Mid-Year Estate & Financial Planning

About Us

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- Partner, **Green & Green LLP**
- Certified Specialist in Estate Planning, Trust & Probate Law by the State Bar of California Board of Legal Specialization
- LL.M. in Taxation
- Award recipient, Ralph Gano Miller Award for Excellence in Taxation Law
- Borderview YMCA, Board of Directors
- Southwestern College Foundation, Board Member

Daniel Guillen, AIF®

- Accredited Investment Fiduciary®
- Founder and CEO of **Sentry Pacific Financial Group, LLC**
- 20+ years counseling and educating on investment management, personal stewardship, retirement income, estate and tax planning
- He frequently lectures on investment and personal finance topics in his community.

“Nothing in this world can be certain, except death and taxes.”

—Benjamin Franklin

Can you answer these questions?

What happens to my assets when I pass?

Am I leaving a big mess for my family to clean up?

Are they really protected?

How do I protect my assets from rapidly increasing healthcare and long-term care costs?

Can I pass assets on without court administration?

How much does this cost?

Introduction

Who needs an estate plan?

- Single or married
- Children or not
- Wealthy or not
- Working or retired

Regardless of your personal situation, everyone can benefit from estate planning. Proper planning benefits while you are still living and when you pass.

Introduction

Benefits of proper estate planning while living…

- **Simplify** the complexities of estate planning
- **Provides control** over assets/finances as well as medical decisions while living or after passing
- **Documents intentions**
- **Designate assets** to the appropriate people and/or trusts
- **Appoint the right person(s)** to make medical/financial decisions for you in the event of incapacity.
- **Peace of Mind**

Introduction

Benefits of proper estate planning at death…

- **Appoint** a guardian to care for minor children
- **Coordinated** distribution of assets
- **Final gifts** to charity or non-profits
- **Minimize** potential taxes
- **Avoid** legal complications as well as family disputes
- **Business** succession planning

Incapacity

Definition

Mental or physical inability to do something or manage one's affairs, legal disqualification

Durable Power of Attorney for Asset Management

A document that authorizes a trusted person to act on one's behalf

- **You control how** the document is drafted to state parameters **and when** the document is effective
- Will help prevent a Conservatorship of the Estate – a very expensive and adversary court proceeding

Incapacity

Advance Healthcare directive or Power of Attorney for Healthcare

- Appoints an agent to better understand your medical wishes and desires
- Allows or limits agent to make medical decisions
- May include living will – instructions on when to be kept alive or not
- Offers direction on wishes regarding organ donation
- Will prevent a Conservatorship of the Person – a very expensive and adversary court proceeding

Taxes and Estate Planning

Proper and proactive planning may offer opportunities to mitigate taxes.

We will focus on these potential tax events:

- Income taxes upon death
- Capital Gain taxes
- Gifting and/or inheriting assets
- Estate taxes

Income Taxes

After death, income taxes will be due on:

- Any income **you** earn in the year of your death
- Income earned by **your estate** after your death but before assets are distributed
- A tax return needs to be filed in the year of your death – potentially longer

A widow or widower has the choice of filing taxes single or jointly in the year of their spouse's death.

Capital Gains Tax

A capital gains tax is a tax on the growth or profits “realized” when individuals and corporations sell their investments.

Depending on how assets are transferred, capital gains will be calculated based on whether the asset is:

1. **Gifted**
2. **Inherited**

Gifting

The general rule is that the donee’s basis (purchase price) in the gifted property is the same as the donor’s basis (original purchase price) in the gifted property.

Example:

Father purchased 1,000 shares of Apple stock for a total of $10,000. Five years later, he gifted the stock to his daughter when it was worth $15,000. **If the daughter later sells the stock, she will owe capital gains on the appreciation upon sale based on father’s original purchase price (i.e., daughter will owe capital gain taxes on any sale price in excess of $10,000).**

Inheritance

Upon inheritance, current tax law may allow a step-up in basis.
This would make the value on the date of the inheritance the new cost basis.

Example:

Father leaves daughter 1,000 share of Apple stock with a basis of $10,000 in his Will. Since daughter receives the stock as an inheritance, when the father dies, the stock receives a step-up in basis and $15,000 is the new cost basis. If daughter later sells the stock, $15,000 is the new cost basis for calculating capital gain taxes.

Gift Tax

This is a federal tax that may be owed if you give money or assets without receiving fair compensation.

- Gift tax is **only applicable on gifts in excess of the annual limit of $15,000 per donor, per recipient (2021)**
- Lifetime gift tax exemption is approximately **$11,700,000 per person (20~~21~~)**
- Typically excludes charity, non-profit and spouse

Federal Estate Tax

The value of your taxable estate upon death determines if federal estate taxes are due.

- Excludes assets inherited by charity or spouse
- 2021 applicable **exclusion is $11,700,000 per person or $23,400,000 per married couple**
- Maximum Federal estate tax rate = 40%

Will

“Do you have a will?”

“When was the last time you updated your will?”

“Has anything changed since you last updated your will?”

Will vs. No Will

Will

- Have control over distribution of your estate
- You can nominate who will administer your estate
- Probate judge may still oversee

No Will

- State intestate succession law makes decision for you
- State determines who has priority to administer your estate
- Probate judge may still oversee

Having a Will Upon Death

Advantages

- Appoint person and/or entity to carry out terms of document
- Document the beneficiaries of your assets
- Pre-determine when assets are to be distributed
- May allow assets to transfer in to trust upon death
- Estate may still be submitted for probate court supervision
- Information becomes public record
  - May invite creditor claims

No Will Upon Death

Disadvantages

- Lose control of distribution
- All children are treated equal, regardless of situation
- Usually flows to next of kin
- Each state's law determine distribution sequence
  - Previous marriages, unmarried couple, distant relatives
  - No inclusion of charity
- Additional taxes, penalties and fees may apply
- Potentially high court and other administration costs due to Probate

What is Probate?

