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Dear Client:

This letter will answer common questions about estate planning. Part one will help you understand what each document does as well as help explain which documents you need considering your individual situation. Based on your assets and wishes we will develop a complete estate planning portfolio that is customized to your family and your assets. Part Two will serve as a guide to keep your estate planning documents current for the rest of your life. If changes occur in your family, your wealth, or your wishes this will help you keep your documents updated.

Everyone over the age of 18 who has anything they consider valuable should consider some type of estate plan. Typically older adults who are educated and have a net worth establish estate plans. (Goettig and Martin, 259) However, disease and accidents strike people of all ages. A 20 year old young man who just bought his first home can be killed in a motorcycle accident. A 25 year old single mother with two children and a bank account can die of breast cancer. We will all die someday. It is best to prepare and plan for this certain occurrence when we are in good health to be assured our assets are passed on to the people we wish.

Part One:

Do you need a will or a trust?

If you own real property such as a home, condo, vacant land, or a timeshare you need a trust. If your assets are limited to your furniture, jewelry, car, and bank accounts then a will is sufficient to distribute your assets to the person you intend, called your beneficiary. The reason is that personal property can be transferred easily. No title documents exist with furniture, clothing, or jewelry. To transfer your car to someone when you die you can name a “Transfer on Death” beneficiary on your pink slip through the Department of Motor Vehicles. Bank accounts can be transferred by designating a beneficiary on your account with your bank. Real estate, however, does not come with a beneficiary card. The only way to transfer a piece of real estate after the owner dies is in a trust or with a court order. This court order is called probate.

What is probate?

Probate is the legal process in which a court of law orders that assets owned by a deceased person, called a decedent, be transferred to the decedent’s beneficiaries indicated in his or her will. Probate also includes intestate succession in which a person dies without a valid will and their assets are

passed on to their heirs as defined in the probate code of the state in which they reside at the time of their death. In California, for example, the laws of intestate succession in Probate Code 6401(a) (California Probate Code 593) have the following effects on these various fact patterns:

- A decedent dies leaving a spouse only- 100% goes to the spouse
- A decedent dies leaving no spouse but three children - 33.3% to each child
- A decedent dies leaving no spouse but three children he raised plus one child he has never met - 25% to each child
- A decedent dies leaving no kids, a spouse they have lived separate from for five years, and a live-in companion of five years - 100% to the spouse, 0% to the companion
- A decedent has no spouse, a step child he raised and also has a biological child he has never met - 100% to biological child, 0% to step child

If a decedent dies leaving a spouse and children and some of the assets are classified as separate property because they were acquired by the decedent before marriage, or as a result of an inheritance they are divided by California Probate Code 6401 (c) (California Probate Code 593) as follows:

- If decedent only has one child, 50% to spouse and 50% to child
- If decedent has more than one child, 33.3% to spouse and 66.6% divided among children
- A decedent dies leaving no kids, a spouse, and a brother he has not spoken to in 20 years- 50% to the spouse and 50% to the estranged brother

As you can see, intestate succession may not always allow the decedent's assets to pass to the people the decedent may have intended. This is why it is so important for every person over the age of 18 to create a will. A will ensures that the decedent's wishes are followed. In the will the decedent names the person they trust to disburse the property to their beneficiaries, called the executor (male) or executrix (female). Personal property such as furnishings, cars, and personal effects, can be transferred to the beneficiary easily. Real estate can be transferred to the intended beneficiary but only under the supervision of a judge by a court order.

Why do people want to avoid probate?

Probate is expensive and time consuming. Court costs are approximately $982.00 according to the Superior Court of California, County of San Bernardino Civil Fee Schedule. (Superior Court of California County of San Bernardino.) Other costs required include appraisal fees, publication fees, and recording fees. For a typical probated estate of $300,000, these fees total an additional $1,000.00. Executor fees for a typical estate of $300,000.00 are another $9,000.00 and attorney fees add another $9,000.00. This totals $19,982.00 in costs and fees for an average size estate. Estates valued at more than $300,000 will cost more as it is based on a valuation of the assets. If your home is worth $300,000 but you owe $250,000 on it, the court does not consider that it has

only $50,000 equity. Values are based on the current market value of $300,000. The second reason people want to avoid probate is because of time. It takes a minimum of eight months to complete a probate in the Superior Court of California, County of San Bernardino. With complications, the probate process can last several years. If a home needs to be sold during probate that will extend the time.

How do I avoid probate?
Allow me or another licensed attorney to draft a trust for you. A trust will give all of the necessary powers to your appointed agent, called your trustee, allowing him or her to gather your assets, pay your final bills, expenses of last illness, and final personal and estate taxes, if any. Finally, your trustee will have the power to transfer your assets to the person(s) you designate in your trust without the need for a court order. The most common type of trust is a two-settlor revocable trust. This is a trust that is created by a husband and wife and can be amended, changed, or cancelled at any time until their death. There are many types of trust and your attorney can advise you on the most appropriate document to carry out your wishes. The two-settlor revocable trust will be discussed here.

