Estate Planning
Living Trusts and Beyond
Estate Planning: An Overview

Estate Planning is about you choosing who will be in charge of you, your family and your assets if you can’t be.

The Estate Planning Pyramid

- Life Insurance
- IRS
  - Estate Tax Avoidance: $5 million+ Estate
- Long Term Care
- Asset Protection
- Dynasty Trust Provision
- IRA Beneficiary Trust
- The Foundation
- Revocable Living Trust
- Pour-Over Will
- Durable Power of Attorney
- Advanced Healthcare Directive
Estate Planning: The Foundation

The core documents that protect you, your family and your assets if you pass on or become incapacitated

**Revocable Living Trust**
- Avoid high cost and delays of probate
- Appoints a successor trustee who will be in charge of your estate
- Allows you to control how and when your heirs will receive your assets
- Can contain a Dynasty Trust provision
- Can protect your heirs against creditors, substance abuse issues and staying qualified for government benefits.

**Pour-Over Will**
- Appoints back-up guardian for your minor children
- Ensures overlooked assets will be distributed through your Trust

**Durable Power of Attorney**
- Appoints an agent who can act on your behalf for legal and financial matters if you are incapacitated
- Avoids need for conservatorship of your estate

**Advance Healthcare Directive**
- Appoints agent who will make healthcare decisions for you if you are incapacitated
- Avoids need for conservatorship of your person
- Includes your Living Will which dictates the decisions your agent should make if a doctor has indicated that there is nothing else they can do for you.

Failure to have a comprehensive estate plan, can cost your family tens of thousands of dollars in otherwise unnecessary legal fees.
Inheritance Planning: If your trust is the gathering point for all of your assets, you can dictate how and when your children will be entitled to their inheritance.

**Hold assets in trust, until they reach a certain age**

- Allows time for child to mature before having direct control over their inheritance.
- Third party trustee will manage your assets on behalf of the children and will provide for their health, education, maintenance and support.
- Can split inheritance amongst multiple age milestones or have it held in trust for their lifetime (Dynasty Trust)

**Special Needs Planning**

- A special needs trust will allow your special needs child to remain eligible for their government benefits such as SSI and Medi-Cal
- The funds held in the Special Needs Trust can be used to improve your child’s quality of life.
- The Special Needs Trust can be a provision within your Living Trust

**Substance Abuse**

- A clause within your trust can allow your Trustee to withhold funds from a beneficiary who has a substance abuse problem

**Contingent Beneficiary Planning**

- Your estate plan will dictate who will inherit your assets if one of your children should pre-decease you.

Failure to have a plan can result in your children having control over your assets as early as age 18.
How will you pay for your long term care after Medicare stops paying?

**Self Insured**

- Most people fall into this category and will rely on pension payments to cover their expenses.
- If you run a monthly financial deficit, you will have to use your savings, sell your home, do a reverse mortgage or rely on financial assistance from family members.

**Long Term Care Insurance and Annuities**

- Long Term Care Insurance typically provides a daily benefit to pay for LTC for a defined period of time.
- Annuities can provide a lump sum that you can draw upon to help pay for LTC. Allows you to leverage your existing savings. Most annuities will require a medical exam.

**Veterans Administration: Aid and Attendance**

- The VA provides a monthly tax free benefit of $1,100 to $2,000 to pay for LTC for qualified Veterans and their spouses over the age of 65. Widows of qualified Veterans can qualify for the benefit as well.
- Can pay for in home care, assisted living and skilled care.
- Must not exceed certain income and asset thresholds. No look-back for transfers.

**Medi-Cal**

- Government program that will assist in paying for skilled nursing care.
- Can only have $2,000 in liquid assets and there is a 3-5 year look back for assets transfers.
- A non Medi-Cal spouse can have up to $115,000 in liquid assets.
- While your primary residence is an exempt asset, the state can come back and place a lien on your home for the benefits you received, after your passing.
- Requires patient to contribute virtually all of their income towards their care.
- It can be difficult to find a facility that has open Medi-Cal beds.

The average monthly cost for an assisted living facility is approximately $4,000 and for a skilled care facility is $8,000.
Life insurance can be a critical component to protecting your family if you were to pass on.

Income replacement
- How much money would your family need to continue their lifestyle if you were to pass on?
- You should consult your financial advisor who can help you analyze what is an appropriate amount of insurance
- Do not rely on life insurance benefits provided by your employer. You should have a policy that you control regardless of your employment status

Legacy Building
- Leverage your current assets to provide a financial legacy for your children and grandchildren

Special Needs Planning
- Ensure that a sufficient pool of funds are available to assist a special needs child

Estate Taxes
- Provide a liquid source of funds to pay potential estate taxes
- May want life insurance policy to exist outside of your estate as to not increase your potential estate tax liability

The best time to purchase life insurance is when you are young and healthy. If you wait too long, you may become uninsurable.
 Dynasty Trust Provision

Provides lifetime asset protection to your children for your estate

- A Dynasty Trust is a provision in your Revocable Living Trust.
- Your children’s inheritance is protected from creditors, judgments, divorces.
- You can decide the level of control you would like to give your children over their share of your estate
  - Your children as Trustee can have complete control over their share of the assets or;
  - You can use a third party Trustee to manage assets until your children reach a certain age or for their lifetime.
- You can make it more likely that your estate will pass on to your grandchildren rather than your children’s spouses.
- Because your children don’t “own” their inheritance, it is not subject to estate taxes when they pass on.
- Provisions for a “Trust Protector” can allow your children to alter the trust as needed for additional asset protection.

