

American Association of Individual Investors
presents
Financial Planning Workshop

Estate Planning

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Financial Planning Workshops

- **Fundamentals of Investing**
- **Building a Diversified Portfolio**
- **Introduction to Computerized Investing**
- **Active versus Passive Investing Strategies**
- **Retirement Planning**
- **Managing your Cash Flow in Retirement**
- **Safe Withdrawal Rates from your Retirement Portfolio**
- **Social Security and Medicare**
- **>>> Estate Planning**

Disclaimer

- **Estate planning decisions are critically important**
- **I am not an attorney**
- **Please talk to an estate planning attorney about your individual case before making any major decisions.**

Overview

- **Important estate planning documents**
 - **Will**
 - **Revocable living trust**
 - **Durable power of attorney**
 - **Advance health care directive**
 - **Letter of intent**
- **California's End of Life Option Act**
- **Practical considerations for an executor/trustee**
- **Dealing with your digital legacy**
- **Your "All About Me" exit folder**

Reasons People Avoid Estate Planning

- Don't want to think about death
- Don't want to discuss money with heirs
- Too busy
- Think the estate is not large enough
- Haven't figured out how to distribute their assets or who should be guardians for minor children
- Don't want to dredge up family conflicts
- Believe estate planning is complicated/expensive

Why Do We Need An Estate Plan?

- Designate to whom our assets will go ...
... and under what circumstances
- Provide for management of affairs if incapacitated
- Appoint guardians for minor children
- Provide for beneficiaries with special needs
- Fulfill philanthropic desires
- Decide whether to probate the estate
- Minimize taxes

Identify Key Plan Elements

- **Who should handle my finances if I become incapacitated?**
- **Who should make life-sustaining decisions for me if I cannot?**
- **What have I decided about organ donation?**
- **Who should inherit assets; how should they be divided?**
- **Who should administer the estate and distribute the assets?**
- **Who should care for minor/special needs children?**

Take Inventory

- **List current assets and liabilities**
 - Home, vacation home, other property
 - Vehicles
 - Jewelry, artwork, other valuable objects
- **Recent financial statements**
 - Checking and savings accounts
 - Brokerage statements
 - Retirement accounts
- **Safety deposit boxes, home safes**

Assemble a Multi-Disciplined Team

- **Financial planner**
 - Coordinate with other team members
- **Estate planning attorney**
 - Write the will or trust
 - Ensure the plan meets all federal and state requirements
- **Tax advisor**
 - Help minimize taxes owed by the estate or beneficiaries

Property Ownership

- **Joint Tenancy with Rights of Survivorship, JTWROS**
 - Must be equal share
 - Cannot be willed; passes by operation of law to the survivor(s) outside probate
 - Not recommended for a married couple owning appreciating assets because only half the property receives a step-up in cost basis on the death of the first spouse
- **Tenancy in Common, TIC**
 - Can be unequal shares
 - Distributed by will or trust
 - Only the interest owned by a deceased co-tenant gets a step-up in basis

Separate Property and Community Property

- **Separate property is anything acquired by a spouse before the marriage, during the marriage as a gift or bequest, or after the parties separated**
- **Community property is anything acquired during the marriage from earnings or salary**
 - **Cannot be sold or gifted by one spouse without the consent of the other**
 - **Will be split equally unless there is an agreement to the contrary**
 - **The surviving spouse gets a step-up in cost basis to the fair market value at the date of death of the other spouse.**

What Is a Will?

- **Legal document expressing a person's wishes**
 - Distribution of his property at death
 - Who will oversee the distribution
 - May state who is to care for minor children
- **Effective on death**
 - Cannot provide for incapacity
- **Parties to a will**
 - Testator: Person making the will
 - Executor: Personal representative nominated by the testator to administer the will
 - Heirs: People who inherit the assets

Forms of a Bequest

- **Specific property: real estate, personal property**
- **Pecuniary bequest: specific dollar amount**
- **Fractional share bequest: percentage interest**
- **Residuary bequest: balance of the estate**
- **Be careful!**
 - **Where there's a will there's a way ...
... to make a mistake.**

What Is Probate?

