehensive Estate Plan*
  - Understanding Living Trusts (to be read if you will be creating a living trust)*
  - Understanding Wills (to be read only if you will not be creating a living trust)*
  
- ▶ ***About The Estate Planning Process***
  - My Fees*
  - About Me*
  - The Steps to Establishing Your Estate Plan*
  
- ▶ ***The Questionnaire***

**Congratulations! You're Finally Doing it!**  
**Feel Good, Not Guilty!**

# *Basic Estate Planning Tools and Decisions*

## *A Brief Introduction to Wills*

*Describes how the wills I draft meet the three most basic estate planning goals of families with young children.*

## *A Brief Introduction to Living Trusts*

*Discusses how living trusts allow an estate to avoid probate and how this may be advantageous in your situation.*

## *Worksheet : What is the Cost of Probate?*

*By filling out this worksheet, you will have a better idea of what probate would cost your heirs.*

## *A Brief Introduction to Wills*

Comprehensive wills accomplish at least three fundamental estate planning objectives for parents of young children. A well-constructed will:

- ▶ *Appoints guardians for minor children.*  
Parents need a will to ensure that their children would be cared for by the person they believe would raise their children in a rich and nurturing environment. If both parents die without a will, the child's fate is turned over to the courts which have neither the knowledge nor the interest to do a terrific job of appointing guardians for orphans.
- ▶ *Protects the estate from unnecessary taxes.*  
A well-drafted will allows parents to pass up to \$7 million to their children without incurring estate taxes and will create structures to reduce taxes on estates with assets of more than \$7 million.
- ▶ *Preserves capital and provides income for the children.*  
Wills for families with young children should establish a trust that allows a trustee to manage property left behind, defray the costs of raising the children, provide for their education and ultimately distribute the assets to the children in a responsible way.

The wills that I draft effectively addresses these issues. Tax savings and asset management for children can be easily accomplished through a will. Most importantly, a will is an effective way to appoint a guardian. All in all, wills provide a sensible vehicle for ensuring that the costs of estate administration and the needs of minor children are balanced against the initial cost of the plan.

Wills have other advantages and disadvantages. Their primary advantage is that there is a court looking over the shoulder of your estate administrator. This safeguards against executor malfeasance. Wills also have a prescribed period for creditor's claims. Once that time is past and the court issues its order, the claims of creditors are wiped out. Finally, because spouses do not face onerous probate proceedings, wills effectively pass property to the surviving spouse, outside of probate and at minimal cost.

Their primary disadvantage, though, is that wills do not prevent a probate proceeding at the death of the second spouse. While the surviving spouse may avoid probate fees, assets passed to children will not. Any estate over \$100,000 is subject to full-blown probate proceedings. Probate is time consuming and expensive. In most metropolitan areas in California it takes a relatively uncomplicated estate 6 to 18 months to move through the probate process. All of this delay creates additional expense. California probate proceedings typically consume between 3% and % or more of the *gross* value of the probate estate.

In addition, probate procedures present a series of hoops that the executor must jump through. The executor is required to file various documents with the court, attend court hearings, and provide the court with appraisals and accountings. People often establish a living trust just to make sure that their executor is not put through this procedural obstacle course. Also, if your children want or need funds tied up in your estate during that time, the executor must make a special request of the court.

With a living trust, the assets are transferred in a very short period of time (usually within a couple of months), and there is complete and immediate access to assets in the interim.

Overall, wills can accomplish specific goals and are effective estate planning tools in certain circumstances. They are essential in nominating guardians to care for your children upon your death. Because they don't allow your estate to avoid probate at the death of the second spouse, however, they are not the best overall solution for many clients.

## *A Brief Introduction to Living Trusts*

Comprehensive living trusts accomplish at least three fundamental estate planning objectives for parents of young children. A well constructed living trust will:

- ▶ *Protect the estate from unnecessary taxes.*  
A living trust allows parents to pass up to \$7 million to their children without incurring estate taxes and will create structures to reduce taxes on estates with assets of more than \$7 million.
- ▶ *Preserve capital and provide income for the children.*  
A living trust for families with young children should establish a trust that allows a trustee to manage property left behind, defray the costs of raising the children, provide for their education and ultimately distribute the assets to the children in a responsible way.
- ▶ *Avoid probate costs.*  
A living trust allows parents to pass their estate directly in trust to their children, thus avoiding the expense and delay of probate.

The living trusts that I create effectively address these issues. (The final critical issue -- guardianship -- is addressed in a simple will that I prepare together with the trust.) While tax savings and asset management for children can be easily accomplished through a will, a will is subject to probate. In most situations, the safest and most effective way to avoid probate in California is to establish a living trust. Probate is time consuming and expensive. In most metropolitan areas in California it takes a relatively uncomplicated estate 6 to 18 months to move through the probate gauntlet. All of this delay creates additional expense. California probate proceedings typically consume 3% to 5% or more of the *gross* value of the probate estate (which includes the fair market value of your house, not just your equity in it). A living trust can be settled in a matter of months, usually at a fraction of the cost.

The mechanics of a living trust during the lifetime of people who establish a trust (the "settlers") are straightforward. Property is transferred into the trust which then holds the property. Since the settlers are the trustees, the settlers are free to invest, spend or move the assets into and out of the trust at will. As beneficiaries, they are able to use trust principal or income for themselves as they choose. Finally, during their lifetimes, the settlers can alter, add to or even revoke their living trust at any time for any reason.