 IRA Beneficiary Trust

A separate dynasty trust for your IRA, 401k, and other pension plans

- IRA Beneficiary Trust is a Revocable Living Trust that you can designate as the beneficiary for your retirement accounts.
- Dynasty Trust provision provides lifetime asset protection for your retirement funds.
- Allows maximum “Stretch-out” of the tax deferred growth of your IRA assets based on the actual age of the beneficiary and not the age of the oldest beneficiary.
- If you name your children as a beneficiary of your retirement funds, they will have little asset protection for those funds.
- If you name your Living Trust as a beneficiary of your retirement funds, they will likely need to take all of the funds out of the IRA within five years and the opportunity for long term tax deferred growth will be lost.
- By having an IRA in an asset protected trust, your children have an incentive to keep the funds invested rather than spending it.
- As a revocable living trust, you can change the terms of the IRA Beneficiary Trust at anytime.

If your existing Living Trust provides for an outright distribution to your children, their inheritance can be attached by creditors, spouses and judgments.

When combined with a Dynasty Trust for your non-retirement assets, your children and grandchildren can have lifetime asset protection for your entire estate.

As a courtesy to your advisor, OC Wills and Trust Attorneys, has agreed to provide their clients a complimentary consultation to discuss how you can incorporate lifetime asset protection by setting up a new estate plan or updating your existing estate plan.
Estate Planning: Beyond the Living Trust

Dynasty Trust Provision
Lifetime asset protection with unlimited control for your heirs

The “Old Way” of Estate Planning

In most Living Trusts, beneficiaries receive their inheritance “outright” - - either immediately after you’re gone, or over a certain period of time, or at certain ages. In other words, your assets are distributed out of your Trust right into the names of your beneficiaries.

Unfortunately, by “owning” their inheritance, your beneficiaries are then needlessly exposed to the claims of spouses in divorce, creditors, lawsuits, the loss of government needs-based benefits and potential estate taxes when their inheritance is handed down to the next generation of beneficiaries.

The “New” and Better Way

Instead of receiving their inheritance directly, each of your beneficiaries may instead receive their inheritance in a special trust, which springs out of your Living Trust. This continuing Dynasty Trust can be controlled by each beneficiary in such a manner as to virtually give him or her all of the same rights as ownership, without the liability exposures ownership brings.

How can I incorporate a Dynasty Trust into my estate plan?

If you do not have a living trust, you can contact a qualified estate planning attorney to draft your trust with a Dynasty Trust provision or if you have a living trust, you can have your attorney amend your trust to add the Dynasty Trust provision.

How the Dynasty Trust Works

The beneficiary may be his or her own initial Trustee in control of his or her own Dynasty Trust. The beneficiary may control the investing of his or her inheritance, how and when it is distributed and even who may receive it when that beneficiary passes away (if you wish, this right may be limited, such as only to your lineal descendants).

The level of asset protection needed may be determined by the beneficiary after you’re gone with the advantage of “20/20 hindsight”, looking at the beneficiary’s circumstances at that time. For example, if a moderate level of protection is appropriate, an independent Co-Trustee or sole Trustee may be brought in to sign on distributions. Or, if a greater level of asset protection is needed, an independent “Trust Protector” can “lockdown” the Trust even more tightly from the attack of third parties. In either case, the beneficiary may continue to indirectly control his or her inheritance, while enjoying additional asset protection.
New IRS rules now permit an individual to create an IRA Beneficiary Trust® to insure that your beneficiaries (those who will receive the IRA's after the client's death) “stretch-out” their taxable, required minimum IRA distributions over a much longer period of time. And, if they do it right, the IRAs can continue to compound for many years income-tax free – and may literally grow to be worth millions of dollars! In 2005, the IRS issued a private letter ruling 200537044 (the “PLR”) that approved this new type of revocable trust created solely to be the beneficiary of an IRA account. As a result of this PLR, it is now possible for you to create a stand-alone IRA Beneficiary trust.

IRA Beneficiary Trusts® insure that your beneficiaries will stretch-out payments from the IRA after they inherit their shares of the account so that the funds will grow inside the account without being taxed. This type of trust has also been referred to as an IRA trust, an IRA inheritance trust, a stand-alone IRA trust, an IRA stretch trust or an IRA protection trust. An IRA Beneficiary Trust is basically a revocable Living Trust for your IRA/401k.

