

OF COUNSEL  
DAVID A. SOLITARE

LAW OFFICES OF  
**MICHAEL N. BALIKIAN**  
A PROFESSIONAL LAW CORPORATION  
LNR WARNER CENTER  
SUITE 100  
21271 BURBANK BOULEVARD  
WOODLAND HILLS, CALIFORNIA 91367-6667

TELEPHONE  
(818) 347-3700  
FACSIMILE  
(818) 346-9400  
E-MAIL  
Mike@BalikianLaw.com

## **ESTATE PLANNING . . . WHAT IS IT AND WHY DO IT?**

By Michael N. Balikian, Esq.

Estate Planning has been defined from many perspectives. A good friend has answered the question of "what is it" and "why do it" as follows:

"I want control of my life and assets while I am alive and well. If I should become sick or disabled, I want to make sure that I am protected and cared for, as are my loved ones, in the manner I have chosen and by the people I have chosen.

When I die, I want to give what I have to whom I want, when I want, and in the way I want. And, if I can, I want to save every last dollar of taxes, professional fees and court costs."

As the above indicates, it is important that we use our assets to their fullest potential during our lifetimes, for our personal, family, business and charitable interests. It is also important that we arrange for the transfer of our assets after our death.

There are many tools available to accomplish these goals. We want to share with you a brief outline of some of those options.

### **THE DO-NOTHING APPROACH...**

This is, unfortunately for you and your family, the most popular method of estate planning. The government has recognized this and in response has established a one-size-fits-all default estate plan. If you do nothing, the plans established by the Internal Revenue Service and the California State Legislature will automatically "kick-in". That's the good news. The bad news is, under such plan there is a good chance you will be paying substantially more income tax, estate tax, court costs and attorneys' fees than necessary, thereby depleting your estate. You will also have no say as to who will receive your assets or when.

### **THE JOINT OWNERSHIP OF PROPERTY APPROACH**

This is probably the next most popular method of estate planning. Most married couples who purchase a home take title as "husband and wife as joint tenants." For smaller estates, joint ownership of property may be an acceptable estate planning tool. It defers probate and provides an orderly transfer of property between two individuals. It is automatic upon death.

However, care must be taken in its use. Its use could have many disadvantages, such as the loss of income and estate tax-saving opportunities, loss of control of the asset, and unintended personal liability.

Except for very small estates, the use of a living trust is usually much more desirable than joint ownership, as will be shown below.

### **THE BENEFICIARY DESIGNATION APPROACH**

The next most widely used planning tool is the beneficiary designation. Certain types of assets (such as life insurance, IRA's, pensions, bank accounts, etc.) are set up in such a way that you can name a beneficiary to receive the asset upon your death. For tax and non-tax reasons, care should be used in properly naming beneficiaries.

### **THE LAST WILL AND TESTAMENT APPROACH**

A will is an estate planning document drafted during your lifetime, which sets forth what you want to happen after you die:

- ◆ It can set forth who you want to receive your assets and when.
- ◆ It authorizes the payment of creditors and all applicable taxes.
- ◆ It names a personal representative who is responsible for entering the will into probate and making distributions according to your desires.
- ◆ It can nominate the person you wish to serve as the guardian of your minor children.
- ◆ It empowers the personal representative to carry out the terms of your will, especially relating to the ability to sell, dispose of and liquidate property and continue the operation of a business.
- ◆ It can establish trusts for the benefit of minor children or other individuals.

The primary disadvantage of using a will is in its implementation. In order to carry out the terms of a will, your personal representative is obligated to file a probate proceeding with the court. This can be time-consuming (approximately two years) and expensive (approximately 5% of the gross estate). In addition, all probates are public and therefore there is a loss of privacy regarding your affairs. For small estates, a will may be sufficient to carry out your desires. As your estate grows, the use of a living trust becomes much more desirable.