In addition to the advantage of avoiding probate, living trusts provide some additional benefits. Because there are no public filings in probate court, family members are less likely to be subject to

solicitations and the finances of the estate are not made public. Living trusts also allow a trusted family member, friend or advisor to manage trust property if the settlors are incapacitated. In addition, if a trust holds out of state property, there will be no need to open another probate proceeding in the state where the property is located. Finally, a living trust is usually more difficult to contest than a will.

Living trusts have three drawbacks, though: they are more expensive to establish, they must be funded, and the property schedules attached to the trust must be kept up-to-date. None of these issues should dissuade a person from creating a living trust *if establishing a trust otherwise makes sense*.

Living trusts do cost more to set up initially than a will, but the savings you pass on to your heirs make that a good investment. Funding the trust requires obtaining paperwork from your financial institution and transferring title of those assets to the trust. It is not difficult, but it can be somewhat time consuming. I will teach you how to do it and will help you if you run into problems. If you would like more help with the process, you can schedule an appointment with my paralegal, who can help you fill out the required forms. I recommend, though, that you transfer at least a few of the assets yourself so that you can do it in the future.

In comparison to funding the trust, keeping the trust up-to-date is a snap. I prepare what are known as “funded” trusts—which means that the trust holds property during your lifetime. The trust includes a list that describes the assets in the trust. I will create this schedule and give it to you on a CD. Then, I’ll teach you how to update it, so that you don’t have to run to an attorney every time you change your trust holdings. It is a simple matter, and the only real trick is making sure that you review the trust periodically to make sure that the schedule is up-to-date.

All in all, living trusts can make a good deal of sense in situations where people have substantial assets that would otherwise pass through probate.

## Choosing the Right Approach for You

### Worksheet: What Is the Cost of Probate?

After completing this worksheet, you will have a better idea of what probate would cost your heirs and whether it's advantageous to have a living trust in your situation. The costs of probate usually include lawyers' fees, executor fees, appraisal fees, accountants' fees, court costs and other incidental costs and fees. Probate fees will not be a factor if one spouse dies without significant amounts of separate property. They will also not affect estates valued under \$100,000. Both of these situations qualify for summary probate proceedings which move very quickly and are relatively inexpensive. However, estates with a *gross value of over \$100,000* will be subjected to full-blown probate proceedings at the death of the remaining spouse. Probate proceedings typically cost 3% to 5% of the gross value of the probate estate. When married people pass on, it is reasonable to calculate a 5% cost to their joint estate. Thus, the cost of probate can be estimated as 5% of the *gross* value of your estate passing through probate.

### What property passes through probate?

Real estate (valued at fair market value), joint accounts, personal property, valuables.

### What does not pass through probate?

Life insurance and retirement accounts (these have designated beneficiaries).

### What would our probate fees be if something happened to both of us?

For a *rough* estimate, work through the following calculation.

<u>Probate Estate</u>	
Home and Other Real Estate (FMV):	\$ _____
Cash:	\$ _____
Stocks, Bonds & Brokerage Accounts(non-retirement):	\$ _____
Personal Property	\$ _____
Other valuable property	\$ _____
<i>Total</i>	\$ _____
Probate Fees = <i>Total</i> × .05:	\$ _____

### Should You Get a Living Trust?

The *incremental* cost of having me prepare a living trust portfolio of documents instead of a will (which includes a living trust, pour-over wills, and other estate planning documents) instead of a will portfolio of documents (which includes wills and other estate planning documents) is \$1250 (i.e., \$2500 - \$1250). In making the decision as to whether to get a living trust portfolio, you should consider whether spending the additional funds makes sense in light of the possible probate fees your estate would pay if something were to happen to both of you.

# *Understanding Your Estate Plan*

## *Components of a Comprehensive Estate Plan*

This short section gives you an overview of the portfolio of documents that should be in a comprehensive estate plan.

## *Understanding Living Trusts* (for clients who will be creating a living trust)

An estate plan based on living trusts, when properly drafted, creates tax savings trusts designed to shelter some assets from estate taxes and also contains the provisions which will govern the disposition of your estate. This section helps to explain the concepts underlying the structure of typical living trusts that I prepare.

## *Understanding Wills* (for clients who will not be creating a living trust)

An estate plan based on wills should address estate taxes and the ultimate disposition of your estate. This section helps to explain the concepts underlying the structure of typical wills that I prepare.

## *Components of a Comprehensive Estate Plan*

Most parents of young children have three basic estate planning goals. While every situation is unique, I find that most people want an estate plan to:

- ▶ Appoint guardians to care for minor children,
- ▶ Create a plan to manage assets left behind for children, and
- ▶ Preserve wealth by reducing or eliminating taxes and transfer costs.

What follows is a list of tools to accomplish these goals, and some others besides.

### **Wills**

Wills are the simplest estate planning tools. They are extremely flexible and provide for appointment of guardians, tax savings trusts, and trusts for children. They do not substantially reduce the costs of wealth transfer (i.e. *probate*).

### **Living Trusts**

Living trusts are legal entities that hold property during a person's life and provide for a distribution plan after death. All assets in the living trust avoid probate. Living trusts are coordinated with *pour-over wills* to appoint guardians and tie up loose ends.

