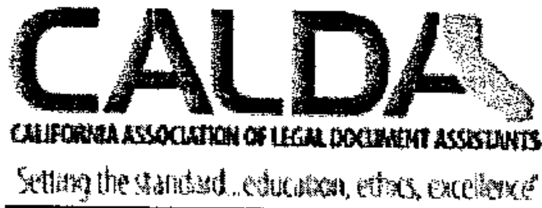
ESTATE PLANNING



ESTATE PLANNING

Legal Assistants of San Diego County

(619) 447-3188

560 Broadway

El Cajon, CA 92021

www.legal-assistants-san-diego.com

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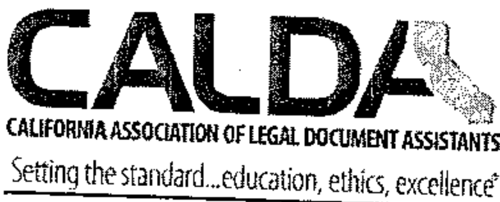

PLANNING YOUR ESTATE

You've worked hard for your money and made every attempt to be a conscientious saver. So it's only natural that you want some control over what happens to your assets in the event of your death. At the very least, you probably want to minimize or avoid potential hassles and headaches for your loved ones. A comprehensive estate plan is important to accomplish your estate planning goals.

WHAT HAPPENS IF I DON'T HAVE A WILL OR LIVING TRUST?

The legal term for dying without a will is dying intestate. If you do not specify through a valid will or living trust who will receive your property, state law controls and generally distributes your property to your spouse and/or your closest heirs. This may or may not be what you intended. Furthermore, if you fail to nominate a guardian for your minor children, the court may appoint someone you wouldn't trust to act as legal guardian of your minor children. Finally, by failing to appoint someone to carry out your wishes, the court can appoint anyone (as outlined in the law) to be the administrator of your property and the administrator may have to pay certain fees or post a bond at the expense of your estate before he or she can begin to distribute your assets.

IF YOU HAVE A VERY SIMPLE ESTATE

A simple will is appropriate for people who do not own property and do not have a lot of savings. If you rent and if you have less than $150,000 in cash or other assets, such as stocks or mutual funds, a will may work just fine for your situation.

IF YOU HAVE MORE THAN JUST A VERY MODEST ESTATE

If you own a home (of nearly any value) or if you have savings in excess of $150,000, you should consider making a revocable living trust as the centerpiece of your estate plan. A properly-funded revocable living trust will allow your estate to avoid the expense and delay of the probate court.

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OTHER DOCUMENTS THAT SHOULD BE A PART OF EVERY ESTATE PLAN

Any comprehensive estate plan, whether it is centered on a simple will or a revocable living trust, should also include other vital documents, such as a Durable Power of Attorney for Property Management, Advance Health Care Directive and Final Disposition Instructions. These documents are described in more detail below.

FORMS NEEDED IN A TRUST-CENTERED ESTATE PLAN

1. *Revocable Living Trust* – A living trust supplements a traditional will and allows for a simpler transfer of property after your death. The trust names you as trustee to manage and control the trust property while you are alive and well and it names a successor trustee to take over for you when you pass away or become incapacitated. The purpose of the trust is to distribute your assets to your beneficiaries in a way that bypasses the expense and delay of the probate process. Trusts are described in more detail in the next section of this brochure.

2. *Trust-Related Documents* – Other "support" documents accompany most revocable living trust packages to ensure the funding and proper operation of the trust. The Certification of Trust is a simplified summary of certain provisions of the trust instrument which makes it easy for financial institutions to transfer your assets to the trust. Various "assignment" forms should be included as well. An Assignment of Personal Property form should be included to transfer your tangible personal property such as jewelry and artwork to your living trust and an Assignment of Business Interest should be executed to transfer sole-proprietor, partnership and LLC businesses to your trust.

3. *Pour Over Will* – In order for a trust to work properly your trust must take title to your assets. If this is not done, then the trust will not control those assets. The pour over will ensures that any assets that not held in your trust at death will be transferred to your trust after your death. This is not the most efficient method for transferring assets to your trust as those assets should be transferred during your lifetime for the trust to work properly and avoid probate. If the property transferred under the pour over will exceeds $150,000, those assets may require a probate proceeding.

4. *Trust Transfer Deed* – If real property is owned it is important to transfer that asset into your trust. This is accomplished by recording a Trust Transfer Deed which will transfer the property from your individual name to your trust.

