

\_\_\_\_\_ Episcopal Church

\_\_\_\_\_, California

Please enter the name of your church and location on this page.


If you would like you can also add a picture of the church or church activity of your choice.



# Estate Planning and You!

Where are you?



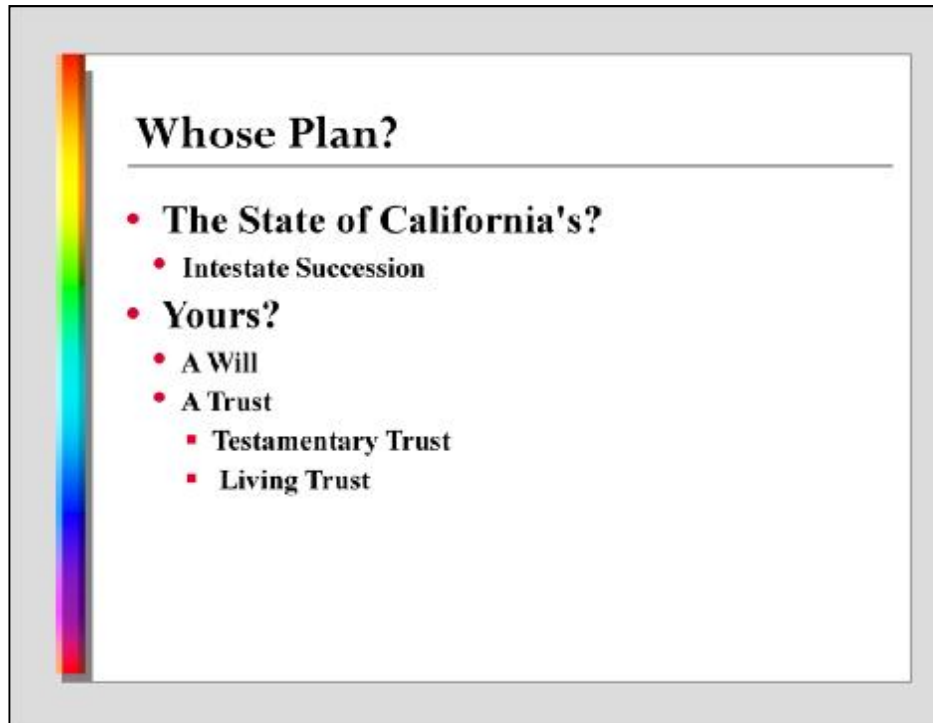


## Where are You?

---

- No Will, No Trust, No Plan,
- Hold title as joint tenants or community property (sort of a plan.)
- A Will (a plan for when you die, maybe includes a trust).
- A Living Trust and a Pour Over Will (a plan for while you are alive and when you die.)


Many people have not really thought about estate planning. It is something that has not risen to their level of consciousness. Others have done something and still others have quite elaborate estate plans. Frequently even those people with fairly extensive estate plans have not considered the church in their plan.



Intestate succession, for those who do not have a will. Under the State's plan, community property goes to the surviving spouse. If no spouse, it follows the blood line down, in equal shares (if there is a deceased child with children, the children get their parent's share, in equal shares.) If no descendants, then property to parents, if parents haven't survived then in equal shares to siblings, or following the blood line down from predeceased parties. Separate property, if married and one child, 1/2 to spouse and 1/2 to child. If more than one child, then 1/3 to spouse and 2/3rds in equal shares to children, again follows bloodline down if someone is deceased.

A will, addresses disposition of property at your death. It is your stuff, you can say where it goes.

A trust, if a living trust, can address your property while you are alive, and also when you die. If a testamentary trust, it doesn't come into existence until you have died. (Again, it is your stuff, you can say where it goes.)




## How can I hold title to my property?

---

- Sole owner
- Joint Tenants (with right of survivorship)
- Tenants in Common
- Community Property
- Community Property with right of survivorship
- Pay on death accounts (Totten trusts)

A listing of common ways that a person can hold property. People typically hold assets in these ways, they can apply to real property or personal property, corporate stock or businesses.



## Wills, there's more than one kind?

- Holographic Wills (handwritten by testator, signed and dated.)
- Formal Written (typed or printed) Will
  - Simple Will
  - Trust Will
- No matter what kind -- you should review it periodically!

Holographic Wills are probably the easiest for someone to create, and probably cause the most problems because various issues are not considered. They are valid, just frequently a problem.

Formal Wills, either a form will provided by Statute, or a will prepared from a software program by the testator (person signing the will) or prepared by an attorney. Simple will means that there is no trust provisions included. Either a trust will or a simple will can actually be quite complex. The important factor is that the person making it understand what they are doing and that it actually carries out what they want to happen to their property.

