

Estate Planning Considerations

Before meeting with an estate planning attorney, there are some important things to consider. You are encouraged to think about and discuss the following items ahead of time. This will allow for a more meaningful and productive meeting with your estate planning attorney.

TRUST:

What will you name the trust?

Who do you want to be your trustee?

First nomination: _____

Second nomination: _____

Third nomination: _____

Fourth nomination: _____

TRUSTEE NOMINATIONS - A trustee is the individual who manages your trust estate if you are alive but incapacitated and/or administers your trust provisions upon your death.

TRUSTEE COMPENSATION - You are not legally required to pay your trustee compensation for their time. Trust administration takes approximately 100 to 250 hours to complete. Trust administration is the process of gathering assets, computing debts, assessing title to assets, filing your federal and state income taxes, possibly filing your federal estate tax, paying any and all debts owed by your estate, notifying your beneficiaries of your trust, and distributing your trust estate pursuant to the provisions of your trust.

You may choose to pay your trustee hourly compensation for their time, or give them a monetary gift, or not pay them at all. Please remember you are merely nominating your trustee to act on your behalf and sometimes if compensation is not provided, your first choice trustee may choose to decline your nomination for lack of payment.

Hourly Compensation Monetary Gift \$ _____ No gift

Beneficiaries Must Establish Estate Plan Prior to Receipt of First Trust Distribution: Do you want to require your beneficiaries, prior to receiving their first distribution of trust funds, to consult with an experienced estate planning attorney to establish an estate plan and maintain their trust funds as their sole and separate property?

Rationale for provision: California is a community property state. This means from the date of marriage on, with the exception of a pre-nup, post-nup, gift or inheritance, everything from the date of marriage on is presumed your community property. This means fifty cents of every dollar a husband earns is the wife's and fifty cents of every dollar the wife earns is the husband's. This trust provision requires your beneficiary to establish an estate plan and receive their inheritance in their separate trust, in their name only. This requirement preserves the separate property status of your beneficiary's inheritance. Please

know, however, upon receipt of the gift into your beneficiary's trust, the gift is legally completed. At this point, your beneficiary has the discretion to share their inheritance with anyone they choose. At least you ensured they obtained proper legal advice to ensure they are making educated decisions when it comes to the maintenance and distribution of their trust monies.

Beneficiary Must Obtain Professional Financial Advice Prior to Investing Trust Funds: The purpose of this provision is to require your trustee to seek the advice of a qualified, experienced certified financial planner prior to investing trust funds to ensure trust funds are properly diversified and invested. If you do not want to require your trustee to seek this advice you choose to *encourage* them to obtain it.

Substance Abuse: The purpose of this provision is to give your trustee discretion to ask any beneficiary prior to receiving a trust distribution to submit to a mandatory drug test if the trustee reasonably feels the beneficiary is using illegal substances. If any beneficiary tests positive for drugs or refuses to take a drug test, the trustee may suspend any and all trust distributions, until the beneficiary tests negative for drugs for twelve consecutive months. The trustee may use trust funds to pay for the beneficiary's rehabilitation, health, education, maintenance and support, if applicable, during this twelve month period. If a beneficiary tests negative for drugs, the trustee shall distribute that beneficiary's distribution pursuant to the provisions of your trust.

Rationale for provision: Many people who use illegal substances are addicted to them. It is possible illegal substances, if taken in large amounts, can cause death. This provision gives your trustee the discretion to ensure your beneficiary does not have access to trust funds to purchase illegal substances.

Pets: The purpose of this provision is to ensure if you have pets when you die, they are taken care of and not improperly or unnecessarily euthanized. Your trustee may give your pets to your children, family, friends, or neighbors. If no one is able to care for your pets, your trustee may place them for adoption with a "no-kill" animal shelter.

CARETAKER COMPENSATION: If you desire, you may give your pets' caretaker a monetary gift as a token of your appreciation for caring for your pets. The caretaker may use this money to pay for the animals' veterinary care, dental care, food, grooming, boarding, and other related expenses. This gift enables your caretaker to use trust funds to pay for the animals' expenses and not pay out of their own pocket.

Who do you want to receive your tangible personal property, e.g., your furniture, jewelry, artwork, family heirlooms, etc.

- Children pick numbers out of hat and choose items of tangible personal property in accordance with their number;
- Trustee decides who receives tangible personal property;
- Other

What is your first choice for a distribution scheme?

- Specific cash gifts, if any: _____
- Equally to your children but if one of your children is not living but has surviving children of their own, their share shall be distributed to their kids.

E.g., You have 2 children, Jane & John. John predeceases you, leaving 3 surviving children. When the last surviving spouse passes, Jane receives her 50% share and John's 3 children receive his 50% share.

- Charitable organizations
- Other

What is your second choice for a distribution scheme?