- Probate is the judicial process of administering the estate of a decedent
 - Judge determines the validity of the will and appoints an executor to manage the estate
 - Executor usually represented by estate attorney
 - Probate estate includes gross value of all property owned by the decedent except ...
 - ... property which passes by contract
 - Life insurance, Retirement accounts, POD account, etc.
 - ... property held in joint tenancy (JTWROS)
 - ... property held in a trust
- Usually bypassed in CA for estates < \$150,000

Duties of the Executor under Probate

- **File petition with Superior Court asking to be appointed as executor and open probate case**
- **Create inventory of probate assets; appraisal**
- **Locate creditors, pay bills**
- **File tax returns**
- **Manage estate assets**
- **Petition court to allow distribution of assets to heirs**
- **File final tax returns**

Statutory Probate Fees

for Personal Representative and Attorney
California Probate Code: Sections 10800, 10810

Probate	Estate	Rate	Cumulative	Fee
First	\$100,000	4.0%	\$100,000	\$4,000
Next	\$100,000	3.0%	\$200,000	\$7,000
Next	\$800,000	2.0%	\$1,000,000	\$23,000
Next	\$9,000,000	1.0%	\$10,000,000	\$113,000
Next	\$15,000,000	0.5%	\$25,000,000	\$188,000
Next	>\$25,000,000		Reasonable	amount

Pros and Cons of Probate

- **Advantages**
 - Court supervises distribution of estate assets
 - Creditors must submit claims within 4 months
 - Transfers clear title to property
 - Court can settle disputes between heirs, executor
- **Disadvantages**
 - **Complexity:** Petitions, accountings, hearings, etc.
 - **Lack of privacy:** Anyone can view the documents
 - **Time consuming:** Can take 6 months to several years
 - **Cost:** Usually much higher than administering a trust

Everyone Has A Will

- **If you die without writing your will, i.e. “intestate” the state writes one for you**
 - **May not follow your wishes for distribution of property**
 - **May not appoint your preferred guardian for minor children**
- **There will be no provision for bequests to any friends or charities**
- **The probate court appoints an administrator to manage the estate, and a guardian for any minor children**

California Intestate Law

- **If decedent was not married the estate goes to:**
 - Decedent's children, if any; otherwise
 - Decedent's parents, if any; otherwise
 - Decedent's brothers and sisters and their children
 - More distant cousins, etc.
- **If decedent was married:**
 - Community property goes to the surviving spouse
 - Separate property is divided between the surviving spouse and children according to a complicated formula

What is a Revocable Living Trust?

- **A written agreement to distribute the assets in an estate and care for minor children**
- **Typically more flexible than a will**
 - **Can accommodate incapacity**
- **Particularly useful when there are young children, or children from a previous marriage**
- **Parties to a trust:**
 - **Grantor or Settlor: Person creating and funding the trust**
 - **Trustee: Person appointed to manage the trust assets for the benefit of the beneficiaries**
 - **Beneficiaries: People receiving the assets of the trust**

Federal Estate Tax Rates

Year	Exclusion	Max Rate		Year	Exclusion	Max Rate
2001	\$675,000	55%		2009	\$3.5M	45%
2002	\$1.0M	50%		2010	Repealed	Repealed
2003	\$1.0M	49%		2011	\$5.0M	35%
2004	\$1.5M	48%		2012	\$5.12M	35%
2005	\$1.5M	47%		2013	\$5.25M	40%
2006	\$2.0M	46%		2014	\$5.34M	40%
2007	\$2.0M	45%		2015	\$5.43M	40%
2008	\$2.0M	45%		2016	\$5.45M	40%

Revocable Living Trust, RLT

The AB Trust

- **Trust A: The Survivor's Trust / Marital Trust**
 - Receives S1's property > exclusion amount
 - Qualifies for marital deduction
 - S2 has full use and control
- **Trust B: The Bypass Trust / Exclusion Trust**
 - S1's available exclusion amount
 - Transferred to someone other than S2
 - Bypasses S2's estate and taxation so long as S2 does not have general power to appoint
 - S2 has use of income + access to principal for purposes of "health, education, maintenance and support"

