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Starting an Estate Plan: Frequently Asked Questions  
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Planning an estate is a powerful process. Those who plan gain control over their assets, they earn peace of mind from knowing their affairs are in order, and they increase their chances of being *fondly remembered*. Does anyone really want their memory forever linked to “that family nightmare in probate that we had to endure?” Yet 40% of Americans never get around to planning their estate. Many don’t know how to start. The following answers to frequently asked questions will help you start to plan your estate.

**What Is A Living Trust?**

A living trust is a separate entity that holds title to your assets, but over which you have complete control during your life. At your death, the trust continues to exist, but a new trustee that you have selected takes control of the trust and distributes the assets according to your wishes.

**What Is The Benefit Of A Living Trust?**

Among other benefits, a living trust allows heirs to avoid probate court supervision of your estate.

**Why Should I Avoid Probate?**

1. Probate is expensive. Attorneys’ and executors’ fees and court filing fees are all based on the total value of the probate estate. For a \$300,000 California probate estate, attorneys’ fees alone would be \$9,000. For a \$1,000,000 estate, attorneys’ fees would be \$23,000. 2. Probate is slow. It can result in lengthy delays in distribution of the estate to the beneficiaries. 3. Probate is not private. Documents, including financial records, filed in probate court, become public records, and are available to tele-marketers and the public.

**What Will Happen To My Retirement Plan When I Am Gone?**

Vested retirement plans have built-in estate planning, because they allow you to designate beneficiaries. Those beneficiaries who survive you receive the funds without going through probate.

**If I Have A Living Trust, Who Should Be The Beneficiary Of My Retirement Plan?**

A living trust should not be named as the primary beneficiary of a tax-deferred retirement plan (such as a 401k or traditional IRA). Otherwise, the beneficiaries of the

trust will be required to take an immediate distribution of the entire plan and all of the deferred income tax will be due.

### **If I Can't Name My Trust As Beneficiary, How Do I Leave My Retirement Plan To Minor Children?**

When naming minor children as beneficiaries of a retirement plan, the UTMA custodian of the child can be named as beneficiary. For example, "John Doe as UTMA custodian of my son Robert Brown."

### **Can I Avoid Probate Of My House By Holding It In Joint Tenancy?**

Joint tenancy also provides built-in estate planning; the surviving joint-tenant takes the entire property without going through probate. But joint tenancy has problems: 1. If the joint tenants are married, the surviving spouse misses out on a reduction in capital gains taxes because at the death of the first spouse there is a step-up in basis on only half of the property. Property jointly owned by married couples in California should normally be titled as "community property with right of survivorship." 2. Joint tenants are exposed to each other's creditors. If a parent holds title in joint tenancy with a child, that child's creditors can levy against the property even before the parent dies. For example, if the child gets a divorce, the Court may be able to force a sale of "your" house in order to satisfy the judgment.

### **What is an Advance Health Care Directive?**

An Advance Health Care Directive designates an agent to make health care decisions on your behalf when you are unable to do so; the document can also state your wishes for health care treatment and life support. Statutory forms of Advance Health Care Directives that can be filled in and signed by the maker without the need of an attorney are available from most hospitals. Attorneys can prepare more customized versions. Everyone should have an Advance Health Care Directive

### **What is a Durable Power of Attorney?**

A Durable Power of Attorney designates an attorney-in-fact to sign legal documents and conduct financial affairs on behalf of the principal, even if the principal is incapacitated. This can prevent financial grid-lock when the principal can't make his or her own decisions.

Now that you know the basics of estate planning, it's time to get started. Your heirs will be glad you did.