### **Powers of Attorney**

Powers of attorney allow someone to make decisions and take actions on your behalf. There are two key documents for estate planning purposes:

*Property Management* - Allows someone to manage your financial affairs for assets outside of a living trust if you become incompetent.

*Health Care* - Allows someone to make medical decisions on your behalf if you are unable to give informed consent. This is part of your Advance Medical Directive.

### **Advance Medical Directive**

In addition to naming your agent for health care, this document instructs a physician as to your desires for end-of-life care.

### **Life Insurance Trust**

Life insurance trusts are used in larger estates (usually over \$7 million) to provide liquidity and offset tax liability through the use of life insurance proceeds.

### **Other tools:**

Sophisticated estate planning involves numerous devices designed to reduce or shift tax liability. If your estate is large, ask me about other devices. I will tell you about them and refer you to an attorney who routinely deals with these sophisticated devices.

# *Understanding Living Trusts*

*(Read this if I am preparing a living trust for you)*

The operation of living trusts can be confusing and somewhat technical. However, since your living trust will be the cornerstone of your estate plan, you should understand how it works and what it will accomplish for you. The living trusts that I prepare are designed to accomplish three objectives: 1) avoid probate, 2) create tax savings and, most importantly, 3) create a property management plan for young children.<sup>1</sup>

## 1. Terminology

To understand the trust, it is important to understand the relevant terminology. A *trust* is an independent legal entity that is established by one or more *settlers*. The basic purpose of a trust is to hold property and ensure that it is administered as the settlers direct. A "*living trust*" is a common name for what lawyers call a "revocable inter-vivos" trust. Living trusts allow the settlers to make changes to their trust throughout their lifetimes. The property that the trust holds is called "*principal*" and funds generated by the principal are called "*income*."

The *trustee* administers the trust. The trustee may be a person, a group of people or a corporation (or any combination of these). The settlor of the trust may also serve as its trustee. The trust document and various statutes establish the powers and duties of the trustee. The trustee's fundamental duty is to act in the best interests of the beneficiaries in managing the trust as the settlor directs in the trust documents.

*Beneficiaries* receive the benefits of the trust. Beneficiaries can be individuals or corporations (usually charities) and may receive trust income or principal or both. Settlers may be the trust's beneficiaries. *Thus a settlor may establish a trust, serve as its trustee and also be its beneficiary.*

## 2. How Your Living Trust Works

Your trust document will actually establish a series of trusts. The first trust is in effect while both of you are alive. You, as settlers, will place property into the trust. *During your lifetimes, you will both act as co-trustees and will be able to change the trust at will. Property can be added to the trust or taken out of the trust and the trust income and principal can be used for any purpose.* You retain complete control over the trust and its contents during your lifetimes.

### a. Tax Savings

If one of you dies, the living trust typically splits into two trusts. The first trust (called the Survivor's Trust) consists of the survivor's portion of the community property, and any portion of the remaining trust property that is not put into the second trust. The Survivor's Trust continues to be a living trust. The surviving settlor has the right to change the terms of this trust, and has free access to all principal and income from the trust.

The second trust created at the death of the first settlor is called the Credit Shelter Trust<sup>1</sup>. The Credit Shelter Trust is designed to take advantage of a key provision in Federal estate tax law. Under the Federal tax law, a person is entitled to leave property with a total net worth of \$3.5 million without incurring estate taxes. This money may be given by gift, will or trust, although only \$1 million may currently be given away while someone is living. For example, if John gives away \$500,000 to his only child during his lifetime and then dies leaving that child an additional \$3,000,000, there would be no estate tax. However, if he gave the gift and then died leaving his child \$3.5 million, his estate would owe tax on the \$500,000 above the \$3.5 million limit.

If John gives his \$3.5 million estate to his wife, Mary, without a Credit Shelter Trust, his tax credit could be lost. Let's assume that Mary also has assets with a net worth of \$3.5 million. If John dies and leaves his \$ 3.5 million to Mary, no tax would be due at his death. (This is true both because of the fact that his estate falls within the limitation, but also because of the marital deduction which allows a spouse to pass virtually unlimited wealth to his or her spouse without being taxed.) However, if Mary were to then die (without diminishing the total assets), she would have a total estate of \$7 million. Since Mary can only leave \$3.5 million free of estate taxes, Mary's heirs would pay tax on \$3.5 million (i.e. the money John left to her). Given the amount involved, this will result in a tax liability of over \$1 million. (The Federal estate taxes begin at a bracket of 37% and go up from there to a top marginal rate of 45%.) John's estate will have thus forfeited its tax credit and his heirs will have lost more than a million dollars to the federal coffers.

If John and Mary set up a living trust, some or all of John's \$ 3 .5million would be placed in the Credit Shelter Trust. (The precise amount would be fixed after John's death in consultation with Mary's accountant and attorney and the election would be made in the Federal estate tax returns filed after John's death.) If Mary died, her \$ 3.5 million would pass free of estate tax (using her \$3.5 million tax credit) and the Credit Shelter Trust assets would also pass without paying taxes (using John's credit). As a result, the entire \$7 million would not be taxed and both settlors would preserve their tax credit. Because the credit covers only \$3.5 million per person, using only a living trust will not work to minimize taxes for estates with a net value greater than \$7 million. Estates of more than \$7 million may require additional planning.

