

COMMON ESTATE PLANNING QUESTIONS

1. Why must I prepare estate planning documents?

If you do not prepare and sign a legally valid estate planning documents, your estate is subject to distribution under the laws of the State of California. In this case, the State of California would ignore your intentions to transfer specific assets within your estate to specific individuals or charitable organizations. For this reason, you are strongly urged to clearly express your intentions by preparing a Will and, more commonly, a Living Trust document.

If you want your assets to transfer to specific individuals or charities upon your death, it is essential that you prepare estate planning documents that clearly express your wishes regarding the transfer of your assets. Additionally, it is important to prepare appropriate estate planning documents in order to maximize the assets available for distribution to your heirs, and to minimize payment of your assets to attorneys, courts or other third parties.

2. Can I simply prepare a Will in order to transfer my assets to my designated heirs upon my death?

Yes, a legally valid Will serves to provide for the transfer of your assets upon your death. A Will only is given legal effect upon your death. You are free to change your Will at any time during your lifetime. Your Will identifies one or more individuals as the personal representative, or executor, whose duties include the payment of your last debts and expenses, along with the distribution of your assets to your designated heirs.

There are some disadvantages to the preparation of a Will as your sole estate planning device or document, however. The primary disadvantage stems from the requirement that your personal representative or executor submit your Will to court oversight through a probate action. Quite often, such probate actions result in significantly greater expense and delay before your assets can be distributed to your designated heirs.

For this important reason, many individuals are including a “living trust” as an essential aspect of their estate planning documents.

3. What is the “Living Trust” document and why is it important to prepare this document?

A “Living Trust” is an increasingly important estate planning document that becomes legally effective during your lifetime, once you approve and sign the appropriate documentation. A “Living Trust” remains in effect throughout the remainder of your lifetime, although you have the power to revoke, terminate or amend this document at any time before your death.

On the other hand, if you prepare a legally valid “Living Trust” document, in most instances, your designated personal representative (identified as your “successor trustee”) can avoid the probate action entirely. Distribution of your assets upon your death to your identified heirs/beneficiaries can

be accomplished far more efficiently and timely.

4. Are there other steps required after I prepare the “Living Trust” document?

Yes. Your “Living Trust” requires that you take additional, very important steps in order to give legal effect to your estate planning intentions, and to avoid the probate situation that arises for those who have solely prepared a Will. Most importantly, you must legally transfer ownership of your assets to the “Living Trust” during your lifetime. This transfer does not result in a loss of ownership, control, management or possession of your assets during your lifetime.

An estate planning attorney should explain to you precisely how to accomplish such asset transfers.

5. What types of assets can I transfer into a “Living Trust”?

Individuals primarily transfer real property and financial assets into their “Living Trust”. There are very specific methods and instructions required in order to legally transfer such assets into your “Living Trust”. It is important that an estate planning attorney assist and advise you with such transfers. If the transfers are not properly made into your “Living Trust” before your death, you run the risk that your estate will be subject to a probate court action – contrary to your intention.

6. What must I own in order to justify the preparation of a “Living Trust”?

If your assets include ownership of any real property within California, along with financial accounts, it is advisable to prepare a “Living Trust” in most instances. Even if you do not own real property, your ownership of financial or other valuable assets may very well justify the preparation of a “Living Trust” for you.

7. Once I have my “Living Trust” in place, does it take the place of a Will?

No, it is still highly recommended that you maintain a legally valid Will when you place your “Living Trust” into effect. The Will serves as a “back up” estate planning device, in the event that ownership of your assets is not properly transferred into your “Living Trust”. The Will typically includes language that confirms your intention to transfer your assets to your “Living Trust” upon your death, and may be provided legal effect to effectively transfer such assets to your “Living Trust” in some circumstances, even though our assets were not properly transferred into the “Living Trust” as otherwise required.

8. Will the “Living Trust” serve to avoid or reduce my estate taxes?

No, the “Living Trust”, in and of itself, does not serve to avoid or reduce your exposure to estate taxes. There are, however, other estate planning devices that you may place into effect in order to reduce your estate tax liability upon your death.

9. What other estate planning documentation is essential for me?

In addition to a Will and “Living Trust”, it is important that you maintain legal documentation that specifies your health care and financial wishes and intentions during your lifetime in the event that you are unable to make such decisions on your own. These documents are identified as Power of Attorney documents, and are increasingly important to confirm that third parties, such as physicians, hospitals and financial institutions, respect and honor your health care and financial wishes and intentions.