It needs to be reviewed periodically to see that it addresses the things (issues) that the person wants. Guardians for children, executors, special gifts, residuary gifts (if earlier named beneficiaries fail to survive.)




## Trusts, is there more than one kind?

---

- Revocable trust (sometimes called a living trust or a family trust.)
- Irrevocable trust
  - Either created that way or
  - Irrevocable because the Trustor died.
- No matter what kind -- you should review it periodically!

Revocable Trust. Usually created with a pour over will and Advance Health Care Directive and possibly a Durable Power of Attorney for Financial Affairs. This is created while you are alive (unlike the testamentary trust in a will that comes into being when you die.) A revocable trust is funded while you are alive and then the trustee will have control of the property funded into it. Generally, the creator(s) of the trust (Trustor or Settlor) is also the initial Trustee. The terms of a revocable trust may be changed while the Trustor is alive. Once the creator(s) of the revocable trust die, it becomes irrevocable (the terms can't change). It doesn't mean that it will last forever!

Irrevocable Trust. The terms can not be changed, either because that is the way it was initially created, or because the creator has died. Generally those that are created as irrevocable trusts are created for specific tax savings issues. Why check it periodically, well maybe you no longer wish to put more assets into it, or if it is an irrevocable life insurance trust, maybe you no longer want to pay for the insurance.



## How does property pass?

- Form of title (Joint tenants, community, community with right of survivorship.)
- Beneficiary designation (insurance, stock accounts, bank accounts, IRA's, etc.)
- Small estates
- Estates in excess of \$100,000 of probate-able property.
- Probate (Will or no Will)
- Trusts

When you die, what happens to your property depends on how title was held.


Joint tenants or community property with right of survivorship: Title passes at the time of death to the other living named party(ies). If you don't have a will, community property (with no other designation) passes to the surviving spouse. If there is no surviving party, then property with these forms of title will either pass by your will or by intestate succession if there is no will.

Beneficiary designations: If the named party is alive, ownership of the property passes to them (it).

Small Estates, In California that is property held solely in the name of the decedent when the **total** of all such property is less than \$100,000.00. May not have to be probated (but some still is even if the total is under \$100,000.)

Probate: For property not held in a trust, or held in the one of the above ways. A formal way of administering the estate. A personal representative is appointed by the Court, either an Executor if they are named in the Will, or an Administrator, if they were not named in the will.

Trust: Property was “funded” (actually has the name of the trust on it) into the trust, or as a result of being the named beneficiary in one of the above situations has been received by the trust. The distribution provisions can either be fairly simple or quite complex. Has the ability to hold property for an extended period of time, such as where distribution is over an extended period of time (when a child reaches a certain age, or so many years after the death of the creator of the trust.)




## When Do I Need to Worry About Taxes!?

---

- When your estate is larger than the "Exemption Equivalent" Amount. (Includes lifetime gifts!)
- What's that?
  - Estates \$5,000,000 in 2011 -2012
  - Returns to \$1,000,000 exemption in 2013
  - Gift tax on amount over \$1,000,000 from 2002 on.

The State of California has no inheritance tax.

The Federal Estate and Gift Tax is based on the net amount of the estate of the decedent. During 2011 and 2012 there is a tax when the net amount of the total estate of the decedent exceed \$5,000,000.00 In 2013, unless Congress acts, that amount will go down to \$1,000,000. Both of these numbers include lifetime gifts other than to charity.




## When Do I Need to Worry About Taxes!? (continued)

---

- What is included in my estate?
  - Your separate property, half of community property, life insurance on your life.
  - Anything that passes as a result of your death
  - Lifetime gifts (which exceed the annual exclusion)
- What is exempt
  - Gifts to Charity
  - Transfers to your spouse
- What is the tax on the amount over the exempt amount? 45%

What is included, just about everything you can think of: (life insurance, real property, personal property, IRA's and 401(k) and the like) anything you own!

Gifts to charity (like the church) are not counted in coming up with that number. Nor are gifts to your spouse.



## Who Gets One of these Exemption Equivalent Things?

---

- Do I have to use it?
- Can I give it away?
- Can I only use it when I die?
- What are the advantages of a large lifetime gift?  
Disadvantages?
- What are the advantages of a large death time gift?  
Disadvantages?


IF you make a gift to anyone other than your spouse or a charity, it is counted to see if a tax must be paid.

If the total amount of your estate exceeds the Exemption Equivalent, a return must be filed. Tax is paid if the net amount exceeds the Exemption Equivalent (amount).