During the lifetime of the surviving spouse, the trustee of the Credit Shelter Trust has full authority to use the assets of the trust for the benefit of the surviving settlor. (Since the trustee and the beneficiary are usually the surviving spouse, this means that the surviving spouse has control over the Credit Shelter Trust assets.) Trust income must be paid to the surviving beneficiary and the principal of the trust may be withdrawn for health, education, support and maintenance. Preserving the tax credit is a strong incentive to not spend this money and it should not be spent on gifts or on items clearly outside the surviving spouse's normal lifestyle. However, these funds are available to the surviving spouse when needed. The Credit Shelter Trust is an irrevocable trust and its terms cannot be altered. For example, if the Credit Shelter Trust names certain beneficiaries who will take after the death of the second settlor, the list cannot be changed after the trust becomes irrevocable.

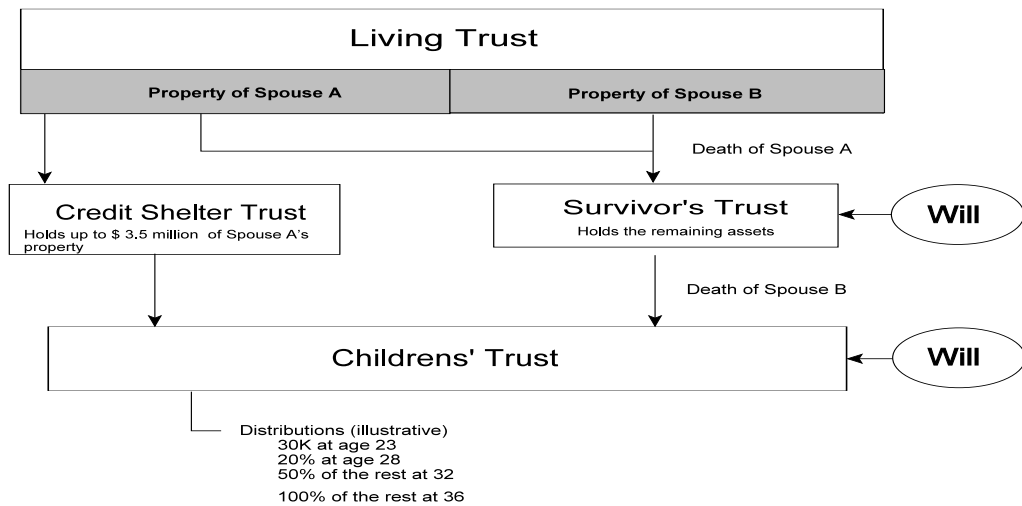
#### b. Children's Trust

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<sup>1</sup> If the surviving spouse is not a United States Citizen, your living trust will contain a QDOT Trust. If you would like more information about QDOT Trusts, please contact me.

At the death of the second settlor, the property in both the Survivor's Trust and the Credit Shelter Trust will be distributed. If the property is to be distributed to the settlor's minor children, the funds will be held in trust for their benefit. The trust will last until the children reach the ages specified in the trust document. Until that time, the funds may be used for the children's health, education, support and maintenance. This trust can provide for such things as living expenses, college expenses, payment to cover costs to the guardians and so on. Your children will not get lump sums of money until the ages you specify. Ultimately, the trust principal can be distributed in one distribution or in stages (for example, 20% of each child's share could be distributed outright when he or she reaches 22, 50% of the remainder at 28 and the final distribution at 32). Provisions in this section can be extremely flexible.

The following diagram puts in graphic form what has been discussed above and represents the mechanics of a typical living trust.



This is a lot to assimilate, but it is useful to understand how the trust actually works. I will be happy to discuss this with you in greater detail at any time.

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Notes: I will also prepare a "pour-over" will for both husband and wife. This will accomplish two primary objectives: it appoints guardians for minor children and it ensures that any property which is not "in" the trust will be transferred to the trust after death.

# *Understanding Wills*

*(Read this if I am preparing wills for you)*

Wills can be somewhat complex, but with a little effort, the concepts underlying your estate plan can be readily understood. The wills that I prepare are designed to accomplish two basic financial objectives: 1) create tax savings and 2) create a property management plan for young children.

## 1. Terminology

To understand testamentary trusts (which are trusts created only after someone dies), it is important to understand the relevant terminology. A *trust* is an independent legal entity that is established by one or more *settlers*. The basic purpose of a trust is to hold property and ensure that it is administered as the settlors direct. The property that the trust holds is called "*principal*" and funds generated by the principal are called "*income*."

The *trustee* administers the trust. The trustee may be a person, a group of people or a corporation (or any combination of these). The trust document and various statutes establish the powers and duties of the trustee. The trustee's fundamental duty is to act in the best interests of the beneficiaries in managing the trust as the settlor directs in the trust documents.

*Beneficiaries* receive the benefits of the trust. Beneficiaries can be individuals or corporations (usually charities) and may receive trust income or principal or both.

## 2. How A Testamentary Trust Works

Your will actually serves to establish a series of trusts. The first trust is established at the time of the first spouse's death.

### a. Tax Savings

When one of you dies, all of your property will be left to the surviving spouse. The surviving spouse then has six months to decide whether to establish a Credit Shelter Trust using some portion of the property they've inherited from the deceased spouse. The Credit Shelter Trust will allow the property it contains ultimately to pass to your children (or other heirs) free of estate taxes that would otherwise be owed. Deciding whether or not to establish the trust is a decision for the surviving spouse, to be made with the help of professional advisors, and will be based on the existing estate tax credit and the size of the survivor's estate.

