

Estate Planning for Everyone

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University of Southern California Gould School of Law
Juris Doctor, 1998

University of California at Berkeley

B.A. History, B.A. Political Science, 1995 with Honors

Golden Gate University School of Law

LLM in Taxation Law, 2007

California Professional Licensed Fiduciary

California Fiduciaries Bureau, License # 1359

Admitted to Practice, State Bar of CA, 1999

Co-Founded Ainer & Fraker, LLP, 2002

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Representing Sellers, Buyer and Investors in Real Estate, Trusts & Estate Planning, 1031 Exchanges, Limited Liability Companies (LLC) for Real Estate

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Estate Planning Trivia

Q: When do I need an Estate Plan?

A: The day Before you Die.

Moral: Unless you have a crystal ball (or Magic 8 Ball) you need to put your plan in place today



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The High Cost of Procrastination

1. Roughly 70% of Americans die without a valid Will or Trust
2. 100% of Americans intend to execute a valid will before they die

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What Happens if I Die with No Estate Plan?

Probate (*Latin*)

def. to Prove the Will

Intestacy (*Latin*)

def. big stinking mess

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Everybody has an Estate Plan

You can Choose Which Plan You Have:

1) The plan that you create,
that reflects your values and needs

OR

2) The plan the State of California creates,
that reflects its values and needs

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Your Will as Drafted by the State of California:

1. I desire to pay the maximum amount of taxes possible
2. I believe in letting the State choose a Guardian for my minor children
3. I believe my **Creditors are More Important than my Children** and Loved Ones – their Needs should come First
4. I feel the State would do a better job than I can in deciding who gets my property
5. I prefer to let the State choose the personal representative of my estate

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Disadvantages of Probate

1. High Cost
 - \$23k for a \$1 million estate
2. Public Process
 - All records are publicly available
3. Time Consuming Process
 - 12-24 months on average
4. Bureaucratic System
 - Court-Controlled
 - Frequent Delays
 - Inefficient
 - Formalities are King

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Advantages of Trust Administration

1. Reduced Cost
 - 0.5-1.0% for a \$1 million estate = \$5-10,000
2. Private Process
 - Only heirs & those named may see the Trust
3. Much Faster Process
 - 6-9 months on average
4. Streamlined System
 - Trustee-Controlled ● Very efficient
 - No Court Delays ● Substance is King

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The Living Trust



R L T

R = Revocable

L = Living

T = Trust

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Living Trust Benefits

1. Can Revoke or Modify during Life
2. Management of Assets during Incapacity
3. Estate Tax Benefits
4. Complete Control over Distributions
5. Asset Protection Features for Children

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California Inheritance Default = All at Age 18



VS.



A Tough Decision

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A Trust Gives You Control over Distributions to Children

All at Once vs. Distribution in Stages

Mandatory Income Begins at age 18

Discretionary Principal

Health - Maintenance

Education - Support

Distribution of Principal in Stages

1/3 at 25, 30 and 35

Spendthrift Provisions protect Undistributed Sums

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Funding Your Living Trust



TRUST



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The Intended Beneficiaries of Your Trust



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The **Un**intended Beneficiaries of Your Trust



Your Future Ex-Son-in-Law

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Not to Mention...



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Spendthrift Trust Provisions

- While in Trust, Inheritance is Protected
 - Creditors may NOT get at assets
 - Creditors may NOT force distribution
- Children do not Own or Control the Trust
- Retain Use of the Assets
 - H, E, M, S
- Accumulation Provisions
 - Money that would otherwise go to Creditor is Accumulated (held over) until settlement
- Promotes Settlement of Legal Claims

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The Basic Estate Planning Package

1. Living Trust
2. Pour-over Will
3. Advance Health Care Directive
4. Durable Power of Attorney for Finance/Property
5. Grant Deeds (Transfer Real Estate into the Trust)

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Criteria for Choosing a Guardian (for Minor Children)

- Required Under Age 18
- Financially and Emotionally Stable
- Committed to the Welfare of Your Children
- Able to Work with the Trustee and Other Professionals
- Shares Your Faith and Values

Discuss with Intended Guardians
Early and Often

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Advance Health Care Directive

- Drafted during Good Health & Sound Mind
- Executed during Incapacity
- YOU State your wishes on Life Sustaining Treatment
- Your Agent carries out your wishes

California Default Law

Without a Writing by the Individual,
Life Support May Not be Withdrawn

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Durable Power of Attorney for Finance/Property

- Durable = Survives your Incapacity
- Legal Signing Authority for your Name
- Covers **ALL** aspects of your Finances & Property, whether or not in Trust

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Deeds for Personal Residence – **Calculating Step up in Basis at First Death**

Community Property vs. Joint Tenancy

Community Property – Eligible for **100%** Stepped up Basis at First Death

Joint Tenancy – Eligible for **50%** Stepped up Basis at First Death

What's in a Name?
A Lot of \$\$\$

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Example: My Sunnyvale Client

H & W purchased Sunnyvale (94087) Primary Residence in 1962 for \$25,000 (Basis)

- In 2007 – Refinanced Property out of Trust INTO Joint Tenancy, and then Back INTO the Trust (Joint Tenancy \rightarrow Trust)

- H died in 2016 with FMV at \$2,000,000

Community Property – Basis = \$2,000,000

Joint Tenancy – Basis = \$1,000,000 (plus applicable § 121)

Client wants to Sell House to Pay for Mom's Skilled Care Facility

Q: Are they SOL?*

A: It Depends.