### **THE LIVING TRUST APPROACH**

A trust is a vehicle to hold title to your assets. There are many tax and non-tax advantages in using a trust. There are many types of trusts as well. A trust must be tailored to your needs and your estate. Some of the benefits of a trust are as follows:

- ◆ It allows you to name the person who will manage your estate (the trustee) both now and after your death. It also empowers such trustee to carry out the terms of the trust that you have defined. While you are alive, you can be the trustee of the trust.
- ◆ It enables you to determine both who will receive your assets and when they will receive them.
- ◆ It can eliminate substantial estate taxes.
- ◆ It provides for management of your assets in case of your disability.
- ◆ It avoids the extended time, expense and inconvenience of probate.
- ◆ There are many other benefits of a trust, including income tax planning.

A Trust should, in most cases, be the key instrument of your estate plan. It is confidential and provides coordination of your entire estate. It is easy to establish and easy to change. You can maintain total control over all of your assets.

In summary, a trust can be used to accomplish many goals, and should be seriously considered in most estate plans.

### **THE DURABLE POWER OF ATTORNEY FOR ASSETS**

The realities of life dictate that we must give consideration as to who we wish to manage our property in the case of a mental or physical disability, prior to death. Relying on family members or friends to act under a court-appointed conservatorship is usually unwise, because of the unnecessary costs, delays and restrictions often imposed.

The alternative to a conservatorship is to grant (while you are able and competent) the power to manage your property to an individual or a bank trust department. In California, this can be arranged through a power of attorney designed to become effective during any such incapacity.

The need for this type of power of attorney is minimized if all of your assets are held in the name of a living trust. With the use of a trust, the successor trustee of the trust will manage your assets during any such disability. Very frequently, (by inadvertence or design), some assets are kept out of the trust. This durable power of attorney will assure that those assets are also properly handled.

### **ADVANCE HEALTH CARE DIRECTIVE**

California also recognizes a separate Advance Health Care Directive granted by you to another individual to authorize that individual to make health care decisions for you during any period of disability.

This power should be granted to an individual or individuals who you trust to hold your personal care and well being as the top priority. An Advance Health Care Directive grants specific authority to that individual to consent to or refuse treatment for you in the event you are unable to make such decisions. Without this power, your family will be required to spend the time and substantial money necessary to establish a conservator to obtain the authority to make such decisions.

### **THE LIFE INSURANCE APPROACH**

The life insurance contract has many uses in the estate planning process, including providing:

- ◆ Liquidity. Even when the best estate planning tools are used, there are liquidity needs to pay final expenses, death taxes, or to provide an inheritance for one family member so a business interest or real property can be distributed to another family member. Life insurance may be the only way to guarantee that this money will be available, in the right amount, and at the time needed. Life insurance should be considered in addition to a trust or other estate documents.

- ◆ **Protection for Dependents.** Life insurance is also effectively used for the protection of dependents when an individual has not accumulated significant assets. A life insurance policy designed to provide cash when needed most, may be the only way a young family can guarantee sufficient assets for the surviving spouse and children.

In many instances, the use of life insurance is the best approach to achieve your estate and financial goals and desires. In addition, insurance can be used to effectively protect your assets, such as in the case of long-term disability insurance.

## **THE USE OF CHARITABLE GIFTS**

Charitable gifts are often motivated by your desire to provide for your favorite charities. When you have made this decision, the tax advantages of a charitable transfer and the integration of these transfers into your total estate plan can provide substantial tax advantages both during your life and at your death. In many instances charitable trusts and private foundations are utilized.

## **CONCLUSION**

We have attempted to familiarize you with some basic estate planning tools. For those with larger estates, there are many additional, more sophisticated planning techniques to provide even more protection and tax savings. Included on such list of tools are: Family Limited Partnerships, Personal Residence Trusts, Life Insurance Trusts, Special Needs Trusts, Dynasty Trusts, Property Agreements, Children Trusts and various types of Charitable Trusts. If you are interested in seeing which of the estate planning tools is best suited for your particular circumstances, please do not hesitate to contact us.