Note: S1, S2 are the first and second spouses to die

Practical Aspects of the Trust

- **Must transfer title of assets to the trust when the documents are prepared**
- **When refinancing a mortgage it may be necessary to temporarily remove the home from the trust**
- **A “pour-over will” is used to transfer assets into the trust at death if not already so titled**
 - **If these assets > \$150,000 probate will be needed**
- **Usually during the trustor’s lifetime he/she acts as trustee**
 - **After death or incapacity of the primary trustee successor trustees (relatives, bank) manage the trust**

Durable Power of Attorney, DPA

- Power of attorney for financial/legal matters
- Nominates someone (your agent, attorney-in-fact) to manage your affairs if you are unable to do so
 - Write checks, pay bills, etc.
 - Access your online accounts
 - Manage your investments
- Immediate (effective immediately)
or Springing (effective on determination of incapacity)
- Terminates on death

How Should You Pick an Agent in Financial Matters?

- **Relative or trusted friend**
- **Financial institution, bank**
 - Many require you to use their DPA form
- **Important characteristics**
 - Trustworthy
 - Competent, knowledgeable
 - Understands and respects your philosophy
- **Can name co-trustees**
 - But beware major differences of opinion!

Durable Power of Attorney for Health Care

- Authorizes an agent to make medical decisions for you if your are unable to do so yourself
- Empowered to speak on your behalf
- Preferable to name at least one alternate agent
- Typically activated when two doctors affirm you are no longer capable of making decisions for yourself
- Expires on death

The Living Will

- **Allows you to state what kind of care you want, or don't want, if you are seriously incapacitated**
- **Can specify your wishes regarding wishes ...**
 - **Resuscitation / DNR (Do Not Resuscitate)**
 - **Artificial respiration**
 - **Forced feeding**
 - **Use of antibiotics**
 - **Pain relief, etc.**
 - **Donation of organs**
- **POA for healthcare and the living will are typically combined in an Advance Health Care Directive**

Who Should You Appoint as Agents for Health Care?

- **Choose your health care proxies carefully**
 - Family, friend
 - Competent, knowledgeable
 - Assertive but not overly controlling
- **Include a HIPPA release**
 - Health Insurance Portability and Accountability Act
- **Discuss your wishes with your proxies at the time your documents are prepared**
- **Proxies should maintain a copy of the document**

Charitable Giving

- **Simple bequest in the will**
- **Donor-advised funds**
 - Funded by donor, managed by trustee for benefit of a charity
 - Donor decides where/when to make donation
- **Charitable trusts**
 - **Charitable remainder trust, CRT**
 - Donor receives an income interest for life
 - At death the remainder interest is paid to the charity
 - **Charitable lead trust, CLT**
 - Charity receives the income for the gifted asset
 - At death the remainder interest reverts to the donor's heirs
 - **Private foundation**

A Letter of Intent

- **Covers practical details; Not a legal document**
 - Intended to be used in case of incapacity or death
- **How to access your electronic data**
- **Type of funeral you prefer**
- **Any prearrangements you have made**
- **An obituary listing your name, place and date of birth, immediate relatives, accomplishments, etc.**
- **People to contact:**
 - Relatives, friends, etc.

California's End-of-Life Option Act Right-To-Die Law

- Signed into law by Jerry Brown in October 5, 2015
- Officially went into effect on June 9, 2016
- Legal challenge filed for injunction to halt implementation due to passage in Special Session
 - Injunction denied; may be appealed
- Sunset clause
 - Law officially sunsets on January 1, 2026 unless amended by further action

Right-To-Die Law

Practical Considerations

- **Patient must:**
 - Be an adult (age 18 or older)
 - Be a California resident
 - Have mental capacity to make own decisions
 - Be diagnosed by two physicians with a terminal illness with six months or less to live
 - Make a voluntary request to the attending physician
Two oral requests >15 days apart, plus written request
Cannot be made through a POA or health care directive
 - Have physical capacity to self-administer the drug
- **Not effective for Alzheimer's patients or comatose patients**

Typical Duties of a Trustee

Pre-Need Considerations

- Read and understand trust and will documents
- Consider your decision to accept the job
 - Great honor
 - Hard work
 - Time consuming
 - Major responsibility
 - Legal liability
 - May be compensated
 - Can resign later after new trustee is installed

