

# THE BILLINGS BULLETIN



From the Law Office of Roger Billings, (916) 786-8706

## Probate 101:

•Probate can be avoided for total assets worth less than \$100,000

•Attorneys' fees for probates are set by statute based on the value of the estate.

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## Probate 101: A Brief Explanation of Probate Court

Clients have been heard to say: "I don't know what Probate is, but I know I don't like it." Because one should know the enemy, this article provides a basic explanation of the Probate process.

Further, facing the Probate process for a family member who has died with a will or no will at all can be daunting, but not insurmountable.

A proceeding in Probate Court is the traditional means of transferring

assets upon the asset owner's death, but it is often not necessary. Because it is expensive, time-consuming and public, many means have been devised to avoid Probate.

Following is a partial list of assets that avoid Probate:

- ◆ Assets in a Trust (this is the reason "Living Trusts" are popular);
- ◆ Life Insurance benefits naming a beneficiary other than the Estate;

- ◆ Retirement Accounts naming a beneficiary other than the Estate;

- ◆ Real Estate, if title is in joint tenancy with a surviving owner;

- ◆ Joint bank accounts, where one owner still lives.

In addition, probate can be avoided for non-real estate assets whose total value is less than \$100,000. Thus, if most of the assets of an estate are transferred outside of *Cont'd on reverse*)

## Business Entity ABCs

Sole proprietors and partners seeking protection from the liabilities of their businesses have several business entity forms to choose from.

S-Corporations (S-Corps) offer the liability protection and structure of a traditional corporation without the double taxation. S-Corp income is taxed to the individual owners, the same as in a partnership.

Limited Liability Companies (LLCs) are a fairly recent legal creation that are also taxed similar to S-Corps, provide the same liability protection, but offer greater flexibility and are simpler to create and maintain.

Limited Liability Partnerships (LLPs) are designed for licensed professionals who are forbidden by law from forming corporations or LLCs.

LPs, or limited partnerships, were once popular for real estate development, but because the general partner of an LP has no liability protection, LLCs have become the preferred real estate development entity.

Given the array of choices, obtaining competent legal and tax advice is essential to arriving at the solution that is best for each particular business.

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provide for your family**

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## When to Update an Estate Plan

An out-of-date estate plan can be worse than none if it contradicts the planner's current wishes.

If the following have occurred, consult your attorney about updating your estate plan: the designated fiduciary (executor, trustee, guardian) has moved

away or lost your confidence; your marital status has changed (marriage or divorce); there has been a birth or death of a child; there have been significant changes in net worth.

An effective estate plan changes when you do.



## Probate 101, Cont'd

Probate, and the only remaining assets are worth a total of less than \$100,000, then there is no need for a Probate.

Simplified Probate procedures are available for Real Property worth less than \$100,000, and community property

transferred to a surviving spouse.

In a formal Probate, attorneys' fees are set by statute according to the following schedule:  
4% of 1st \$100,000  
3% of next \$100,000  
2% of next \$800,000  
1% of next \$9 million

½% of next \$15 mill. Court fees are also charged according to the value of the estate.

Our next issue will describe the steps included in a typical Probate. In the meantime, please contact us with any questions.

## About the Law Office of Roger Billings...

*We serve our clients in the areas of estate planning, probate and business entity formation. Roger*

*Billings has over 17 years experience, and lectures frequently in the areas of estate planning and probate*

*practice. Contact us for details about his seminar on Probate Procedures for Attorneys, May 8, 2008*

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