
SEPTEMBER 7

TAX AND ESTATE PLANING SEMINAR

INTRODUCTION

Tax planning has now become a year round exercise. Congress is always passing some new law having an enormous effect on taxes. Estate planning is centered around two different sets of laws. State law concerns probate and Federal law concerns inheritance taxes.

Under California state law, probate is required on estates where the gross value of the estate exceeds \$100,000.

Under Federal Law, your beneficiaries must pay an inheritance tax where the net value of the estate exceeds \$1,000,000 during 2002 and 2003. This amount is scheduled to increase as follows:

2006 & 2008	\$2,000,000
2009	\$3,500,000
2010	repealed - no tax
2011	\$1,000,000

1. How to avoid probate.

The only ways to avoid probate is to have assets of less than \$100,000 in gross fair market value at the date of death, or establish and fund a trust to hold all of your assets. You should also executive a pour over will to provide for any assets that may have been missed or inadvertently not put into the trust, called funding you trust.

Other ways to avoid probate is through the use of life insurance and naming specific beneficiaries, retirement plan benefits, Uniform Transfer to Minor Act, gifts, private annuities, and joint tenancy.

2. What is probate.

Probate is essentially a court proceeding that occurs after death and transfers a decedent's assets to his or her beneficiaries, either pursuant to a will or if there is no will pursuant to the intestacy laws of the State of California.

Probate, in complicated estates, can take 18 to 24 months before any assets are transferred to the beneficiaries. On average, the fees associated with probating an estate range from 6% to 15% of the gross value of the estate. The fees include the fees for the attorney, the executor, the probate referee, bond, costs, newspaper publication costs and court filing fees.

Joint tenancy does not avoid probate. It merely postpones the probate until the death of the surviving joint tenant. Moreover, by holding property as a joint tenant, you adversely affect the income tax basis of your assets because you only receive a 50% step-up in basis at the death of the first spouse.

3. Why one needs a will and what should be and should not be in a will.

A will expresses one's desires as to how and who will be your executor (executrix), guardian of your minor children and what you want done with your assets. A will is revocable during one's lifetime, operative for no purpose until death, and applicable to the situation which exists at one's death.

You should NEVER prepare a joint will with your spouse. Separate individual wills should be executed. However, both spouses should be in accord with guardianship issues.

You should not list specific items to be bequeathed to specific individuals within the body of a will. Should that individual die or you change your mind, the entire will needs to be re-drawn, or a codicil needs to be drafted.

4. What is a trust and what are the critical components.

Inter vivos trust is one prepared during one's lifetime. Sometimes referred to as a living trust or an A/B trust.

There are five elements that must be satisfied to create a valid trust:

1. Trust intent. Settlor's express intent to create a trust must be present.
2. Trust property. The trust property (also known as trust res or trust corpus) must be present. It cannot be formed for personal reasons for a particular trustee.
3. Formalities. The legal formalities must be met in that property must be transferred, the statute of frauds must not be violated, or is it being created out of a will (testamentary trust).
4. Trustee. The trustee is the individual who holds legal title to the trust property for the benefit of the beneficiaries. A trustee manages the assets in the trust after your death for the benefit of the beneficiaries until the trust property is distributed in accordance with the provisions of the trust instrument.
5. Beneficiary. There must be one or more ascertainable beneficiaries, who can enforce the duties owed by the trustee and the rights created in the trust property. Note that during your lifetime, you as the settlor or creator of the trust are the beneficiary. After you die, your children normally become the beneficiaries.

5. How to hold title to property.

Joint tenancy versus community property. See attached worksheet.
See attached article.

6. How to fund a trust.

7. Gifting program.

A donor can gift \$11,000 to each donee per each calendar year. (This does not include the payment of medical expenses and college expenses). Thus, a husband and wife can gift to each child a total of \$22,000. Remember that gifts to a child mature when that child reaches the age of majority.

8. Guardianships.

A. of the person - takes care of the minor child.

B. of the property - takes care of any money held on behalf of the minor child.

9. Durable Power of Attorney.

A document which when combined with a trust, insures that you will avoid a conservatorship
A conservatorship is a court proceeding that oversees your affairs if you become incompetent. A durable power of attorney allows you to appoint others to handle your affairs should you become unable to do so.

10. Special Power of Attorney.

A document which allows certain named individuals to cease all life-saving medical efforts should they determine that it is against your wishes and desires. Normally, one uses such wording as no brain waves, inability to breathe on one's own, in a comatose situation with no hope for revival and other such wording.

11. Outlook for estate taxes.