

# Estate Planning Guide Book



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## **FREQUENTLY ASKED QUESTIONS ABOUT Bruce D. Gleit, Attorney at Law Wills & Trusts**

**1. Who is Bruce D. Gleit, Attorney at Law?**

Bruce D. Gleit, Attorney at Law, is an attorney with more than 24 years experience. He is located in the Tustin area of South Orange County, California.

**2. How long will it take before I receive my estate-planning package?**

Because we need to analyze the information you have given us and prepare custom estate planning documents for you, you should allow approximately three weeks after we receive your completed Workbook and accompanying information.

**3. What if something changes after my estate planning documents are prepared that I think affects my estate plan?**

Please call us about changes in your life that you believe might affect your estate plan so we can advise you (at no additional charge). These changes may include an increase or decrease in the value of your estate, having a child, losing a child, having a grandchild, losing a grandchild, marrying or divorcing. If we recommend you change your estate plan, we will be able to prepare new documents for you at a discounted rate because you are an existing client.

**4. What if I have a friend or relative who would like to have their estate planning documents prepared at the same price?**

Contact our office at (949) 900-1880 or (714) 640-2490 or Email us at: [bgleit@lawgb.com](mailto:bgleit@lawgb.com). Write us at 17332 Irvine Boulevard, Suite 110, Tustin, CA 92780, or visit our Website at [www.lawgb.com](http://www.lawgb.com).

**5. What if I have questions about my estate plan after it is completed?**

Call us. We will be happy to take as much time as necessary to answer all of your questions at no additional charge.

**6. If I have a friend or relative who dies without proper estate planning, what should I do?**

Call us. Despite our best efforts, occasionally people die without having made the prudent plans that you are making to protect your family. We can handle these probate matters for you or direct you to someone else who can.

## QUESTIONS AND ANSWERS

### 1. WHAT HAPPENS WHEN YOU DIE WITHOUT A WILL?

- The Probate Court decides who will administer your estate and who will become guardian of your minor children.
- The State of California makes a will for you and decides who gets your money and your belongings.

Possible problems with leaving no Will:

- The wrong person is selected by the court to administer your estate.
- The court selects an inappropriate guardian for your children.
- Children receive their share when they become "adults", at the age of eighteen (18) years.
- Beneficiaries are not those whom you wanted.

### 2. WHY IS A "HOMEMADE" (HANDWRITTEN) WILL DANGEROUS?

- Handwritten wills are easily challenged because of unclear (non-legal) language and lack of witnesses to prove the person writing the will was legally competent.
- Lawsuits challenging the will are expensive and usually result in a compromise, with beneficiaries you wanted to eliminate getting part of the estate.

***Caution: Do not attempt to change a will prepared by your attorney by writing on the document. Adding words or crossing out language could invalidate the entire Will.***

### **3. WHY JOINT TENANCY IS NOT AN ACCEPTABLE SUBSTITUTE FOR A WILL OR A GOOD WAY TO AVOID PROBATE:**

If a couple is married, holding assets in joint tenancy between spouses is okay, but not ideal. Married couples living in a community property state can obtain a "step-up" in basis in both the decedent's half of community property as well as the survivor's half, but they lose this advantage by keeping assets in joint tenancy.

However, adding anyone else as a joint tenant can create other problems, such as:

- The new joint owner could misappropriate the asset. After all, you gave it to him/her.
- Did you file a gift tax return when you added his/her name to your asset? Adding a name to an asset is a gift.
- Do you really want to expose your money to someone else's problems (for example, adding children or relatives as joint tenants)? If the joint tenant gets involved in a divorce, bankruptcy or lawsuit, your asset may be tied up in a long legal battle and you could lose your money.
- Joint tenancy means "automatic right of survivorship" so the surviving joint tenant will get the entire asset regardless of what your will says.

### **4. WHY A SIMPLE WILL CAN HURT YOUR LOVED ONES:**

- A simple Will does not avoid probate. If your assets exceed \$150,000.00 at your death, probate will take, depending on the state and county, anywhere from one (1) to two (2) years. It will further cost your estate approximately 6%-8% of your gross estate paid to the personal representative of your estate and to the attorney representing your estate before your beneficiaries receive any money. (See Appendix "A" for approximate probate expenses.)
- If your estate is large and you have only a simple Will, or if you hold your assets in joint tenancy, you will create a tax for your beneficiaries. Currently, the maximum estate tax rate is 45% of the amount of your estate exceeding the individual or collective (married) personal estate tax exemption in effect at that time. Utilizing tax provisions in your estate planning documents can protect your heirs from estate taxes.
- A Trust can protect the estate you want your children to inherit.

