

PLANNING FOR PROPERTY TRANSFER ON YOUR DEATH

Transfer of your property on your death is governed by the law of the State of your residence, except procedures for transferring real property (land) located in another State will be governed by the law of the State where the land is located. In California there are basically four different ways of holding title to property; and how your property is “titled” will determine transfer procedures and who receives your property upon your death.

1. **JOINT OWNERSHIP WITH SURVIVORSHIP RIGHTS:** If property is titled as “as joint tenants,” or as “community property with rights of survivorship,” the property will automatically pass to the joint owner upon your death. No probate will be necessary; instead only a death certificate and perhaps an Affidavit of Death will be required. Any Will you may leave has no effect on property held in joint ownership with survivorship rights. Do not add someone to title to your property as a joint owner as an estate planning device without first discussing it with an attorney. A joint owner’s creditors may be able to reach the asset prior to your death; and joint tenancy ownership may reduce income tax “stepped up basis” benefits that would otherwise be available to your joint owner if they received the property from you via a different avenue.

2. **BENEFICIARY DESIGNATION:** You are allowed to sign forms designating beneficiaries for certain property, usually retirement accounts, life insurance, and bank accounts. The property will automatically pass to the designated beneficiary upon your death. No probate is necessary for property having a designated beneficiary; instead only a death certificate and completion of a Claim form. Any Will you may leave has no effect on property passing to a designated beneficiary. If you have young children, you may want to name a custodian for them in the beneficiary designation: for example, “John Doe, son, but if he is under the age of 18 then to Jane Doe as Custodian for John Doe until he attains age 18 under the California Uniform Transfers To Minors Act.” You may select any age between age 18 and 25 as a Custodianship ending age. If your minor child is designated as a beneficiary without a specified custodian, it would be necessary for a Court to appoint a Guardian for that minor child’s estate before payment would be made if you die while the child is a minor.

3. **PROPERTY HELD IN A TRUST:** A revocable living trust is an estate planning device that allows you to name someone (called a Successor Trustee) to follow instructions you write into the trust for distributing the property that you placed into the trust after your death. A trust is created by a signed document, usually written for you by an attorney, and then you transfer your assets so title is held by the Trustee of your Trust. A Trust is not probated; and usually costs less and is completed in less time than Probate. A trust also provides instructions for the management of the property that you have transferred to the trust in the event of your incapacity, thus avoiding the expense of Conservatorship proceedings.

4. PROBABLE ESTATE: Only property, which is not held in one of the 3 ways listed above is part of your estate that could be subject to probate. If you leave a Will, this property is transferred as specified in your Will. If you don't leave a Will, this property passes to your nearest relative(s) as specified in State law (called the Intestate Law). It would only pass to the State of CA if you don't leave a Will and none of your relatives can be identified or located. If the total value of all your property passing via this avenue #4 is less than \$100,000, no Probate will be necessary; instead only a Probate Code Affidavit and death certificate will be required. If the total value of your entire property passing via this avenue is more than \$100,000, then Probate will be required.

If you would like to discuss estate planning with an attorney, our office provides estate planning services, including Trusts, Wills, Powers of Attorney, Advance Health Care Directives, under your group legal services plan.

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