5. *Durable Power of Attorney For Property Management* – This document designates an agent who to manage your financial affairs if you cannot become injured, ill or otherwise incapacitated. Your agent pays your bills, does your banking, runs your business and takes other

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actions that would ordinarily require your signature. Having a power of attorney is critical and it takes the place of a costly, court-supervised conservatorship.

6. *Advance Health Care Directive* – This document designates an agent to make health care decisions for you if you become ill or incapacitated. It also allows you to express your wishes in writing regarding end-of-life decisions and the disposition of your remains.

7. *Final Disposition Instructions* – Lets your survivors know how you want your remains to be handled after you die; whether you want burial or cremation, what your wishes for a ceremony are and whether you have already made pre-arrangements at a funeral home.

FUNDAMENTALS OF LIVING TRUSTS

A living trust will be used as the mechanism to manage your property before and after your death as well as provide how those assets, and the income earned by the assets, will be distributed after your death. If you should become incapacitated or disabled, a successor trustee whom you have named will manage the affairs of the trust for you as beneficiary. A living trust is not subject to probate and, therefore, all provisions of the trust will remain private.

The "living trust" described in this brochure is a revocable living trust. It is sometimes referred to as a revocable inter vivos trust, or a grantor trust. A living trust may be amended or revoked by the person creating it (commonly known as a "trustor," "grantor" or "settlor") at any time during the trustor's lifetime as long as the trustor is competent.

A trust is a written legal agreement between the individual creating the trust and the person or institution named to manage the assets held in the trust (the "trustee") for the benefit of the trust's beneficiary. In most cases, you will be the trustor, the initial trustee of your living trust and the beneficiary of the trust, all at one time. If, at some point, you need assistance in managing the trust the successor trustee will manage the trust for your benefit as the beneficiary.

In a living trust agreement:

- The trustee has the legal right to manage and control the assets held in the trust.

- The trust describes the persons or charitable organizations ("beneficiaries") who will receive the trust assets after the initial beneficiary's death.

- The trustee is given guidance and certain powers and authority to manage and distribute the trust property in a prudent fashion. The trustee is a "fiduciary." A fiduciary is an individual or company who occupies a position of trust and confidence and is subject to strict responsibilities, usually higher standards of performance than one who is dealing with his or her own property. Without the trustor's express written permission the trustee cannot use trust property

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for the trustee's own personal use, benefit or self-interest. A trustee must hold the trust property solely for the benefit of the beneficiaries of the trust.

Three basic types of revocable living trusts include:

- A probate-avoidance trust for an individual
- A probate-avoidance trust for a couple who own property together
- A probate-avoidance and estate tax-saving AB trust for prosperous couples, typically couples with a net combined estate worth over $5 million (according to current law)

A living trust can be an important part, in many cases the most important part of your estate plan. Not everyone, however, may need a living trust. The greater the risk of incapacity or death, the greater the need for a living trust. The greater the value of your assets, particularly if they include real estate, the greater the need for a living trust. A young, healthy individual with few assets probably does not need a living trust right now. Nor does the real estate developer who is frequently buying, selling or refinancing his or her real estate holdings want a living trust to hold those assets. On the other hand, many people recognize that a living trust will be helpful in the future so they set up a living trust now to have it in place in the event of an accident or sudden illness.

KINDS OF TRUSTS

Revocable Living Trusts – A revocable living trust is a trust you can revoke at any time. They're called "living" trusts because they're created when you're alive, not at your death like some other kinds of trusts. Sometimes, living trusts are known by their Latin name: inter vivos (among the living) trusts. There are two common types of revocable living trusts.

Basic living trust - Lets your family inherit your property without going through the notoriously slow and expensive probate court process. A basic living trust does nothing to reduce federal estate tax, however most people don't have to worry about that. Only a tiny fraction, less than 2% of estates owe estate tax.

AB trust - Both avoids probate and may also allow your heirs to save thousands of dollars on estate taxes after your death. Currently, estate tax affects only people who die leaving a taxable estate of more than $5 million. This amount will revert to $1 million per person in 2013 unless Congress updates the law. An AB trust may eliminate estate tax liability for couples who jointly own up to double the estate tax exemption. It works by making the first spouse's estate subject to tax at his death, but it is counted as part of the second spouse's estate at the second

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death. That way, each spouse's estate stays under the estate tax threshold; they're never combined for estate tax purposes.