If John gives his \$3.5million estate to his wife, Mary, without a Credit Shelter Trust, his tax credit could be lost. Let's assume that Mary also has assets with a net worth of \$3.5 million. If John dies and leaves his \$ 3.5 million to Mary, no tax would be due at his death. (This is true both because of the fact that his estate falls within the limitation, but also because of the marital deduction which allows a spouse to pass virtually unlimited wealth to his or her spouse without being taxed.) However, if Mary were to then die (without diminishing the total assets), there would be a total estate of \$7 million. Since

Mary can only leave \$3.5 million free of estate taxes, Mary's heirs would pay tax on \$ 3.5 million (i.e. the money John left to her). Given the amount involved, this will result in a tax liability of over \$ 1 million. (The Federal estate taxes begin at a bracket of 37% and go up from there to a top marginal rate of 45% on amounts above \$3.5 million.) John's estate will have thus forfeited its tax credit and his heirs will have lost more than half a million dollars to the federal coffers.

If John dies and leaves his entire estate to Mary under the terms of this will, Mary may decide (within six months of John's death) to put up to \$3.5 million of the inheritance she received from John into a Credit Shelter Trust. (The precise amount would be fixed after John's death in consultation with Mary's accountant and attorney and the election would be made in the Federal estate tax returns filed after John's death.) When Mary dies later, her \$3.5 million would pass free of estate tax (using her \$3.5 million tax credit) and the Credit Shelter Trust assets would also pass without paying taxes (using John's credit). As a result, the entire \$7 million would not be taxed and both settlors would have made full use of the individual estate tax credit.

During the lifetime of the surviving spouse, the trustee of the Credit Shelter Trust has full authority to use the assets of the trust for the benefit of the surviving settlor. (Since the trustee and the beneficiary are usually the surviving spouse, this means that the surviving spouse has control over the Credit Shelter Trust assets.) Trust income must be paid to the surviving beneficiary and the principal of the trust may be withdrawn for health, education, support and maintenance. Preserving the tax credit is a strong incentive to not spend this money and it should not be spent on gifts or on items clearly outside the surviving spouse's normal lifestyle. However, these funds are available to the surviving spouse when needed. The Credit Shelter Trust is an irrevocable trust and its terms cannot be altered. For example, if the Credit Shelter Trust names certain beneficiaries who will take after the death of the second settlor, the list cannot be changed after the trust becomes irrevocable.

#### b. Children's Trust

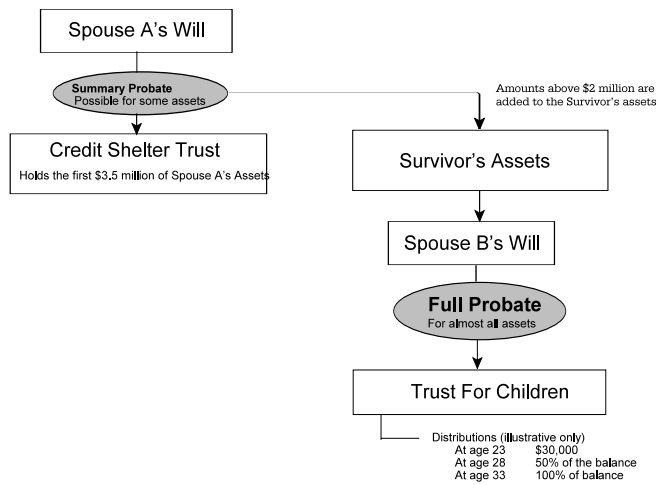
At the death of the second spouse, his or her property and the Credit Shelter Trust property will be distributed. If the children are old enough to receive the distributions directly, the assets can simply be distributed straight away after the close of probate. If the property is to be distributed to the couple's minor children, the funds will be held in trust for their benefit. The trust will last until the children reach the ages specified in the trust provisions. Until that time, the funds may be used for the children's health, education, support and maintenance. This trust can provide for such things as living expenses, college expenses, payment to cover costs to the guardians and so on. Your children will not get lump sums of money until the ages you specify. Ultimately, the trust principal can be distributed in one distribution or in stages (for example, 10% of each child's share could be distributed outright when he or she reaches 22, 50% of the remainder at 28 and the final distribution at 32). Provisions in this section can be extremely flexible. The following diagram puts in graphic form what has been discussed above and represents the mechanics of a typical Testamentary Trust.

### 3. Probate.

Typically, at the death of the first spouse, there is either no probate or a summary proceeding. Assets which name beneficiaries pass outside of probate (for example life insurance and retirement

plans). Assets which are in joint tenancy also pass outside of probate. Thus, the only assets which would be subject to probate would be those assets with only one spouse's name on them or those assets held in formal title as community property. Upon the death of the surviving spouse, there would be a full probate proceeding for those assets that did not have beneficiary designations. Upon the conclusion of this proceeding, the assets would be distributed to the heirs (whether directly to them or in trust).

The diagram puts in graphic form what has been discussed above and represents the mechanics of the basic will plan for a couple.



# *About Estate Planning: My Process and Fees*

Creating your estate documents is actually a relatively painless process. This section will let you know what to expect as you proceed to create your estate plan.