* Sure out of Luck.

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How Much is All this Going to Cost?

Estate Planning Finance Explained

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Exploring Your Options

	NO PLAN	NON-ATTORNEY TRUST MILL	ATTORNEY RUN TRUST MILL	ESTATE & TAX LAW FIRMS
WHO?	<ul style="list-style-type: none"> DIY'ers Meant-to-do-It but Didn't Get Around to It-ers 	<ul style="list-style-type: none"> Legal Zoom We-the-People Forms Driven No Accountability 	<ul style="list-style-type: none"> Attorneys with More than 200+ Clients a Year Forms Driven 	<ul style="list-style-type: none"> LLM in TaxLaw Certified Specialist Probate Litigators and Drafters
Up Front Cost	FREE!	\$250-\$1,000	\$250 - \$1,500	\$2,500 and up
Back End Cost	Probate Code Fees 3-5% of Estate Potentially Unlimited Liability	Potentially Unlimited Liability	Potentially Unlimited Liability	Estimated 0.5-1.0%

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The No-Planners

Statutory Probate Fee

4% of the First \$100,000 = \$4,000

3% of the Next \$100,000 = \$3,000

2% of the Next \$800,000 = \$16,000

Total Probate Fee (\$1M Estate) = **\$47-50,000**

Attorney's Statutory Fee = \$23,000

Personal Representative Fee = \$23,000

Appraisal Costs = \$1,000

Filing Fees = \$460 Each

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The "How Hard can it be to DIY" Family

\$500,000 Estate

Family Friend of Decedent Cut and Pasted Trust he Found Online

- Personal Property = I give my motorcycle in equal shares to my 2 kids
- Sale of Cash-Only Business

Highly Contentious Beneficiaries

Attorneys Fees - \$15,000

CPA Fees - \$40,000+ (Forensic Accounting)

Up Front Costs = \$0

Back End Costs = \$55,000 and 1 ½ years

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The “I Meant to Get Around to it Before I Died” Family

\$6 Million Intestacy Case

No Kids, Grandkids, Parents or Grandparents
 Three Years of Court Cases, north of \$100k in Fees
 Property Split between 24 Beneficiaries (Cousins)

\$1.7 Million Will No Trust Case

Charity and Remote Cousins
 Year of Court Cases, Total Fees > \$70,000
 Charity badgered family members

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The “Don’t Spend a Lot of Money on an Attorney” Family

- Decedent owned **28 properties** in the Bay Area
- Second Marriage, Kids from his First Marriage
- Trust Mill Trust = 4 properties to Wife, 24 to Kids and Sister
- Reality = JTWRORS means 100% to Wife, \$0 to Kids and Sister
- 7+ years of Litigation later
- Attorneys Fees north of \$100,000
- Family Ripped apart and no longer speaking
- Up Front Costs = \$500?

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Just Because there's an Attorney Involved, Doesn't Mean it isn't a Trust Mill

- Aunt died with Trust leaving \$2 million to Niece
- Aunt amended Trust **5 times** in last **8 years** of her life, changing beneficiaries (\$500-\$1 million) each time
- Up Front Costs = \$1,000 +/-
- **Back End Costs** = 3 years of Litigation (2 Cases)
- **\$150,000** in Legal Fees and **\$300,000** in Settlements

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Just Because there's an Attorney Involved, Doesn't Mean it isn't a Trust Mill

LAWSUIT #1

- \$800,000 house left to caretaker, a violation of CA Law
- No Certificate of Independent Review
- 1.5 Years in Court
- Settlement Cost > \$300,000

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Just Because there's an Attorney Involved, Doesn't Mean it isn't a Trust Mill

LAWSUIT #2

- "Nephew" Sued Niece for \$500,000, claiming 4th and 5th Amendments were Invalid
- A Restatement Would Have Made Lawsuit Impossible
- 1.5 Years in Court
- Settlement \$65,000

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FINAL COST OF THIS TRUST MILL ESTATE PLAN

- Up Front Costs = \$1,000 +/-
- Back End Costs – Close to \$450,000
- 3 years of Litigation (2 Cases)
- \$150,000 in Legal Fees and
- \$300,000 in Settlements

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Get it Done Right the First Time

Spend the Money Up Front to Get it Done Right

Use Attorneys who will stand behind their work

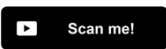
Hint: It isn't about the Documents

It's about the PEOPLE involved

PEOPLE not PAPERWORK

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Exclusive Offers for IBEW Members



Basic Estate Planning Package

Normal Price = \$2,500

Exclusive to IBEW Members Price = \$1,500

Book FREE Initial Consultation NOW

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