Other common types of trusts include:

Testamentary Trusts - Trusts which are set forth in your will and which, therefore, cannot provide for any management of your assets during your lifetime. Testamentary trusts can, however, provide for young children and others who require management of their assets after your death.

Irrevocable Trusts - Trusts which, immediately upon their creation, are not amendable or revocable by you. These are generally tax-sensitive documents. Some examples include irrevocable life insurance trusts, irrevocable trusts for children and charitable trusts. A qualified estate planning lawyer should be consulted with respect to these documents.

Special Needs Trust's (SNT) – Trusts set up specifically to supplement or address special needs of individuals who receive means tested social services or benefits. Most of these individuals have profound disabilities and the benefits they receive (such as Supplemental Security Insurance) do not cover or provide for their special needs. These trusts allow the beneficiary to receive a benefit from the assets of the trust without exercising any direct control over the trust or its management. The SNT is developed to manage resources while maintaining the individual's eligibility for public assistance benefits. The family can place assets in the trust to be used to supplement the beneficiaries' needs. The trust is managed by a trustee for the benefit of the disabled beneficiary. While the government has recognized the validity of special needs trusts, very stringent rules and regulations govern the use of funds and the management of the trust. Although not all Special Needs Trusts may be subject to the rules and regulations imposed by federal and state government agencies, it is vital that any family contemplating the creation of a SNT consult an attorney knowledgeable about special needs trusts and current government benefit programs.

WHAT CAN A LIVING TRUST DO?

A living trust can provide for the private management of your assets if you choose not to act as trustee or when you are unable to do so, by the person or persons whom you appoint as trustee. When you are incapacitated your trustee can assume responsibility for your assets and manage them for your benefit without direct court intervention or supervision. At your death the trustee acts much as an executor would, gathering your assets, paying valid debts, claims and taxes and distributing your assets as you have directed in your living trust.

If you are acting as trustee of your own living trust and become incapacitated, whoever you have named as your successor trustee will assume the responsibility for managing your

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assets on your behalf. If your assets are not in your living trust, someone else must manage them. How this is accomplished may depend on whether the assets are your separate or community property. If you are married, assets earned by either you or your spouse while married and while a resident of California are considered to be community property. On the other hand, a married individual may own separate property as a result of assets owned prior to marriage or received by gift or inheritance during marriage.

TRUST MANAGEMENT AFTER YOUR DEATH

Assets held in your living trust at your death can be managed by the trustee of your living trust and distributed in accordance with your directions in the trust. The trustee is also accountable to your beneficiaries for the trust assets held for their benefit after your death. The trust is not under the direct management of the probate court at and after your death and, therefore, the value and the nature of your assets and the identity of your beneficiaries do not become a public record. At your death, however, notice must be given to all of your heirs and to all beneficiaries of your living trust, advising them, among other things, of their right to obtain a copy of the living trust.

If your assets were in your name alone at your death, then they would be subject to probate. Probate is the court-supervised process developed under California law which has as its goal the transfer of your assets at your death to the beneficiaries set forth in your will and in the manner prescribed by your will. At your death a petition is filed with the court, usually by the person or institution named in your will as executor. After notice is given and a hearing is held, your will is admitted to probate and an executor is appointed. A full inventory of the assets held in your name alone at your death is filed with the court and the probate continues until your estate is ready for distribution and the court approves the final distribution of your estate. Probate can take more time to complete then the distribution of your trust following your death. Assets held in a living trust can be more readily accessible to beneficiaries than those in a probate. The cost of a probate is often greater than the cost incurred by a comparable estate managed and distributed under a living trust.

LEAVING PROPERTY TO MINORS AND YOUNG ADULTS

There are several ways to arrange for an adult to manage property inherited by a young person. The most common are:

Leave the property to an adult to use for the child. Many people don't leave property directly to a child. Instead, they leave it to the child's parent or to the person they expect to have care and custody of the child if neither parent is available. There's no formal legal arrangement but they trust the adult to use the property for the child's benefit.

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Name a "custodian" under the Uniform Transfers to Minors Act (UTMA). In California, you can name a custodian to manage property you leave a child until the child reaches 18 or 25. If you don't require management to last beyond that age, a custodianship is probably the way to go. As a general rule, the less valuable the property involved and the more mature the child, the more appropriate the UTMA is because it is simpler to use.