Do I still need a will if I have a trust?
You will need a pour-over will if you have a trust. A pour-over will states that all of your assets, whether property titled in your trust or not, will pass through your trust and will be distributed by your trustee according to your trust's terms. This covers you in case you acquire more assets in the future that you forget to title in your trust name.

What should my trust include?
Your trust should include all of your assets with a few exceptions. If you have an IRA or a life insurance policy you should leave those outside of the trust and name a beneficiary directly with the company issuing the account or policy. Also, you may decide to leave a particular checking, savings or investment account outside of trust if you have a properly designated co-owner or beneficiary. The goal is to have your financial institutions know exactly who will receive your account when you die. If you do not name your trust or a beneficiary to each account the bank will freeze your account on your death and will require a court order. This means that a probate is required for that asset even if you have a trust in place.

Real estate should always be placed in your trust. Real estate includes your home, any rental properties you own, commercial properties, vacant land, and timeshares. Real property you own located out of the state of California should also be placed in your California trust. A grant deed, quit claim deed, or trust transfer deed are instruments which properly place your real estate in trust. This deed should be prepared, signed by the property owner and recorded with the Recorder in the county is which the real property is located. Even if you do not own your real estate outright, meaning you owe money to a bank or private lender on a deed of trust or mortgage, you are considered the legal owner and should execute a deed to transfer your real property to your trust. Personal property which includes furniture, clothing, jewelry, personal effects, vehicles, artwork, collections, guns, etc. should also be trust assets.

Can I be in charge of my trust?
Yes. Although you are the person who created the trust, called the settlor, you can also manage

your trust, as trustee, as long as you have the legal capacity to do so. Unless an illness or accident occurs most people continue to be the trustee of their own trust until they die. At the time they die their spouse, if any, may continue to be the sole surviving trustee. When the surviving spouse dies a successor trustee, previously appointed by you now has the power to act. You may name several individuals to act in order of succession or as co-trustees. Your trustee has a fiduciary obligation to manage the assets of the trust, use your assets to provide for you during your lifetime if you are incapacitated, and collect your assets at your time of death. Your trustee then has the responsibility to pay the expenses of your last illness, your outstanding bills, file and pay your taxes, and finally distribute any remaining assets to your beneficiaries according to the terms of your trust. Your trustee can be your adult child, parent, friend, neighbor, or any other person even if they are one of your beneficiaries. If you do not have a person you trust to act as your trustee you may hire a bank or a person who is licensed and bonded as a professional fiduciary.

I have a special situation. Can you create a customized plan to meet my needs?
Of course we can. If your needs go beyond a typical revocable trust we can customize estate planning documents for your family. Some common specialized issues include:

- You may have a child with special needs who receives state aid. An inheritance through a trust would cut off those benefits. A special needs trust can protect you

- You may want to leave your assets to a charity instead of a child or family member. A charitable trust can achieve your goals

- You may have considerable assets and need to reduce your tax liability. A tax savings trust can protect more of your assets. According to the American Taxpayer Relief Act of 2012, $5 million can be passed to beneficiary's tax free with inflation increases each year. (American Taxpayer Relief Act, 2012) Currently in 2014, the amount that can be passed on without estate tax is $5.34 million dollars. Your estate only pays tax for the portion of assets that exceed $5.34 million dollars. With proper trust planning, a married couple with a tax savings trust can double their estate tax exemption to $10.68 million dollars

Can same sex couples benefit from an estate plan?
Non-traditional families especially need an estate plan (Godfrey, 85) each state creates laws called statutes which govern inheritance laws. The State of California currently recognizes same sex marriages however the federal Defense of Marriage Act (Defense of Marriage Act, 1995-1996) has made benefit eligibility for same-sex spouses uncertain in the past. (Godfrey, 81) This controversial issue was before the Supreme Court in 2013 when the court declined to defend the constitutionality of the California same sex marriage ban known as Proposition 8 thereby allowing gay marriage to continue. (Sacks, Reilly and Siddiqui 1) Because these issues are so new in California and are still unsettled in other states, it is most important for gay and lesbian couples to put their wishes in writing in the form of a will or trust. By doing so their wishes cannot be changed by laws in place at the time they die.