Actually under current law, if you don't use the full amount of the Exemption Equivalent, the excess can be transferred to your spouse.

Life time gifts are counted at their current fair market value (they could appreciate in the future), however they also carry with them your basis.


Death time gifts. Depending upon the size of your estate, either all or a part will get a stepped up basis. You had the use of the asset during your lifetime. Downside: appreciation may have increased the value of your gift to a point where taxes will be due. But, in either case, a gift to charity will not count against your exemption equivalent.



## When does my estate get taxed?


---

- Value as of the date of death or six months later, return due 9 months after death.
- Includes lifetime gifts.
- Can shift any excess over "exemption equivalent" to surviving spouse (but gets taxed when spouse dies at their rate?)



## Lifetime Charitable Gift Plans.

- Current gifts.
  - Cash
  - Appreciated assets
  - Unappreciated assets.
- Lifetime gift, with asset to return to estate later.




If you have an asset that has appreciated in value, and you give the gift to a charity, you get to count the full value of the gift as a charitable gift, but you don't have to pay capital gains tax on it. (If you sold an appreciated item of property, then gave the charity \$, you would owe capital gains on the gift. You still get to count the next amount as a charitable gift, this just is not the best way to make the gift.) On the other hand, you do have control of the sale.

Life time gift, with return to estate later. (Charitable lead trust.)

A charitable remainder trust would allow use of current income from a completed gift, with amount remaining at your death to go to the charity.

Both of these, charitable lead trust and charitable remainder trust should be discussed with an estate planning professional.




## Questions ?

---

- Is Probate all bad?
- Probate fees: based on gross estate
  - 4% of 1st \$100,000
  - 3% of 2nd \$100,000
  - 2% of next \$800,000
  - 1% of next \$9,000,000
- Is a Revocable Living Trust the answer to everything?

No not really. Probate provides for a court supervised and accountable administration of the estate. While not inexpensive, it is probably not as expensive as many people think. However, if there are large or significant debts the fees can be a significant part of the net estate. The fees shown here are the amount awarded in a normal run of the mill, plain Jane estate, and the same amount is awarded to the personal representative and the attorney for the estate. (Either could waive fees, attorneys seldom do!) Remember, that there will no doubt be fees in a trust as well.

Is a Revocable Living Trust the answer to everything? Nothing is. If there are disputes, the court has jurisdiction to resolve them. However, if the creator of a revocable trust becomes incapacitated, a successor trustee could act in their behalf without having to obtain a Conservatorship.



## Questions? *(continued)*


---

- What's an Advance Health Care Directive?
- What's a Living Will?
- Durable Powers of Attorney?

An Advance Health Care Directive is essentially a combination of a “Living Will” and a Durable Power of Attorney for Health Care. You have stated what you want done when you can’t make health care decisions, and you have appointed someone to carry that out.

Living Will, a statement about what kind of things you want done if you are unable to make decisions about your health care. BUT, there is no one who can enforce that statement. Therefore, an Advance Health Care Directive is usually better.

A Durable Power of Attorney. The granting of power to an agent to act in your behalf, since it is durable, it is effective even if you are incapacitated. However, when you die, your agent has no power. It is only effective when you are alive. These can be for health care or for financial affairs. (Separate documents are normally used.)



**Things of Importance.**

---

- Your family.
- Your personal security.
- Your church, diocese, charities.

Things to consider when you make an estate plan. These are the things that we all consider during our lifetimes. They are the same things that we should consider when we think about our death.

## Can I do all of those things?

- What do I need to take care of my family?
- What about me?
- Can I think about my place of worship?
- What about charities?



You are not on a desert island. However, we each get to make choices based on how we view our responsibilities.

Because those responsibilities change over time, what we decided when we had young children, or children in college, may not be the same decisions we would make later in life.

Some things never change, ... but the way we think about them may change.



## Annual \$12,000 Gift Tax Exemption

- **Separate Trusts for Children or Grandchildren for annual gifts.**
  - Fund with annual exemption amount
- **Irrevocable Life Insurance Trust for Children**
  - Fund with annual exemption amount

What about annual gifts? You are able to make a gift annually in an amount up to \$12,000 to any number of people, and it doesn't count against the amount which gets included in the Federal Estate and Gift Tax computation.

You might consider making annual gifts to separate trusts for your children or grandchildren (or anyone else for that matter.)

You might try to increase the value of that gift making funding an Irrevocable Life Insurance Trust (ILIT) for your children or grandchildren. The total fund at your death would not be included in your estate.