Create a child's sub trust. If you require management beyond age 25 or if the amount of property you are leaving the beneficiary has significant value, you may wish to use the child's sub trust to postpone distribution past age 18 or until an age you choose. The sub trust ends at whatever age you designate, then any remaining property is turned over to the child outright. If you have adult children with special needs (i.e., mentally disabled, etc.) you may want to seek legal counsel regarding how to set up special management in the form of a "Special Needs Trust" for that individual.

Create a "pot" trust. This is a legal structure you can establish in your will or trust. Instead of creating a separate trust for the property you leave to each child as with the other trust options, you create one trust for all the property you leave to your children. You name a single trustee to manage the property for the benefit of the children as a group, without regard to how much is spent on an individual child. The pot trust will last until the youngest child turns an age you specify. Final disbursement of the trust is withheld until the youngest reaches the age specified.

For each minor or young adult to whom you leave property in your will or trust you must decide which management approach to use.

SELECTING A TRUSTEE

As noted, many people act as their own trustee until their incapacity or death. Others determine that they need financial assistance and management of their assets simply because they are too busy or too inexperienced or simply don't wish to have the responsibility of day-to-day management of their financial affairs.

Perhaps the most important decision for you to consider is your choice of a trustee to act in your place. As you have read, your trustee will have considerable authority and responsibility, is not under direct court supervision and will assume that responsibility either during your lifetime (if you so choose) if you become incapacitated or at your death. A trustee may be a spouse, adult children, other relatives, family friends, business associates or a professional fiduciary. The professional fiduciary may be a bank or trust company which must be licensed by the State of California. You may also provide for co-trustees. There are a number of issues to consider. For example, will the appointment of one of your adult children cause undue stress in

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his or her relations with siblings? What conflicts of interest are created if a business associate or partner is named as your trustee? Will the person named as successor trustee have the time, organizational ability and experience to do the job effectively?

DISADVANTAGES OF A LIVING TRUST

Because living trusts are not under direct court supervision, a trustee who does not act in your best interests or in a prudent fashion accountable to you or your beneficiaries may, in some cases, be able to take advantage of the situation to a greater extent than would be possible had the trustee been under direct court supervision which provides such safeguards as court accountings and, in some situations, a bond.

In some cases, the cost of preparing a living trust and other estate planning documents will be higher than the cost of simply preparing a will. However, in more complex estate plans the difference in cost may not be significant.

Once created, the trust must be "funded." The funding of a trust is simply the transfer of assets from your own name to whomever is acting as trustee of your living trust - you or some other person. Deeds to real property must, therefore, be prepared and recorded, bank accounts transferred and stock and bond accounts or certificates transferred as well. These are not necessarily expensive tasks but they are important ones and require some paperwork to complete in order to make your trust effective. People in certain businesses (for example, real estate development) sometimes find that having a living trust creates excessive problems in the operation of the business when it is necessary to deal with a third party, such as a title company.

DO I NEED A WILL IF I HAVE A TRUST?

If you have a living trust you should also have a back-up or pour-over will. Your will affects any assets which, for one reason or another, were held in your name alone at your death and not in your living trust or in some other form of ownership. With the living trust, your will usually contains as its primary provision for the distribution of your estate, a "pour over" provision which simply directs that any assets held in your name be transferred at your death to your living trust. Of course, a probate is not avoided with respect to those assets which are transferred to your living trust by your will. Your will may also nominate the guardians of the person and estate of your minor children, to care and provide for them.

TAXES

Income Taxes – As long as you are the trustee or a co-trustee, no separate income tax returns are required to be filed for your living trust. The taxpayer identification number for the trust is your social security number and all income and deductions related to the assets held in the trust are reportable on your individual income tax returns. When you are no longer a trustee of your

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trust, then income tax returns must be filed by the trustee, reporting all of the income and deductions relating to the trust assets to the IRS and attributing them to your personal return. No additional tax is assessed by reason of the living trust. After your death, the income taxation of the living trust is similar to that applicable to a probate estate.

Estate Taxes - While a living trust may contain provisions which can postpone, reduce or even eliminate estate taxes, similar provisions could be placed in a will to accomplish the same tax planning.

TRANSFERING ASSETS TO YOUR LIVING TRUST

Once your trust has been signed, a very important task remains to be accomplished. In order to achieve your objectives of avoidance of court-supervised conservatorship proceedings if you are incapacitated or require probate at your death, assets must be transferred to the trustee of the living trust. As discussed above, this is known as "funding" the trust.

