
TOOLS FOR ESTATE PLANNING

NO WILL (INTESTATE) — If a person dies without a will and the transfer of his property is not controlled by the title to the property, it will be administered by the courts and will go to the persons determined under California law. The court will appoint an administrator to handle the estate and will appoint a guardian for any orphaned minor children. If there is real property to be sold by the estate, it is substantially more expensive and time consuming to do so when there is no will authorizing the sale.

SIMPLE WILL (NO TRUST) — When a person makes a will, he can name whom he wishes to receive the property under it. This may or may not be the same person who would receive it under the intestacy laws had a will not been made. The will also can specify who should be the estate's executor and who should be the minor children's guardian. The executor can be given a power to sell real property and other administrative powers which will make the estate easier to close. The will must go through the probate process.

TRUST WILL — A trust will has all a regular will's qualities with the addition of a trust, usually set up for the surviving spouse or orphaned minor children's benefit. The purpose is to provide long term asset management, usually until the children reach an age when the parents think they can manage it on their own.

Such a trust can provide a more equitable method for supporting children of different ages by retaining all the estate in a single "*family pot*" until all the children have completed their education. Then it can be divided up and distributed or retained in the trust for some additional time period. Trust terms can be extremely flexible to meet a variety of needs.

LIVING (or "INTERVIVOS") TRUST — In order to avoid probate expense, a settlor can hold title to his assets as trustee of a living trust. This requires a trust agreement or declaration specifying a successor trustee and the property's distribution after his death.

In addition to avoiding probate expense and delay, a properly structured living trust also can avoid many problems associated with establishing a conservatorship for a settlor who later becomes disabled. The disadvantages are the additional "*up-front*" expense over a simple will's cost.

COMPLEX, TAX MOTIVATED REVOCABLE TRUSTS — Until December 31, 2009, the federal government and California levied an estate tax on at death transfers. The federal law tax had an unlimited exemption for assets transferred to a surviving spouse and a \$3.5M equivalent exemption for assets passing to others. A complex two or three trust plan often was employed as a tax planning device to assure that the equivalent exemption available for the first spouse to die's estate would not be wasted, resulting in a significantly higher estate tax at the surviving spouse's death. The technique's practical effect was that a total of \$7.0M in assets could be passed with no estate tax.

Effective January 1, 2010, the federal estate tax was abolished with the practical effect that the California inheritance tax likewise was abolished. However, the federal estate tax currently is scheduled to return on January 1, 2011 with an equivalent exemption of only \$1.0M. This makes planning for people with estates larger than \$1.0M very difficult.

Most commentators believe that Congress will modify the law before January 1, 2011 and any changes may be made retroactive to January 1, 2010. In this uncertain environment, tax planning for an estate necessarily involves some guess work about both what Congress will do and when the parties may die.

IRREVOCABLE TRUST — Traditionally a settlor with an estate larger than the equivalent exemption could consider establishing an irrevocable trust for tax saving purposes. If the trust was properly drawn, all assets in the trust (frequently life insurance policies) would not be taxed in the settlor's estate. Despite the current uncertainty in the tax law, this technique has continued life, but now requires a deeper analysis.

CHARITABLE REMAINDER TRUST — Traditionally, a settlor with a very large estate could consider establishing a trust from which he receives income for a specified period with the remainder going to a designated charity at termination. The advantages are a current income tax deduction and removal of the asset from the settlor's estate at death. Again, the current uncertainty in the tax law, this technique has continued life, but now requires a deeper analysis.

POWERS OF ATTORNEY — General, special and durable powers of attorney for asset management are frequently used as low cost alternates to provide asset management for elderly or otherwise incapacitated persons.

A durable power of attorney for health care can likewise be used to authorize an agent to make health care decisions for the principal consistent with his or her wishes. Typically, this will include decisions to accept or deny medical treatment.

A more detailed discussion of powers of attorney is contained in the handout entitled "*Powers of Attorney*".