## *My Fees*

I typically work on a flat fee basis for basic estate plans, starting at \$2500. There are, however, a few things that charge extra for because they increase the time it takes for me to complete your estate plan: a meeting in your home, specialized trusts for parents or blended families, the transfer of a business entity, such as a partnership, to your trust, or the transfer of more than one piece of California property to your trust. If any of these additional charges apply to you, we will discuss this at our first meeting, before you sign my fee agreement.

## *About Me*

I am a graduate of Stanford Law School, where I was an officer of the Law Review and finished with honors. I served as a law clerk to the Honorable Betty B. Fletcher of the Ninth Circuit Court of Appeals and have worked for the California State Legislature, and the County of Santa Clara. I also practiced transactional law in the Information Technology Group of Cooley Godward, LLP, in Silicon Valley. In addition to practicing estate planning, I taught Estate Planning and Taxation at Santa Clara University Law School, 2003 - 2006, and have written three books, *The Busy Family's Guide to Estate Planning*, (2007), *The Mom's Guide to Wills and Estate Planning* (2009) and *The Trustee's Legal Companion* (2010, with attorney Carol Zolla) for Nolo, [www.nolo.com](http://www.nolo.com). I write a blog, Everyday Estate Planning, also for Nolo, <http://blogs.nolo.com/estateplanning/>. I am also the mother of two children. I love the work that I do because it allows me to do constructive work for families and to structure my work around my family.

# *The Steps to Establishing Your Estate Plan*

## **Step 1: Your Preparation (or “Yikes! Homework”)**

- ▶ You should review this packet carefully.
  - Read the enclosed materials.
  - Make a tentative decision as to whether you will be preparing a living trust.
    - Obviously we can talk about this further when we meet, but it will help you in your preparation to have a sense of the overall approach we will be taking.*
  - Fill out the Questionnaire.
  - Gather and copy necessary documents.
- ▶ After you have reviewed the packet, set up an appointment. You can do this online at my website. We will book your next appointment at the end of our first meeting.

## **Step 2: Our First Meeting (this is often the best part!)**

During our appointment, we will talk generally about your goals and any special circumstances or concerns that you have. I will go over the mechanics of the living trust and answer any lingering questions. I will then review your Questionnaire and I will gather some additional information. The meeting typically takes about an hour and half. [I have found over the years that it is best to have someone to watch your toddlers (or have something for them to watch) during this meeting so that you can fully focus on the task at hand.] At the end of the meeting I will ask you to sign the Fee Agreement and the Disclosure and to pay one-half of the fee (the balance is due at our second meeting, when you have approved the drafts have been sent out for your review).

## **Step 3: Document Preparation (now its my turn to do homework...and lots of it)**

I will prepare your documents. If you are doing a living trust portfolio, these documents will include a living trust, pour over wills, durable powers of attorney for property management and your advance health care directive. If you are doing a will portfolio, these documents will include wills, durable powers of attorney for property management and your advance health care directive.

## **Step 4: Document Review (a bit more homework for you)**

When I am finished with your documents, I will mail a draft of them to you for your review.

## **Step 5: Our Second Meeting (this makes it easy for you to review the drafts)**

At this meeting I will walk you through the drafts that I've sent to you, and explain how your trust or will works for your family. If you haven't had time to review the drafts before this meeting, don't worry, by the time we're done you'll understand your estate plan. We'll also fill in any missing information and set up a time for our final meeting. Your final payment is due at the this second meeting.

## **Step 6: Final Meeting (this one completes the process!)**

When we meet we will sign the documents and, if you are creating a living trust, we will work together on the paperwork transferring your assets into the trust. If finding someone to watch your children is difficult, it is no problem having children (of any age) attend this meeting. There

are some technical issues we will be discussing, but we can cope with interruptions and still remain focused. After our meeting you will mail these forms into the appropriate entities. I will handle the transfer of real estate into the trust.

## *My Fees*

I typically create an entire estate planning portfolio of documents for each client on a fixed fee basis, unless there are additional issues that must be addressed. Please note that the fees quoted below may be revised upward if you ask me to undertake substantial additional work (such as preparing additional trusts or subtrusts, substantially redrafting the documents you receive based on stylistic or aesthetic preferences, or reviewing documents created by other estate planners). My hourly fee for such additional services is \$300/hour. Any additional fees will be discussed at our first meeting, before you sign your fee agreement.

In addition to the fixed fees that I charge for legal services, you will be billed for the costs and fees incurred by Finch, Montgomery, Wright & Emmer, as we complete your plan—typically these include the cost of requesting your deed from the title company (\$10/deed), the cost to record your deed with the county (\$12-\$20, depending on the county), and the cost to make a complete copy of your estate plan upon completion of the plan (\$0.25/page).

### **Living Trust Portfolio**

The portfolio includes your trust and several supporting documents, pour-over wills, powers of attorney for property management, and advance health care directive, a schedule of trust assets, beneficiary designation forms and other ancillary documents. Living trusts for married couples with young children typically include a tax-savings trust and a trust for children. The base fee for preparing a basic living trust portfolio of documents starts at \$2500. I charge \$1600 to do a living trust for a single person. I collect one half of the base fee at our first meeting and the balance when you approve the draft documents at our second meeting.