A living trust can hold both separate and community property. If community property is held in a living trust, then both spouses are the grantors. Care must be taken to carefully designate the property held in a living trust by married persons as either separate or community property.

If you own real estate in another state it is appropriate to transfer title of that asset to your trust to avoid probate in the other state.

You may also want to consider changing beneficiary designations on life insurance policies, to the trust. As for beneficiary designations on a qualified plan, such as a 401 (k) or IRA, serious income tax issues require the advice of a qualified professional concerning the appropriate beneficiary designation on those assets.

BEWARE OF FINANCIAL AND ESTATE PLANNING SERVICES

There are many who call themselves "trust specialists," "certified planners" or other titles which are intended to suggest that the person has received advanced training in estate planning. California is experiencing an explosion of promotions by unqualified individuals and entities which have only one real goal - to gain access to your finances in order to sell insurance-based products such as annuities and other commission-based products. Here are some helpful hints and suggestions:

- Before considering a living trust or any other estate or financial planning document or service, consult with a lawyer or other financial advisor who is knowledgeable in estate planning and who is not trying to sell a product which may be unnecessary.

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- If the person attempting to sell you the trust is a not a lawyer, he or she must be a registered and bonded Legal Document Assistant or the employee of a Legal Document Assistant. A non-lawyer cannot say he or she is "affiliated with" or "supervised by" an attorney unless you actually meet in person with the attorney. Only an attorney or registered and bonded Legal Document Assistant can sign a contract with you and accept fees from you.

- Always ask for time to consider and reflect on your decision. Do not allow yourself to be pressured into purchasing any estate or financial planning product.

- Know your cancellation rights. California law requires that sellers who come to your home to sell goods and services (not including insurance and annuities) that cost more than $25 must give you two copies of a Notice of Cancellation form to cancel your agreement. You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction.

- Be wary of home solicitors who insist on receiving confidential and detailed information about your assets and finances.

- Find out if any complaints have been filed against the company by calling local and state consumer protection offices or the Better Business Bureau.

- Know whom you are talking to and insist on identification of the person and a description of his or her qualifications, education, training and expertise in the field of estate planning.

- Always ask for a copy of any document you sign at the time it is signed.

- Report high-pressure tactics, misrepresentations or fraud to the police immediately

FUNDAMENTALS OF WILLS

A will is a legal document which directs how a person's property should be distributed after his/her death. Within this document you designate your executor (the person who will handle your assets and ultimately make distributions per your instructions) and your beneficiaries (the person or entities which will receive gifts from your estate).

You must be 18 years of age and of "sound mind" to create a valid will. You must know what a will is, what it does and that you are making one. You must understand the relationship between you and those who you would normally provide for in your will, such as your spouse or your children (this does not mean you must provide for these individuals). You must also be able to understand the kind and quantity of property you own and how you wish to distribute it.

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A will should be sufficient for your estate planning:

- if the total value of your assets at the date of your death is less than $150,000 not including any asset that has a beneficiary provision and any asset that is in joint tenancy (or other multiple tenancy).

- if the value of your real property at the date of your death is less than $50,000

DYING WITHOUT A WILL

If you die without a valid will, money and other property you own at death will be divided and distributed to others according to your state's intestate succession laws. These laws divide all property between the relatives who are considered closest to you according to a set formula and it completely excludes friends and charities. Furthermore, these legal formulas often do not mirror most people's wishes.

Also, if you have minor children, another important reason to make a will is to name a personal guardian to care for them. This is an important concern of most parents who worry that their children will be left without a caretaker if both die or are unavailable. Intestate succession laws do not deal with the issue of who will take care of your children. When you don't name a guardian in your will it is left up to the courts and social service agencies to find and appoint a personal guardian. The court makes the final decision when appointing a guardian for your children after your death but the court will usually accept your nomination. A guardian's legal responsibility is to provide for your child's physical welfare

CARRYING OUT THE PROVISIONS OF YOUR WILL

The process by which the provisions in your will are carried out following your death is known as "probate." Probate is the court-supervised process developed under California law which has as its goal the transfer of your assets at your death to the beneficiaries set forth in your will and in the manner prescribed by your will. It also provides for the relatively quick determination of the validity of any claims by creditors against your assets at your death.