Typical Duties of a Trustee

Immediate Tasks

- **Mortuary**
 - Verify details for death certificate; Order ~20 copies
 - Sign off on burial/cremation documents
 - Arrange for burial or scattering of ashes
 - Review scattering documents and distribute to family members
- **Miscellaneous**
 - Notify Social Security Administration/Medicare
 - Notify Bank and brokerage accounts
 - Close out nursing home account

Typical Duties of a Trustee

Legal Issues

- **Retain estate attorney**
 - Often drafting attorney, but not necessary
 - Coordinate all legal issues with him
 - Provide supporting documentation as required
- **File for new Tax ID for trust**
- **Sign documents as “Your Name, Trustee”**
- **Irrevocable trust of pre-deceased spouse**
 - Review document to determine trustee
 - Consider requesting trustee to vacate trust
 - Requires consent of beneficiaries and original trustee

Typical Duties of a Trustee

Financial Issues

- **Collect, sort and store all financial documents**
 - Transfer boxes of documents to a safe site
 - Review all documents
 - Shred unwanted documents
 - Organize and store remaining documents for 3-7 years
- **Bank and brokerage accounts**
 - All accounts frozen by state for 40 days
 - Then file affidavits to open new accounts
 - Review and pay all bills in a timely manner
 - Manage the brokerage accounts in an appropriate manner (Prudent investor rule, diversified portfolio)

Typical Duties of a Trustee

Utilities

- **File change of address with post office, utilities**
- **Work with essential utilities to maintain service**
 - **Gas and electricity**
 - **Water**
 - **Trash collection**
 - **Landscape service, etc.**
- **Cancel non-essential utilities**
 - **Telephone, cable service, etc.**
- **Pay all utility bills after new bank accounts are opened**

Typical Duties of a Trustee

Sale of Home

- Interview at least 3 realtors; document interviews
 - Sign listing agreement
 - Review property report, roof report, termite report
- Prepare for an open house
 - Retain a staging consultant
 - Arrange furniture as recommended by consultant
 - Ship small items to family members
 - as specified in the will, trust or letter of intent
 - Move all other items to garage or off-site
 - Schedule house cleaners

Typical Duties of a Trustee

Estate Sale

- **Preparation**
 - Interview estate sale agents and document
 - Typical commissions ~ 40% of total proceeds
 - Sign agreement with selected agents
 - Work with agents to prepare for sale
- **Sale**
 - Usually held over weekend or successive weekends
 - Remaining unsold items donated to charity
 - Junk carted to city dump
 - House cleaned and prepared for close of escrow

Typical Duties of a Trustee

Close of Escrow

- Review all offers and determine which to accept
- Notify beneficiaries of terms of sale
- Get beneficiaries' signed acceptance
 - Can delay closing by weeks
- Review preliminary closing documents
- Meet with title company to sign final closing documents

Typical Duties of a Trustee

Accounting Issues

- **Retain accounting firm to work with estate attorney**
 - Have accounting firm document value of estate on day of death
 - File report with all percentage beneficiaries
 - Distribute ~80% of estate to beneficiaries
 - File Federal and State tax returns in a timely manner
 - Maintain accounts and file tax returns for 3 years
 - i.e. past any potential audit period
 - Distribute all remaining funds to beneficiaries
 - Close out the estate
- **Keep meticulous records**
 - All meetings, communications, transactions

How Long Should I Keep Financial Records?

- **Forever**
 - Estate planning documents, trusts, wills, etc.
 - Tax returns (in case of fraud)
- **3 to 7 years**
 - Bank statements
 - Brokerage statements
 - Tax returns (typically)
- **At least 3 years after sale**
 - Escrow closing statements (both purchase and sale)
 - Property improvements
 - Stock trade confirmations

Practical Trustee Tips

- **Document everything**
 - **If it isn't written down it never happened !!!**
- **Communicate status frequently with beneficiaries**
 - **Annual report plus other significant events**
- **Be careful to disclose all major transactions to percentage beneficiaries in advance and get their written approval**
- **Specific beneficiaries do not have a need-to-know and are easier to work with**

We Live in a Digital World

- **Files stored on desktop computer, laptop, smart phone, MP3 player, cloud, etc.**
- **Letters, documents, spreadsheets, presentations**
- **Email accounts**
- **Social media: Facebook, LinkedIn, Twitter, etc**
- **Online bill payments**
- **Photo files**
- **Music, movies, books, etc.**

Can Your Trustee Access Your Digital World When You Die?

