

## **What is Best: Will, Trust, Both or Neither?**

### **I. Why make an estate plan?**

- A. Will make it easier to care for you if you become disabled.
  - 1. Usually avoids need for conservatorship.
- B. Support church, school or charity; provide income.
- C. Peace of mind
  - 1. Loved ones stop bothering you.
  - 2. Addresses Unitarian discomfort with untidiness.
- D. But intestate succession laws provide for family if no will or trust.
  - 1. Since Hammurabi's Code, 1755–1750 BC.
  - 2. California Probate Code extensive.
  - 3. Intestate estate goes to spouse and next of kin.

### **II. What to do first?**

- A. Determine value of assets included in probate estate:
  - 1. Everything in which you have an interest except: IRAs, 401ks, life insurance policies, joint tenancies, POD accounts, TOD titles for cars or real estate, beneficial interest in a trust.
  - 2. Real estate of any value.

### **III. What are the options?**

- A. Intestate Succession.
  - 1. No probate required if no real estate and other property worth less than \$166,250. Small Estate Declaration and Affidavit Re Real Property of Small Value may be used.
  - 2. TOD deed may be used to transfer real estate of any value.
  - 3. Simplified probate for real estate less than \$61,500.
- B. Will
  - 1. Probate required if doesn't meet above prerequisites.
  - 2. Estate managed by executor.

C. Living Trust, aka Revocable Trust

1. No probate required.
2. Actually transfers your assets to separate entity, i.e. the living trust.
3. Managed by trustee: This is usually you during your lifetime, hand-picked successor trustee thereafter.

IV. Is a trust better than a will?

- A. Probate usually takes longer and is burdensome to executor.
- B. Probate can be costly, especially executor's and atty's fees.
- C. Probate proceeding is public record.
- D. Trust harder to contest for lack of capacity, influence or fraud.
- E. Tax planning can be simplified, esp. for surviving spouse.

V. What documents are used in estate plan?

- A. Trust instrument, usually 20--40 pp., largely boilerplate, but!
- B. Pour-over will.
- C. Durable Power of Attorney
- D. Power of Attorney for Health Care & Advance Health Care Directive.

VI. What gifts (bequests) can I make from trust?

- A. Trustee makes the gifts, even if you are not trustee.
- B. Gifts to caregivers and attorneys strictly regulated.

VII. What are the tax consequences?

- A. Not considered a change of ownership for property taxes.
- B. Basis step up for surviving spouse.
- C. Special problems of noncitizen spouses. No estate tax marital deduction for non-citizen spouse (but \$13.61 million estate tax exemption applies).