Probate is usually a long, expensive and burdensome process that can be avoided by using a living trust, which is described in the prior section of this brochure. A probate has advantages and disadvantages. The probate court is accustomed to resolving disputes regarding the distribution of your assets in a relatively expeditious fashion and in accordance with defined rules. In addition, you are assured that the actions and accountings of your executor will be reviewed and approved by the probate court.

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Disadvantages of a probate include its public nature; the provisions of your will and the value of your assets become a public record. Also, because probate court fees, lawyers' fees and executors' commissions are based upon a statutory fee schedule; the expenses may be greater than the expenses incurred by a comparable estate managed and distributed under a living trust. If your probate is not complex, however, you may be able to utilize the services of a registered Legal Document Assistant to prepare your probate paperwork saving the statutory lawyer fees. Time can also be a factor. Often distributions to beneficiaries can be made pursuant to a living trust more quickly than in a probate proceeding.

PROPERTY NOT AFFECTED BY YOUR WILL

Generally speaking, your will affects only those assets which are in your name alone at your death. Some assets which are not affected by your will include:

- Life Insurance proceeds when the policy has a valid beneficiary designation.
- Retirement Plans with a valid beneficiary designation.
- Assets owned as a Joint Tenant - real estate, automobiles, bank accounts and other property held in joint tenancy will pass to the surviving joint tenant upon your death, not in accordance with any directions in your will.
- Assets owned as Community Property with Right of Survivorship - married couples can own property this way which is very similar to joint tenancy. When an asset is owned this way, the property transfers to the surviving spouse, not in accordance with instructions in your will.
- Transfer on Death or Pay on Death - some bank accounts and savings bonds security accounts may be held with a beneficiary designation such as "transfer on death" ("TOD").
- Living Trusts - assets held in a revocable living trust at your death are distributed pursuant to the provisions of that trust document.
- Your spouse's half of Community Property - in California, any assets acquired by you and your spouse from earnings during your marriage are community property. You and your spouse own equal shares of those assets. Your will, therefore, affects only your half of the community property, not your spouse's.

THE EXECUTOR OF YOUR WILL

Your executor (or personal representative) is responsible for collecting and distributing your property after you die and for arranging to pay your debts and taxes. It is both common and appropriate to name a close relative or friend to do the job. Your choice need not

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have special professional knowledge; he or she can hire an attorney and accountant to do any necessary legal and tax work.

Your choice for executor should:

- agree to serve
- be trusted by you and your beneficiaries
- live in or close to your state to more effectively handle his or her duties
- be likely to survive you

NAMING YOUR BENEFICIARIES

The main purpose of your will is setting forth who gets your property when you die. For many, this is an easy task - you may want it all to go to your spouse, your kids, your partner or your favorite charity.

In your will you can make specific bequests, that is, leave specific property items to specific people or groups (beneficiaries). After the gifts are distributed the remainder of your assets are distributed to your residuary beneficiaries. Your residuary beneficiary receives anything that does not go, for one reason or another, to the beneficiaries you named to receive specific bequests. There is no need to describe, in your will, the property the residuary beneficiary will receive. By definition, your residuary estate is the rest of your property that does not pass outside of your will or in a specific bequest, so it is impossible to know exactly what it will include.

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COMPARING WILLS AND TRUSTS

	Will	Living Trust
Probate	Subject to probate proceedings. Out-of-state property requires probate proceedings in that state as well. Provides court supervision for handling beneficiary challenges and creditor disputes. Becomes public record at the time of your death.	Not subject to probate proceedings. Avoids the cost of a second-state probate proceeding where there is out-of-state property. No automatic court supervision to deal with disputes. Remains private.
Tax Savings	Same tax saving provisions available as are available in a basic Probate Avoiding Trust.	NOTE: an AB trust can eliminate estate tax for couples who together own up to twice as much as the estate tax exemption.
Management of your assets	In addition to the will, must use a Power of Attorney or Conservatorship to manage assets.	Allows you as the grantor to manage the trust assets as long as you are willing and able. Makes a provision for a successor trustee to take over in your place.
Costs	Costs less to prepare a will than a trust. Cost to probate a will can be substantial.	Costs more to prepare, fund and manage a trust than to prepare a will, but avoids probate costs if all assets were held by the trust.

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1363 Sun Tree Drive
Roseville, CA 95661
Phone: (916) 791-9100
Fax: (916) 791-8600
Website: www.calda.org

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