- Which files/accounts do you want your trustee to access when you die?
 - What should happen to your Schwab account? Facebook?
- Does your trustee know your logon ID and password?
- Against all security rules
 - Keep written list of all IDs and passwords in clear text in a safe place known to your DPA agent or trustee
- Make sure the individual is given authority in the will
 - Allows your trustee to access those accounts which will remain active (e.g. bill paying) and to close out the others in an orderly manner

A Long-Term Digital Strategy

- **Take Inventory**
 - Organize your files
- **Back up your data**
 - CDs, DVDs, Flash cards, etc. Will the drives be available?
 - Local hard drive
 - Cloud, e.g. Google Drive, Carbonite, etc.
- **Make sure the data is protected**
 - Use strong passwords
 - Keep a list locked in a secure place
- **Include a specific section in your DPA authorizing your agent's access to your digital files**
 - Make sure your agent knows where to find your list of logon IDs and passwords

Your “All About Me” Exit Folder

- **Best gift you can leave your loved ones!**
- **Collect all the documents needed into a large folder or ring-book**
- **Store in a secure place**
 - **Do not store in a bank deposit box unless owned jointly or in trust**
- **Make certain your executor/trustees and powers of attorney know where to find your exit folder**

Your Exit Folder

Estate Planning Issues

- **Location of original legal documents, and key or combination to any safe or lock box**
 - **Durable power of attorney for financial matters**
 - **Advance directive for health care issues**
 - **Will and revocable living trust**
- **Letter of intent, ethical will**
- **Funeral wishes, desired obituary wording**
- **Pre-need funeral arrangements already made**

Your Exit Folder

Financial Planning Records

- **Personal Investor Profile, PIP (from Workshop 1)**
- **Investment Policy Statement, IPS (from Workshop 2)**
- **Cost basis for Non-deductible IRA (see Workshop 5)**
- **Net worth statement**
 - **Bank and brokerage statements**
 - **Account numbers, contact information**
 - **Websites, ID and passwords**
- **List of credit cards with contact information**

Your Exit Folder

Health Care Issues

- **Copy of health care directive, HIPPA release**
 - **Location of original**
- **Primary care doctor, specialists**
 - **Contact information: Phone #, email address**
- **Health issues, medications**
- **Health care insurance information**
 - **Medicare / Medigap / Advantage Plan, other**

Your Exit Folder

Comprehensive Contact List

- **Personal**
 - Immediate family
 - Friends and neighbors
- **Professional**
 - Financial adviser
 - Estate attorney
 - Accountant
 - Insurance agents
- **Other**

Your Exit Folder

Account ID and Passwords

- **Access to desktop and laptop computers, phones**
- **Email accounts**
- **Bank and brokerage accounts**
- **Social media accounts**
- **Photo websites**
- **Personal websites, etc.**

Your Exit Folder

Copies of Important Documents and Location of Originals

- Driver's license
- Social Security/Medicare cards
- Passport ID page
- Birth certificate
- Marriage certificate, Divorce decree
- Death certificate for a spouse
- Military records