- If all of your children are not living, do you want to distribute the remaining trust estate equally to your grandchildren?

E.g., You have 2 children, Jane & John. Jane & John both predecease you. Jane has 2 kids & John has 3 kids. This distribution scheme gives your grandchildren equal shares, each of them receiving 1/5.

- If all of your children are not living, do you want to your grandchildren to receive their parent's share?

E.g., You have 2 children, Jane & John. Jane & John both predecease you. Jane has 2 kids & John has 3 kids. This distribution scheme gives Jane's 2 kids her 50% share & John's 3 kids his 50% share.

- Other

What is your third choice for a distribution scheme?

- If all of your children & all of your grandchildren are deceased, who inherits? (While rare, it is designed to prevent the State of California from receiving your estate. Clients often give monies to their parents, or the survivor of the two of them, then their siblings equally if their parents are not living, then to their nieces and nephews equally if their siblings are not living, or to their church or a favorite charitable organization(s). Who would you want to inherit if you and your spouse, all of your children and all of your grandchildren are not living?)

Do you plan to disinherit anyone?

At what "ages and stages" would you like your children and/or grandchildren to inherit? Regardless of age, if needed, your children &/or grandchildren can always access trust funds for their health, education, maintenance, and support. You can either distribute at certain ages, certain events (college graduation, etc.), or a combination.

The following are examples of provisions for children:

G Children cannot be separated. The purpose of this provision is to inform a judge that it is your intent that your children not be separated if your guardian is unwilling or unable to care for all of your minor children in the guardian's home.

G Allowance. If your trustee & guardian are not the same individual(s), this provision authorizes your trustee to distribute monthly distributions to your guardian for the purposes of paying your children's incidental expenses, including but not limited to, travel, entertainment, sport uniforms, gasoline, etc.

\$ _____.

G Emotional Support. This provision specifically authorizes your trustee to use the child's trust funds, to pay for the child's emotional counseling to assist your child in coping with the loss of his or her parents.

Ⓔ **Family Visitation.** This provision specifically authorizes your trustee to use your child's trust funds, to pay for each of your children's travel & accommodation expenses to enable your children to spend quality time with your extended families. (E.g., if grandma & grandpa live in Ohio, the trustee may use trust funds to purchase airplane tickets to fly your children to Ohio to visit your parents.)

Ⓔ **Religious Instruction.** The purpose of this provision is to inform your guardians you would like your children to be raised in a religious environment similar to how you raised them.

Ⓔ **Cord Blood.** This provision specifically authorizes your trustee to use your child's trust funds, to continue storage & maintenance payment for your children's cord blood.

Ⓔ **Vehicle.** This provision specifically authorizes your trustee to use your child's trust funds, to purchase a safe, reliable vehicle for each of your children at a specified age. _____. Shall the trustee use trust funds to pay vehicle expenses such as insurance, maintenance and gas while your child attends school full-time?

Ⓔ **High School Graduation Gift or Trip.** This provision specifically authorizes your trustee to give each of your children a high school graduation gift or trip. How much money would you authorize the trustee to distribute? \$ _____.

Ⓔ **College School Graduation Gift or Trip.** This provision specifically authorizes your trustee to give each of your children a college graduation gift or trip. How much money is the trustee authorized to distribute? \$ _____.

Ⓔ **Wedding Gift.** This provision specifically authorizes your trustee to give each of your children a wedding gift. How much money is the trustee authorized to distribute? \$ _____.

Ⓔ **Down Payment for a Home.** This provision authorizes your trustee to give each of your children a down payment for a home assuming your child qualifies to purchase the home without the use of trust funds being considered in the qualification process. How much? \$ _____.

POUR-OVER WILL

If your children are minors when you and your spouse pass, who would you want to be your children's guardian?

First nomination: _____

Second nomination: _____

Third nomination: _____

Fourth nomination: _____

If at the time of appointment your first choice guardian is not married, do you prefer to skip to your second choice guardian so your children will be placed in a home with two parents?

ADVANCE HEALTH CARE DIRECTIVE (living will)

Your health care agent is the individual you choose who will make your health care decisions when you are unable to make them. Who would you choose? (both husband and wife can choose their own people)

First nomination: _____

Second nomination: _____

Third nomination: _____

Fourth nomination: _____

How do you feel about organ donation?

- No organ donation.
- Tissue & organ donation for family donation only, for transplant purposes.
- Tissues & organ donation for family first then donate to public, transplant purposes.
- Tissues, organs & body parts for science, research & transplant.
- Whole body to be used as cadaver.

How do you feel about life support?

- I want to be on life support indefinitely.
- I do not want to be on life support.

Do you have any specific burial preferences?

- Burial
- Cremation
- Religious funeral or memorial service

Other thoughts or specific wishes: _____
