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Estate Planning Frequently Asked Questions

1. **Why Should I make an Estate Plan?** Without an estate plan, everything you have worked hard to build can come crashing down. For larger estates, tax and administrative court costs can significantly deplete assets. You deserve to have a plan that allows you to pass on what you want, to whom you want, when you want. Having an estate plan also helps your loved ones make decisions for you more easily in the event of dementia or diminished mental capacity.

   Note, these famous people died without an estate plan: (a) *Howard Hughes* never wrote a will. More than 25 people submitted phony wills which the Probate Court publically reviewed and rejected. His wealth was passed onto his extended family, but none of his friends or the medical research programs he supported in life received any money. (b) *John D. Rockefeller's* gross estate of $27 million was finally settled at $17 million after federal and state taxes, administrative and court costs were paid. (c) *Marilyn Monroe* wrote a will in which she created a trust to support her mother. Unfortunately, the royalties and licenses that she wanted to be given to charity could not be carried out because there was no estate plan in place. Her net estate shrank over 55% after debts and taxes.

2. **What Happens if I Die without a Will?** In California, half or one-third of the property you had *before or after* marriage is passed to the surviving spouse, the remainder to your children in equal portions. All property received *during* marriage (except inheritance and gifts) goes automatically to your spouse. If not to a spouse or children, to parents, then siblings, then grandparents, then aunts and uncles via laws of "intestate succession."

   Note, if you have children who are minors, the surviving parent may have to report annually to the Probate Court to account for how their children's inheritance money is spent. The surviving parent may be asked to set up a bond to guarantee proper handling of all funds.

3. **What is an Estate Plan?** Everything you own or have a financial stake in, at the time of your death, is your estate. An estate is a separate income-tax paying entity, and must file and pay income taxes to both the State of California and the United States. Creating an "estate plan" helps you pass on your wealth in the most efficient manner possible, and explains how your estate should be handled if you become ill during your lifetime.

4. **What Goes into a Typical Estate Plan?** (a) one will; (b) an advance directive regarding life-support and other health care decisions, which is more thorough than a "living will" because it addresses terminal illness; and (c) two durable powers of attorney, one for making health care decisions on your behalf, the other for making financial and business decisions. *Sometimes* an estate plan also includes (d) a revocable living trust.

5. **Does every Estate Plan Contain a Trust?** No, young married couples without significant assets who do not anticipate having children (and single people without significant assets without complicated after-death wishes) may not need trusts. In these cases, the Probate Court will likely supervise the division and administration of their assets. However, the greater the value of your assets, the greater the need is for a living trust. Trusts are also the best way to effectively address sudden illness, especially if you own real estate.

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6. **How Does Having a Trust Avoid Probate Court Exactly?** The U.S. Constitution's full faith and credit clause protects the privacy of contracts (including trusts). By contrast, documents examined in Probate Court remain in the public record. Trusts are not as easily disputed as wills by ex-spouses and disinherited family members. They also force title problems out into the open because, unlike wills, trusts are funded during life. About 5% of the gross estate value is lost in court costs and *another* 7-10% in attorney fees. Last, probating an estate in court takes much longer to conclude than finalizing a trust because of: notice requirements, busy court calendars, bank delays, inventory and appraisal of the estate by court personnel, selling illiquid assets, closing creditor claims, appointing a guardian for minors, resolving disinheritance disputes or determining beneficiaries where none are named.

7. **What is Wrong with Going to Probate Court?** To clarify, estates with a gross value of *under* $150,000 (before taxes and other credits are subtracted) will not go to Probate Court. For all estates at or above that gross level, Probate Court takes 12 to 24+ months to conclude, much longer than the administration of a trust. If a loved one has dementia and the court-appointed professional have to investigate the need for conservatorship of that person, all of those private and intimate details stay on public record. Likewise, a thorough accounting of the assets and debts of the estate remain on public record, for anyone to access and read. Dividing assets and settling disputes in the public arena of Probate Court can be a devastating burden on families, both financially and emotionally.

8. **Can I Leave all my Health Care Decisions to my Family?** For 70% of us, we will be mentally incapacitated at some point before our death, and someone else will have to make our medical decisions. The more we do to prevent conflicting opinions about our choices, the greater the likelihood our choices will be respected. After all, advance directives are not just for the elderly. Some of the best-known choice-in-dying cases arose from the experiences of *young* people (e.g. Terri Schiavo, Nancy Cruzan, Karen Ann Quinlan) on life-support because of tragic accidents and illness.

9. **What Does the Lawyer Do?** Your attorney should help you design a plan that will let you stay in control of your estate as long as possible, provide for your care should you become ill, and in the event of your death, distribute your estate to your heirs as you see fit. A good lawyer will also make sure that you understand the nuances of property ownership, taxation, wealth transfer, and wealth protection. Depending on your needs and interests, your attorney may recommend that you work with a financial and/or tax advisor to ensure the documents are tailored to meet your short-term and long-term financial goals. Last, any information you provide to your lawyer will be safeguarded and protected from disclosure to the fullest extent of the law.

10. **So Anna, Why You?** I practice law because I am passionate about helping people secure their family's future. I conduct my law firm in accordance with the golden rule: I treat clients how I wish to be treated – with compassion, with respect and with a smile. I am a certified estate planner through NICEP, and regularly attend seminars regarding the latest trends in estate planning. I love giving clients free resources, answering questions that pop up after our meetings, and keeping my pricing fair and affordable. I hope I can assist you with your estate planning needs.

I hope this material helps you when dealing with the inevitable questions that come up about end-of-life planning. This F.A.Q. is not meant to be legal advice and it is not a comprehensive treatment of estate planning. I strongly suggest readers consult legal counsel before using any pre-written estate planning services.