Probate is the legal process whereby a court determines who will have the power to administer your estate after you have passed and to whom your estate will be distributed. In other words, it's a lawsuit you file against yourself, after you are dead, to give power to another person to act and make decisions for you.

- **This is the first step** in the process of distributing and administering an estate
- Ensures a **consistent process**
- **Provides supervision**

What is Probate?

No prepared will - assets subject to the probate process are distributed according to each state's law

Will prepared - probate courts supervise the administration and execution of the will's instructions

How to Avoid Probate?

- Gifting - pros and cons
- Joint Ownership
  - Real Estate
- Beneficiary designation
  - Retirement plans
  - IRA
  - Life Insurance
  - Annuities
- Payable on Death (POD) or Transfer on Death (TOD)
  - Bank accounts
  - Brokerage accounts
    - Stocks, bonds, mutual funds, ETFs

Trusts

Part of a Comprehensive Estate Plan

A trust is a legal document or entity designed to hold title to assets while following a specific set of instructions for managing and distributing those assets.

Many people think of a trust as a bucket with a manual. The bucket receives the assets during their lifetime and the manual ensures that their wishes are followed upon their passing.

Trust Advantages

- Draft document with **specific instructions**
- **Control** your wealth
- **Simplicity**
- May **avoid probate**
- Maintain **privacy**
  - **Avoid claims** of creditors or **lawsuit**
- Distribute indivisible property
- **Delay inheritance or ownership of assets** until specific time period
- **Transfer** management capacity of certain assets for those that lack financial responsibility
- **Ability to avoid tax** in certain scenarios

Types of Trusts

There are many types of trusts with a variety of benefits for each. However, for today, we are going to focus on the four most common:

- Testamentary trust
- Revocable living trust
- Irrevocable trust
- Irrevocable life insurance trust (ILIT)

Testamentary Trust

- Created by your will and **becomes active upon death** (Will trust)
- **Contains last will and testament** that provides instruction for all or a portion of an estate
- **Appoint a trustee** to manage assets held in trust for beneficiary

Examples:

1. A parent may not want a child to inherit an asset until a specific time. They would appoint a trustee to oversee the asset until distribution.
2. A well spouse may want to protect public benefits for their sick spouse and can utilize a testamentary trust to protect them.

Revocable Living Trusts

- Would be **set up while you are still living**
- You can **name yourself or appoint someone else as trustee (i.e., the manager)**
- Set up to **simplify management and transfer of assets** upon incapacity and death to avoid court intervention (i.e., conservatorship and probate)
- Trust document determines when assets held are distributed
- **Allows the grantor** (creator) **to revoke or change terms**
- Can be dissolved at any time
- **Assets remain taxed as a part of your estate**

Irrevocable Trusts

- **Terms cannot be changed or revoked**
- Transfer assets out of estate
- Typically **used to avoid or reduce estate taxes**
- Used in planning for long term care

Irrevocable Life Insurance Trust

Type of Irrevocable trust

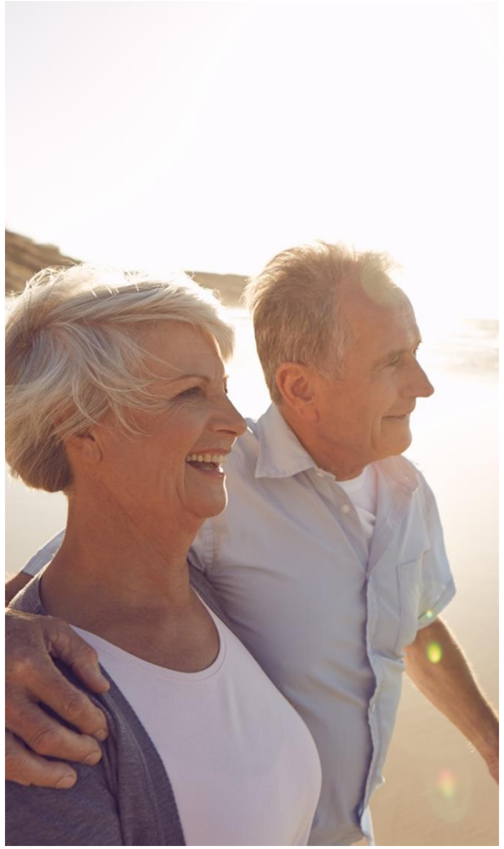
Set up during lifetime to exclude life insurance death benefit from estate

Help **reduce estate taxes**

Provide **potential tax-free benefit** to beneficiaries upon insured death

Provide liquidity upon death for expenses or taxes

Conclusion



Estate planning is a very complicated topic. Each of you has your own set of circumstances and desires and there is no one size fits all when it comes to this topic.

Please make sure your documents are drafted according to your desires...

Finding the Right Attorney

- Only Practices Estate Planning or Elder Law
- Communication and Trust
- Welcomes being challenged and questioned
- Succession Planning
- Handles Administration on Death
- Fair not Cheap!

Finding the Right Financial Advisor

- Serves as a Fiduciary
- Offers a Complimentary Consultation
  - Meshes Well With Your Personality
  - Understands and Integrates Your Values
- Has a Good Reputation
- Competent
- Fair not Cheap!


More important than
leaving an inheritance,
is leaving a legacy.
-Anonymous

Thank You!

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