**5. A LIVING TRUST-AN ANSWER TO IRRESPONSIBILITY:**

What are the benefits of a living trust?

- A living trust avoids probate, thereby avoiding delay and expense.
- A living trust avoids the need for a conservatorship if you should become incompetent or incapacitated.
- A living trust provides possible tax savings.
- A living trust can continue for the benefit of:
  - Your loved ones
  - Minor Child/ren
  - Elderly dependent parent/s
  - Adult child/ren with drug or alcohol problems, mental, physical, or educational special needs, or developmentally adult children on SSI or Medi-Cal.

**6. IF I HAVE A TRUST, DO I ALSO NEED A WILL?**

Yes, for several reasons:

- As a safety net to pour assets into your trust if you have forgotten to put something into it.
- To provide for the care (guardianship) of your minor children or other dependents.
- To give instructions for the disposition of your remains (burial instructions.)

**7. IF I HAVE A TRUST, DO I ALSO NEED A POWER OF ATTORNEY FOR FINANCES?**

*Yes.* Financial Powers of Attorney are extremely important if you have only a Will. With a living trust, a Special Financial Power of Attorney allows your Agent to transfer assets to the trust, sign income tax returns, deal with Social Security, pensions, IRAs, insurance, and other legal non-trust documents where your signature is required.

**8. WHAT IF I CAN'T MAKE A DECISION REGARDING MY HEALTH CARE DUE TO MY INCAPACITY?**

You need a special document known as an Advance Health Care Directive. This document is invaluable in the event you become incapacitated for whatever reason, since it allows you to designate who will make health care decisions for you if you are unable to make them for yourself. Without such a document, you may be required to go through an expensive, time-consuming and public conservatorship proceeding before anyone will be allowed to make such decisions for you.

Advance Health Care Directives should contain correct addresses and telephone numbers of your named agents, and should typically have an unlimited duration.

**9. WHAT SHOULD I CONSIDER WHEN SELECTING MY EXECUTORS AND TRUSTEES?**

**CORPORATE EXECUTOR/TRUSTEE**

**Advantages**

- Specialist in handling estates/trusts.
- No emotional bias.
- Impartial—usually free of conflicts of interest with beneficiary.
- Never moves or goes on vacation.
- Never dies or gets sick.

**Disadvantages**

- Usually little familiarity with family
- Administrative fees may be higher
- May go out of business or merge with a trust department you find unsatisfactory.

**INDIVIDUAL EXECUTOR/TRUSTEE**

**Advantages**

- More familiar with the family.
- Administrative fees may be lower.

**Disadvantages**

- Probably not experienced in handling
- May not be impartial
- Could have schedule conflict or live too far away to do the job properly.
- Could be incapacitated at times or no longer competent when you need their assistance.

**10. SHOULD I TRANSFER THE OWNERSHIP OF MY "NON-ROTH" INDIVIDUAL RETIREMENT ACCOUNT (IRA) OR OTHER RETIREMENT PLAN, TO MY TRUST?**

NO! If you do so, the entire amount of your retirement account will be immediately taxable. If you have a "Roth" IRA, its benefits will not be taxable to your children or your estate. If you have a "Non-Roth" IRA and your children or anyone other than a spouse is the beneficiary, there will be a tax. If you are married and your spouse is the only beneficiary of your retirement account, taxes can typically be deferred on your "Non-Roth" IRA.

Despite a potential tax disadvantage, some people consider designating the trust as beneficiary of all or a portion of their "Non-Roth" IRA in order to care for special needs children who would otherwise receive the IRA portion outright.

**11. WILL LEAVING MONEY TO A SPECIAL-NEEDS CHILD WHO IS RECEIVING DISABILITY OR MEDI-CAL PAYMENTS AFFECT THOSE BENEFITS OR PAYMENTS?**

Yes. Leaving part of your estate to a special-needs child who is receiving disability or Medi-Cal payments could have the effect of terminating those payments until the child has exhausted the entire amount of the bequest. If you find yourself in this position, discuss it with us privately and carefully consider what you should do before you make any decision.