The fixed fee above includes the transfer of one piece of California real property into the trust. I will transfer additional California real property for \$100 per property. I will not transfer out of state property for you, but will help you coordinate this process with a third-party provider of such services at my hourly rate of \$300/hour. If you authorize me to do so, I will contract with them to transfer your property and ask you to pay me their fees in advance (this will stay in Finch, Montgomery, Wright & Emmer's trust fund until the work is completed by the third party.)

**Funding Your Trust.** I will help you transfer your assets into the trust, as long as you obtain the required paperwork from your financial institutions and have it for our third meeting.

### **Will Portfolios**

When I draw up your will, I will also prepare durable powers of attorney for property management, and advance health care directive, and ancillary documents. The fee for preparing a will is \$1250 for a couple and \$625 for a single person. This fee is for stand-alone wills only, if you choose to do a Living Trust Portfolio, the cost of the will is included in that fee.

**Pro bono policy.**

If you cannot afford the fee for a will, I will prepare a will for you on a sliding scale based on what you feel is your ability to pay. It is my policy not to turn away any parent of a minor child because of an inability to pay.

# CLIENT QUESTIONNAIRE

## *Filling out the Questionnaire*

- ▶ You should fill in all names in this questionnaire as you would want those names to appear in your documents (even if the person will not be specifically mentioned). You may use full legal names or middle initials.
- ▶ You can always change the decisions you make here by amending your documents. You want to make the best choices you can given your life situation now.
- ▶ This is a generic questionnaire so if questions do not apply, simply write in N/A.

I understand that my estate plan will be based on the information provided herein. I further understand that my responses to the questionnaire are protected by the attorney-client privilege. With these understandings, I affirm that the information provided herein is full, complete and accurate to the best of my present knowledge.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

# CLIENT QUESTIONNAIRE

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## PART I: FAMILY

Client 1: \_\_\_\_\_

Client 2: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_, CA \_\_\_\_\_

Phone Nos. Home: \_\_\_\_\_ Fax: \_\_\_\_\_

Cell: \_\_\_\_\_ Pager: \_\_\_\_\_

E-mail: 1) \_\_\_\_\_ 2) \_\_\_\_\_

Your Employer: \_\_\_\_\_ Phone No. \_\_\_\_\_

Spouse's Employer: \_\_\_\_\_ Phone No. \_\_\_\_\_

### Children:

Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_

### Client 1's Family:

### Client 2's Family:

Father: \_\_\_\_\_

Mother: \_\_\_\_\_

Siblings: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you are not married, check this box:

**PART II: BACKGROUND QUESTIONS**

- Are you and your spouse U.S. citizens?  Yes  No
- Do you have a premarital agreement?  Yes  No
- Do either you or your spouse have a prior marriage?  Yes  No
- Do you have children from a prior marriage?  Yes  No
- Do you have any deceased children?  Yes  No
- Do you have stock options?  Yes  No
- Do you have a current will or trust?  Yes  No
- Do you have interests in partnerships?  Yes  No
- Do you currently receive income from a trust?  Yes  No
- Are you involved in litigation?  Yes  No
- Do you expect to inherit in the next six months?  Yes  No
- Do you have any copyrights, patents or trademarks that you own?  Yes  No
- Do you own your own business?  Yes  No
- How did you hear about me? \_\_\_\_\_

**PART III: OVERARCHING PERSPECTIVES**

On a scale of 1 to 10 how important are the following objectives. (1 is most important.)

- | Client 1 | Client 2 |   |
|----------|----------|---|
| _____    | _____    | Naming guardians for minor children   |
| _____    | _____    | Reducing estate taxes   |
| _____    | _____    | Providing flexibility for my surviving spouse   |
| _____    | _____    | Protecting assets for my children if my spouse remarries, even if it means reducing my spouse's control of funds. |

**PART IV: GUARDIANS, TRUSTEES, EXECUTORS AND ADVISORS**

**Guardians:**

Who do you want to appoint to care for your minor children?

*Primary:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Age: \_\_\_\_\_

*Secondary:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Age: \_\_\_\_\_

*Tertiary:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Age: \_\_\_\_\_

**Trustee:**

Who should manage the assets for your children as they are growing up? (You may name the same person as both guardian and trustee if you choose to do so. You may also name cotrustees and you may name a corporate trustee.)

*Primary:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Age: \_\_\_\_\_

*Secondary:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

*Tertiary:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

**Executor/Personal Representative**

Who should handle the probate process? (I will assume that you have chosen each other as your primary choices and so you need only fill in secondary and tertiary choices). You may name any individual to this position.

*Secondary-Client 1:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_

*Secondary-Client 2:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_

*Tertiary-Client 1:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_

*Tertiary-Client 2:*

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_

**Financial Advisors:**

Accountant: Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Company: \_\_\_\_\_

Life Insurance: Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Company: \_\_\_\_\_

Investment Adv. Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Company: \_\_\_\_\_

If you would like the names of advisors, please let me know. I do not benefit in any way from referrals, but like to see a team of people in place to support my clients

**PART V: GIFTS and DISTRIBUTIONS**

**Guardian Gift:**

Would you like to make a gift to the guardians or provide them with a stipend? This is money that they will use for their own needs, as opposed to the money that they will use to take care of your children.

Gift to Guardian: \_\_\_\_\_

Stipend for Guardian: \_\_\_\_\_/month

**Final Distribution:**

If something happened to both of you and your children, who should receive your assets?