Review The Plan Regularly

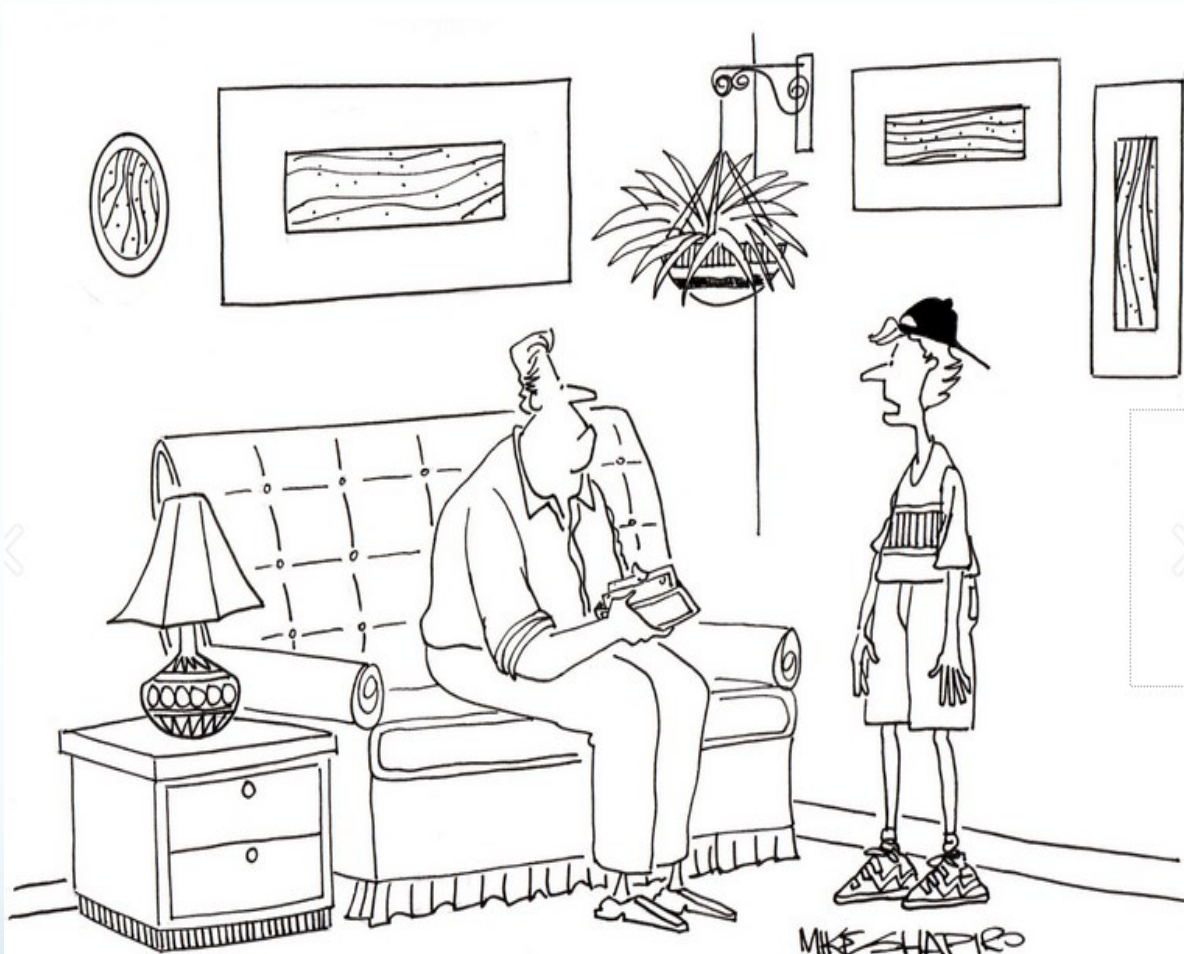
- **Review/update the plan every 3 to 5 years, or ...**
 - ... Death of a spouse**
 - ... Divorce or remarriage**
 - ... Birth or death of a beneficiary or fiduciary**
 - ... If you, spouse, or a beneficiary become incapacitated**
 - ... Move to another state or country**
 - ... Significant change in financial situation**
 - ... Purchase or sale of a business**

References

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- **Managing Electronic Documents, Consumer Reports Money Advisor, February 2015**
- **Plan For Your Digital Afterlife, Consumer Reports Money Advisor, April 2015**
- **Preparing Clients for Widowhood, Bill Harris, Journal of Financial Planning, April 2017**
- **How To Make Your Money Last, Jane Bryant Quinn, Simon & Schuster, 2016**

Useful Websites

- www.aaii.com Broad selection of financial planning material
- www.siliconvalleyaaii.org Previous presentations on various topics
- [www.santaclaracountylib.org/Adults/Business & Money](http://www.santaclaracountylib.org/Adults/Business%20&%20Money)
- www.letsmakeaplan.net Find a CFP professional
- www.estateplanning.com Comprehensive source of useful info
- <https://info.wellsfargoadvisors.com> Useful papers
- www.consumerreports.org/cro/papershredders.htm How long to keep important documents
- www.ethicalwill.com



"A raise in my allowance is fine, dad. But what I'm really after is power of attorney."