**12. SHOULD I MAKE MY TRUST THE BENEFICIARY OF MY LIFE INSURANCE POLICIES?**

We normally recommend that you name your revocable living trust as the primary beneficiary of your life insurance. If you are married, your surviving spouse is typically the trustee and beneficiary of the trust, and thus would manage any insurance proceeds paid to the trust for his or her own benefit. In the event that the surviving spouse is legally incapacitated, the successor trustee will step in to manage and distribute the insurance proceeds for the benefit of the incapacitated surviving spouse. If you are single, or your spouse predeceases you, the proceeds are paid to the trust and the successor trustee then administers and distributes those funds to your contingent beneficiaries (children, grandchildren, etc.) in accordance with the distribution provisions you have outlined in your trust. This is particularly beneficial for beneficiaries who are still minors.

In the event that the net value of your insurance policy(ies), when added to your remaining estate, will cause your estate to exceed the estate tax exemption limit then in effect, we recommend establishing an Irrevocable Life Insurance Trust for your life insurance to remove the proceed value from your taxable estate.

## **SUMMARY OF THE ADVANTAGES OF A LIVING TRUST**

### **NO PROBATE**

Whether you are single, married, divorced, or widowed, if your assets exceed \$150,000 (or any amount if real estate is involved), your heirs can anticipate probate unless you have established a living trust.

1. Avoid the delays of up to two years or sometimes more for settling the estate.
  - a. No 120-day waiting period for notice of creditors.
  - b. No need to file petitions and reports to the probate court as with a Will.
  - c. The trust can enable your heirs' income to continue without interruption after your death.
  - d. All property or income is immediately distributable in accordance with the provisions of your trust, and at the times you indicated.
2. No court costs or publication expenses.
3. No Executor's fees. Attorney fees are substantially reduced compared to attorney fees in probate, which are set by statute and are based on a percentage of the gross asset value, not the net.
4. Privacy. Since a trust eliminates probate, no information concerning the decedent's estate can become public knowledge.
5. Not as easily challenged ("contested") as a Will.
6. Out-of-State probate is avoided. Regardless of where you live or move to, your moves do not affect your trust.
7. As Trustee of your trust, you retain complete decision-making control over your assets and may buy, sell, withdraw, or add to your Trust at any time.

## **BUILT-IN CONSERVATORSHIP**

If you become physically or mentally incompetent and cannot serve as Trustee, you can name your Successor Trustee (an individual, a bank or a Trust company).

- a. You then have the opportunity during your lifetime to determine whether the Trustee is doing a good job and/or whether the Trustee should continue or be discharged.
- b. The Trustee can be given discretionary powers to provide for your comfort and support should you become incapacitated due to illness or accident.
- c. You eliminate court action that could declare you incompetent for either physical or mental reasons and appoint a conservator of your estate.
- d. Your Trust eliminates the cost of a court-appointed guardian for minor children. Since you eliminate the need for regular accounting to the court, you also eliminate the resulting fees.
- e. Heirs do not have to make decisions about the management of assets, which have been placed in the Trust.

## **TAX-SAVINGS POTENTIAL**

1. Income taxes are payable on trust income by the individual creating the living trust, just as though there were no trust.
2. Use of an "A/B" trust will preserve the estate tax exemption for the first spouse to die, which other wise typically would be forfeited due to a failure to plan properly.

## APPENDIX "A"

### THE COST OF PROBATE

Probate is necessary when an individual dies owning assets exceeding \$150,000 (gross, fair market value) in his/her name. California's probate fees, set by law, are about average among the states. The fees to settle in court (listed below) do not include special fees for the sale of assets, tax preparation, and potential litigation.

The approximate cost for probating an estate is:

<u>ASSET VALUE</u>	<u>MINIMUM FEES</u>
\$200,000	\$7,000
\$300,000	\$9,000
\$400,000	\$11,000
\$500,000	\$13,000
\$700,000	\$17,000
\$1,000,000	\$23,000
\$2,000,000	\$33,000
\$3,000,000	\$43,000

...and upward.