If your children and grandchildren who inherit IRA funds keep the funds in the IRA over their lives and only take the required minimum distributions each year (the “stretch-out”), the amount of money that can be earned, accumulated and paid to the beneficiaries can be staggering.

This wealth accumulation strategy only works if the beneficiaries retain the inherited funds inside the IRA account. If a beneficiary takes all of the funds out of the IRA account at the time of the client’s death (called a “blow-out” because it blows the stretch-out), this wealth accumulation technique will be lost. One of the reasons to create an IRA Beneficiary Trust® is because it can insure the stretch-out and can prevent a blow-out. This blow-out happens more often than you may think. The beneficiaries may not be aware of the tax rules and their distribution choices, so they may immediately withdraw the IRA's at the first opportunity (or worse yet, do a prohibited rollover!). Or the beneficiary, influenced by his or her spouse, may just decide to withdraw the IRA's to foolishly spend it. If the “stretch-out” isn’t done properly by the beneficiaries and income taxes are paid up front shortly after the IRA's are inherited, your client’s family may lose hundreds of thousands of dollars (or more). Even if you assume that your beneficiaries will do the right thing (that is, keep the funds in the IRA account for their lives to maximize the income tax “stretch-out” of the IRA's), the IRA's may still be seriously exposed to one or more of the following threats that can arise years after you have passed:

The beneficiary's spouse may snatch half (or more) of the inherited IRA's in a divorce. The divorce rate is over 50% and a big pile of inherited money may
become a divorce incentive for the ex-spouse. Even though inherited property is separate property, the beneficiary's ex-spouse's divorce lawyer will probably go after the IRA funds because the IRA account is frequently the largest asset and the lawyer knows there is a good chance the spouse who inherited the IRA will give a large portion or all of the IRA account just to end the divorce and to be rid of the ex-spouse.

The beneficiary's poor spending habits, creditors and lawsuits may grab all of an inherited IRA's.

The beneficiary could lose his or her needs-based government benefits (if he or she ever requires them), such as supplemental income (SSI) or long-term nursing care (Medi-Cal).

And even if the beneficiary never encounters any of these problems, he or she may get walloped with a huge estate tax when he or she passes the IRA's down to the next generation.

One of the big advantages to the IRA Beneficiary Trust® is the option to give a "Special Trustee" the right to elect out of the "conduit trust" (i.e., where the MRD must be paid to the beneficiary on an annual basis) to a fully discretionary "accumulation trust" (i.e., where the trustee can hold the beneficiary's MRD inside the trust). This election must be made, if at all, by September 30 of the year following the client's death. Making this election may result in a shorter “stretch-out” because the age of the oldest “possible beneficiary” must be used (the Special Trustee is also given the power to limit such possible beneficiaries to minimize this issue); however, having this option to elect between the different forms of trusts provides the flexibility to consider all factors known at the time of death and up to the election deadline (e.g., creditor problems, disability, etc.) the benefits of which may greatly out-weigh the increase in the income tax costs.

In summary the primary advantages of designating an IRA Beneficiary Trust as the beneficiary for your retirement account are;

- IRA Beneficiary Trust is a revocable Living Trust that can be changed by you at anytime
- Lifetime asset protection for your retirement funds for your children
- Maximum “Stretch-out” of the tax deferred growth of your retirement funds based on the individual child’s age
- You decide who will control the distribution and investment of your retirement funds after you pass on
- You can control who will inherit your retirement funds when your children pass on
- Minimize estate taxes on your children’s estate
Estate Planning: Avoiding the Estate Tax

For Estates worth over $5.34 million dollars, the top estate tax rate is 40%. The funding of certain irrevocable trusts can reduce your estate tax liability.

Irrevocable Life Insurance Trust (ILIT)
- Placing life insurance policies within this trust will remove the proceeds from these policies from your taxable estate
- Proceeds from your life insurance can be used to pay the estate tax

Qualified Personal Residence Trust (QPRT)
- Future gifting of your home to your children result in lower gift tax reporting amounts in the present
- Freezes the value of your home at the time of transfer and thus future growth in value happens outside of your estate
- Trustor retains the right to live in the property

Grantor Annuity Trust (GRAT)
- Freezes the value of your appreciating assets (i.e. stocks) as future growth will happen outside of your estate
- Allows you to control the assets while you are alive
- Can be designed to result in no use of your gift tax exemption

Charitable Trusts (CRT, CLAT, CRUT)
- Gifting of asset through the trust to qualified charities will remove asset from your taxable estate
- Trustor can retain lifetime income from the gifted asset
- Trustor can receive a charitable tax deduction for the gift
- Avoids capital gains tax for gifted assets
- Tax savings can be used to purchase life insurance
OC Wills and Trust Attorneys

- Estate Planning
- Asset Protection Planning
- Estate Tax Planning
- VA: Aid and Attendance
- Medi-Cal Planning

For more information or to schedule a consultation call:

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