\_\_\_\_\_  
\_\_\_\_\_

**Specific Gifts:**

Do you want to make gifts of personal property?

**Charities:**

Do you have specific charities to which you would like to contribute? (In making your list please provide the complete name of the organization and the city and state where it is headquartered)

**Pets:**

Who should care for your pets? (People will often choose the guardian of minor children if their children are old enough to be attached to the pets.)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**Funeral Arrangements:**

Client 1:            Burial            Cremation

Special Instructions: \_\_\_\_\_

Client 2:    Burial            Cremation

Special Instructions: \_\_\_\_\_

**PART VI: MEDICAL and FINANCIAL DECISIONS**

If you were incapacitated and needed someone to make medical and financial decisions for you, who would that person be (after each other):

**Client 1's Agent for Healthcare**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Backup Agent: Name/Address/Phone \_\_\_\_\_  
\_\_\_\_\_

**Client 1's Agent for Finance**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Backup Agent: Name/Address/Phone \_\_\_\_\_  
\_\_\_\_\_

**Client 2's Agent for Healthcare**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Backup Agent: Name/Address/Phone \_\_\_\_\_  
\_\_\_\_\_

**Client 2's Agent for Finance [can be the same as Client 1's choice]**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Backup Agent: Name/Address/Phone \_\_\_\_\_  
\_\_\_\_\_

**PART VII:-END-OF-LIFE DECISIONS**

California law allows competent adults the right to refuse medical treatment. Please choose the option below that best states your desires for end-of-life care. If neither does, you can attach a statement of your own to the document.

<p><b>Choice Not To Prolong Life:</b> If I am suffering from a terminal condition from which death is expected in a matter of months, or if I am suffering from an irreversible condition that renders me unable to make decisions for myself, and life-support treatments are needed to keep me alive, I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physicians allows me to die as gently as possible.</p>	<p>_____ Client 1</p> <p>_____ Client 2</p>
<p><b>Choice to Prolong Life:</b> I want my life prolonged as long as possible within the limits of generally accepted health care standards.</p>	<p>_____ Client 1</p> <p>_____ Client 2</p>

If neither of those choices quite captures your wishes with respect to end of life care, California law permits you to make your wishes known. Let me know if you'd like more information on end-of-life choices and suggested language.

## PART VIII: QUICK BALANCE SHEET & TRUST DISTRIBUTIONS

These numbers can be approximations to within \$10,000

<b>Assets</b>		<b>Liabilities</b>	
Real Estate:	\$ _____	Mortgage:	\$ _____
Cash & Savings:	\$ _____	Other Debt:	\$ _____
Securities:	\$ _____		
Options:	\$ _____		
Mutual Funds:	\$ _____		
Retirement:	\$ _____		
Life Insurance:	\$ _____		
Annuities:	\$ _____		
Business:	\$ _____		
Sub total	\$ _____	Subtotal:	\$ _____
		Net:	\$ _____

### TRUST DISTRIBUTION:

The money left to your children will be placed in trust, and managed for them by the trustees that you name. The trustee will use that money for their health, education, and welfare. As they get older, this money will be distributed them outright, to be used as they wish. You can direct these distributions. A common way to do this is to provide them with a specific sum at 23, or whenever they finish college, whichever happens first, and then distribute percentages to them of their remaining assets at specific ages. I suggest you think first about how old you were when you were able to manage money responsibly, then work backwards from there.

\_\_\_ \$ at \_\_\_ (20K at 23, for example)  
\_\_\_ % at \_\_\_ (20% at 28, for example)  
Balance at \_\_\_ (100% at 32, for example)

**PART IX: DOCUMENTS AND INFORMATION**

Please provide attach copies of the following documents or provide me with the requested information:

- Statements for all NON-RETIREMENT accounts that hold significant amounts of cash, (including checking and saving, brokerage, mutual funds, custodial accounts, money market funds, retirement plans, certificates of deposit and treasury bills) or:

Institution \_\_\_\_\_, Account Number \_\_\_\_\_  
Institution \_\_\_\_\_, Account Number \_\_\_\_\_  
Institution \_\_\_\_\_, Account Number \_\_\_\_\_  
Institution \_\_\_\_\_, Account Number \_\_\_\_\_  
Institution \_\_\_\_\_, Account Number \_\_\_\_\_

- Information about vested options (including, where possible, the grant dates, numbers of shares, basis for each grant and current price).
- Copies of documents related to loans you have made to others (*not* money you have borrowed).
- Face pages for life insurance (including policy numbers and death benefit amounts) or:

Policy Provider \_\_\_\_\_, Policy Number \_\_\_\_\_  
Policy Provider \_\_\_\_\_, Policy Number \_\_\_\_\_  
Policy Provider \_\_\_\_\_, Policy Number \_\_\_\_\_

- Copies of any existing estate plan documents (including wills and trusts, if any).
- Small business documents.
  - Corporations: Articles of Incorporation, stock certificates.
  - Partnerships: Partnership agreements, list of partnership assets.
  - Sole Proprietorships: List of assets, account statements.
- Martial property agreements, if any (premarital agreements, post marital agreements and/or marital separation agreements).
- Documents reflecting ownership of patent, copyright or trademark, if any.
- Final judgement from divorce proceedings (if applicable)