Do I need any other documents to complete my estate plan?
A thorough estate plan also includes a Durable Power of Attorney for Financial Affairs and an Advance Health Care Directive. Your will and trust are controlling documents effective

immediately on your death. If you become physically or mentally incapacitated during your lifetime but have not yet died, you will need these powers of attorney in place. This occurs most often in elderly people diagnosed with dementia or stroke, or younger people in an accident. If you are in this situation and you don't have these powers of attorney already in place it is necessary for someone to obtain a conservatorship over you. Conservatorship is a court order in which a judge appoints a person to oversee your finances and take care of you physically. You may not choose the conservator and the court may not consider your wishes if you are mentally incapacitated. You should draft these documents now while you are healthy and competent.

A Durable Power of Attorney is a document that allows you to nominate a person you trust as your agent. Your agent is called your attorney in fact, although they do not have to be an attorney at law. Your agent will handle your financial affairs during your lifetime if you cannot handle them on your own. This includes paying your bills, investing your money, filing your taxes, and selling your assets, among other things. Your agent can be your spouse, adult child, parent, sibling, friend, etc. A durable power of attorney expires at your death when your will and trust become effective.

An Advance Health Care Directive is a power of attorney for health care. You nominate a person you trust to make health care decisions for you at the time that you can no longer communicate them to medical personnel on your own. This document will also allow you to set forth your wishes to donate anatomical parts, be buried or cremated, have an autopsy, and be given life support.

I'd like to save money. Can I prepare these documents myself? Can I use an online document or hire a paralegal to prepare my estate planning documents?
You can prepare your own estate planning documents or have a paralegal prepare them but unless you are a lawyer trained in estate planning you might not produce a valid document. Online documents are formats that require you to insert information. The final product is only as good as the information you provide. A computer program cannot direct you on what documents you need or how to complete them. Only a lawyer licensed to practice law with the State Bar of California can legally do that. The probate code is a set of state laws which outline what content must be included in your documents and how they should be signed. For example, your will must be witnessed by two disinterested persons and not notarized. Your trust should be notarized and not witnessed. If you don't meet the legal requirements when you draft the documents they will not be valid when you're deceased. By then it's too late to make corrections.

You have no assurance with online companies or paralegals as they are not required to be licensed or insured. A licensed California attorney is required to have errors and omissions insurance. Therefore even if your attorney commits a serious error in the documents your family is protected. Your attorney is also subject to disciplinary action by the State Bar of California if they commit negligence or malpractice.

Part Two:

After I create an estate plan how do I keep it up to date?
You should review your estate planning documents with your attorney every two to three years or when your marital status changes or you have a birth or death in your family.

What happens to my trust if my spouse and I divorce?
If you divorce your spouse you should revoke your family trust and establish new estate planning documents to reflect the division in property or your wishes for someone other than your former spouse to make financial and medical decisions in the event of your incapacity. You will also want to make changes to joint bank accounts and remove your spouse as beneficiary on your pension or life insurance policy.

What happens to my trust if my spouse dies?
When your spouse dies, your trust will still continue until after your death. If your spouse dies you will need to prepare some required state notices and record their death certificate and Affidavit of Death on each piece of real property. This process is called trust administration. You, as the sole trustee, have the power to prepare and record these documents yourself but many people, especially when they are distraught at the death of a spouse, hire a lawyer to handle the trust administration.

What happens if the person I appoint as my trustee dies?
You can nominate a successor trustee in your trust to handle the administration in the event your first named trustee dies, is incapacitated or is otherwise unable or unwilling to act. Several successor trustees can be named to act in the order you direct in case one or more are unavailable.

What happens if my beneficiary dies?
You can nominate alternate beneficiaries in your trust in the event your first named beneficiary dies before you. You can also change that gift to go to a different beneficiary since your estate planning documents will remain revocable until you die.

What if my assets change?
Your assets are listed on a document titled Schedule of Trust Assets. If you no longer have an asset in your possession you can simply put a line through it on your schedule. When adding additional assets you can handwrite them on your schedule but you must make sure proper titling documents such as a deed for real property or a bank beneficiary card for a cash account is in place.

If I change my mind about a provision in my trust can I cross it out and change it?
The freedom you have to cross out and add on assets to your schedule of trust assets does not carry over to your will and trust. Writing on or crossing out language on your will or trust invalidates the document. A formal amendment, drafted by an experienced attorney, is needed.

When is a formal amendment necessary?
A formal amendment will be required if you wish to change who you nominate as your trustee. It is also required to make any changes to your beneficiary designations. A formal amendment is also recommended when you get married or have a child.

In summary, now is the time to put your affairs in order to protect your assets and your family. Wills, trusts, and powers of attorney are necessary for you to decide who receives your cash and property. If you don’t have these important documents in place the court will act for you.

I hope this guide has made the estate planning process more clear. If you have additional questions please contact my office to set an appointment for a free initial consultation.

Sincerely,

By: _____
JENNIFER M. MEDEIROS

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