

Estate Planning 101

Beyond the Basics

Presented by Tate Birnie, Esq.

Birnie Law Office, Inc.

www.birnielaw.com

If you die, what will happen to your family?

- Can they maintain standard of living?
- Are there immediate funds available for your funeral and memorial expenses?
- Who has the ability to manage complex organizational tasks?
- Can your family manage your debts?
 - Mortgage?
 - Will they have to move?
- What happens if you become incapacitated during your lifetime?



Motivation to Estate Plan

- Fear/worry for family
- Take care of children
- Make sure that the majority of your assets go to your family
 - Not government – estate taxes & income taxes
 - Not attorneys – probate
 - Not county – property taxes
 - Not creditors

Reasons to estate plan

Wealth Transfer – pass along your assets to your heirs in most efficient/cheapest manner

Benefits of lifetime planning

Incapacity planning

Avoidance of Taxes

Avoidance of Probate

Special planning for special situations

Terms and Types of Documents



Basic Documents

Wills & Pour over Will
Trusts
Durable Power of Attorney
Medical Directive



More Advanced Documents

Special Needs Trusts
Family Limited Partnerships
Irrevocable Trusts
Charitable Remainder Trusts

Wills versus Trust

properly
legally held
trust. noun
a trustee
as its nor
are be

- In a Will, you can...
- Name your
BENEFICIARIES
- Name your
ADMINISTRATOR
 - Called an Executor



- In a Trust, you can....
- Name your
BENEFICIARIES
- Name your
ADMINISTRATOR
 - Called a Successor Trustee
- Allows you to plan for
incapacity
- Avoids PROBATE
- Allows for complex TAX
PLANNING



Costs of Probate



TIME – OVER 1
YEAR



WORK –
RIGOROUS
PAPERWORK/AC
COUNTING



PUBLIC NATURE
OF
PROCEEDINGS



EXPENSE

Expense of Probate (example \$500,000 estate)

- Court filing fees \$1000
- Publication fees \$225
- Bond premium \$1500 per year
- Probate referee fees \$500
- Administrator fees \$15,000
- Statutory Attorney fees \$15,000

TOTAL: \$33,225

Approximate
administration
costs of Living
Trust

- Attorney's fees \$1000-5,000
- Trustee fees \$0-\$5000

TOTAL: \$1,000 – \$10,000



Lifetime Planning Tool

- **TRUST ONLY**
- One piece of overall financial plan
- Review assets
- Look to future goals
- Retirement Planning – efficiently using assets
- Use estate planning documents to protect assets
 - Separate property/premarital agreements
 - Irrevocable transfers
 - Note: no creditor protection for revocable living trust

For YOUR CHILDREN – Lifetime Planning Tool

- Your decisions shape their future choices
- Guardianship
 - Guardian of the Person (CUSTODY OF CHILD)
 - Guardian of the Estate (MANAGES MONEY)
 - Court process
- Reasoned approach to asset distribution
 - Trusts w/ piecemeal distribution

What do you need?

- Own property?
- Own a business?
- Married?
- Have children?
- Blended family or second marriage?
- Interested in tax avoidance?
- Interested in saving money for your estate?

YES =
Revocable
Living Trust



Incapacity Planning

- TRUST ONLY
- Naming someone to handle your affairs if you are unable to do so
- Establishing how you want your assets managed for your benefit
 - Personal residence, income/principal clauses
- Avoiding conservatorship
- Medi-Cal planning opportunities



Other Incapacity Planning Documents

Durable Power of Attorney

- Name agents to take over when you are incapacitated
- Can give someone authority to act immediately

Advance Health Care Directive

- Name agents to take over when you are incapacitated



Wealth Transfer

- Most common reason people first go to an attorney to start estate planning documents
- Naming beneficiaries
- Naming scheme for distribution
- Gifting to individuals and organizations



Avoidance of Taxes

- Three types of taxes
 - Gift/Estate Taxes
 - Income Taxes
 - Property Taxes

Estate Taxes

- “Death Tax”
- Current \$11.7M per person exemption
- Who does this effect?
 - Less than 2,000 people annually have an estate tax
- Reversion to prior law in 2026, exemption will be between \$5M and \$7M per person

Gift Taxes

- \$11.7M lifetime GIFT transfer
- Annual gifting - \$15,000 per year per donor and done with no reporting requirements
- Gift tax returns if gift greater than \$15,000
- Transfer of basis

Income Taxes

- Basis and Capital Gains taxes
- Gifting vs. inheriting for income tax purposes
- Step-up in basis
 - Biden's proposal to eliminate
- Passing on income tax deferred assets
 - IRA, 401(k), 403(b), Deferred Comp., etc.

Retirement Accounts

- Need to be considered as part of estate plan
- Income tax consequences to recipient
- Estate Tax issues
 - Spousal roll-over puts it in estate twice
- No more “stretch” inherited IRA provisions
 - 10-year rule
 - Required Minimum Distributions (RMDs)

Property Taxes

- New Rules with Proposition 19
- Death = “Change in Ownership”
- Parent-child transfer now only exempt if transfer is parents’ principal residence to child’s principal residence
 - Additional assessment if the gap between FMV and assessed value is greater than \$1M
- Sibling transfers or grandparent/grandchild will be reassessed

How does estate planning minimize taxes?

- Taxing advantage of tax law
 - A-B trust or disclaimer trust
 - Irrevocable Trusts
 - Partial Interest Transfers
 - Annual gifting
 - Maximizing property distributions – matching assets and recipients (example: charitable giving)

Advanced planning – Irrevocable Trusts

- “catch all” phrase
- Charitable split-interest trusts
- Grantor/Trustor retained interest trusts
- Life insurance trusts
- Transfers into trust via annual gifting or lump sum w/ gift tax
- GOAL: remove income during lifetime, remove asset on death

Too good to be true?

- No step up in basis on death
- Loss of control over property
- Cannot change mind

Questions?

Tate Birnie, Esq.

Birnie Law Office, Inc.

tate@birnielaw.com

(707) 823-8593