PacificCPE

COURSE
40651A

Estate Planning Fundamentals and Asset Ownership

A solid estate plan starts with understanding what it includes and why it matters. This course introduces the core components of an estate plan and walks through the critical process of taking inventory of assets—including how ownership structure affects what happens to property at death. Ideal for CPAs and tax professionals who want to help clients build a strong planning foundation, this course covers the essentials before diving into specific planning tools and strategies.

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Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recognize the characteristics of various estate planning tools.
- Identify the most common way for couples to own property.

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Chapter 1: WHAT'S IN AN ESTATE PLAN AND WHY DO YOU NEED ONE?

Chapter Objective

After completing this chapter, you should be able to:

- Recognize the characteristics of various estate planning tools.

GETTING STARTED

Estate planning boils down, really, to three things: what you have, who gets what, and how you are going to get those things to those people:

- First, you have to identify your assets.
- Second, you have to decide who you want to give these assets to.
- Third, you have to decide how you want to accomplish the transfer of your assets to your beneficiaries after you die.

This chapter will help you get started with all three of these tasks. But not in this order.

I know it's important to figure out what you own and how you own it. But, let's face it, that's also a chore, and I want you to be motivated, not dispirited. To put it another way, I want you to imagine your destination before you pack your suitcase. I think it makes the most sense to get started with your estate plan this way: First, I'll give you an overview of how probate works in California so that you can decide the "how" question—whether it makes the most sense for you to build your plan around a will or a trust. After that, you can work on the "what" part by preparing an inventory of what you've got and creating a list of your key beneficiaries.

For most people, an estate plan consists of three or four main documents: a living trust, a will, a durable power of attorney for finances, and an advance health care directive. Your plan also includes the transfer of your retirement assets and life insurance, which pass to the beneficiaries named on your beneficiary forms for each such account or policy. This book explains why each of these four documents is important, what you'll need to think about to create each one, and how to name the right people as beneficiaries for your retirement plans and life insurance policies.

But before we get started, let's consider the word "plan." It's important because the alternative to making a plan, is, of course, not having one at all. People who die with no plan in place will have their property distributed according to California intestacy law (which distributes property according to the closest living family members). The estate will have to go through a probate

proceeding if the estate is big enough; and, if the decedent had minor children, those children will be placed with adult guardians after a court investigation and hearing. It might work out just the way you hoped it would—but, really, what are the odds?

California's intestacy laws leave property belonging to people who die without a will or trust to surviving spouses, children, parents, and siblings—and more distant relatives after that. (In Chapter 1 of course 40652B, see "What Happens If You Don't Make a Will," for more on the subject.) But if you aren't married or don't want your assets distributed to family members according to the order the law dictates, the only way to make your wishes known and legally binding is to make a will or a trust. If you want to nominate guardians for your minor children, you have to do that in writing, too. There's just no other way to make it clear to a judge that your partner is the best choice and that your former mother-in-law is not. Given the alternative, it's hard to justify not putting at least a simple plan in place, isn't it?

The Key Estate Planning Documents

Wills are the simplest estate planning tools. They are extremely flexible and allow you to appoint executors, guardians, tax savings trusts, and trusts for children. If your estate plan uses a will as its central document, your estate will usually have to go through probate before it can be distributed to your heirs. (Read more about wills and how small estates may avoid probate in Chapter 1 of course 40652B, choosing guardians for minors in Chapter 2 of course 40653B, and leaving money to minors in Chapter 1 of course 40654B.)

Living trusts are legal entities that hold property during a person's life and include a distribution plan after death. All assets in the living trust avoid probate. Living trusts are coordinated with pour-over wills to appoint guardians (if necessary) and tie up loose ends. (Read more about living trusts in Chapter 2 of course 40652B, and about using trusts to plan for blended families in Chapter 1 of course 40655B.)

Durable powers of attorney for finances allow someone to make decisions and to manage your financial affairs for assets outside of a living trust if you become incompetent or incapacitated. (Read about durable powers of attorney in Chapter 1 of course 40657B.)

Advance health care directives allow you to name an agent to make health care decisions for you if you become unable to do so yourself, and state your wishes for end-of-life care. (Read about advance health care directives in Chapter 1 of course 40657B.)

Retirement plans and life insurance policies are distributed to named beneficiaries and pass outside of your will or trust. (Read about naming beneficiaries for retirement plans and life insurance in Chapter 1 of course 40656B.)

Will or Trust?

If you're going to make a plan, your first decision is going to be what kind of plan you need to make — one that uses a will as the central organizing document, or one that uses a living trust to manage your property and distribute it at your death. Think of this choice as a fork in a road. Either kind of estate plan will get you where you want to go. Doing either one is far superior to doing nothing at all.

Both wills and trusts are perfectly effective, legal ways to manage and distribute what you own at death. But they differ in how long it will take to settle your estate and how smooth the road will be between where you are now and that ultimate destination. They also differ in their initial cost to set up and in the time and energy they take to maintain during your lifetime. The biggest difference of all is whether you want to avoid probate—for most people that's the determining factor in choosing a will or a trust.

Some states, like California, have slow and expensive probate proceedings. In those states, avoiding probate by creating a living trust is an excellent idea. Your heirs will thank you, because a trust avoids the expense and delay that results when an estate settles via a will. Other states, primarily the ones that have adopted a set of laws known as the Uniform Probate Code, have relatively quick and inexpensive probate proceedings, and in those states, a will is a perfectly fine way to make your estate plan.

If you aren't sure whether your state makes probate easy, you should do a little bit of research to find out. First, check out the Nolo state-specific articles, available for several states, on Nolo.com (on the home page, open the search box and choose "articles" from the drop down on the left, then search for "probate in [state name]"). Then, do an internet search for "probate in [state name]" and evaluate the results. You're likely to see pages maintained by state legislatures, courts, state bar agencies and associations, and law firms. Read the law firm articles with a grain of salt—they *should* know the law and be able to faithfully explain it, but keep in mind that they have a vested interest in making the process seem scary and difficult, so that readers hire that firm. As with all internet searches, look for consistent information, which is your best bet that it's accurate.

You could also ask your friends and family if they're ever had to go through a probate proceeding—if probate's a bear in your state, you'll get an earful.

Example

Charlene lived for many years in California. She had a living trust there to hold her home and her investment accounts so that her sons, Alan and Charley, wouldn't have to endure a probate proceeding when she died. After the boys went to college, she moved to Idaho. There, probate is easy and quick, so she used only a will for her estate plan.

States That Have Adopted the Uniform Probate Code

Alaska	Massachusetts	New Mexico
Arizona	Michigan	North Dakota
Colorado	Minnesota	Pennsylvania
Hawaii	Montana	South Carolina
Idaho	Nebraska	South Dakota
Maine	New Jersey	Utah

UNDERSTANDING PROBATE

Probate isn't inherently evil. Actually, it was created with the best of intentions—to make sure that, after people die, their assets get distributed according to their wills and that all of their creditors are paid.

A probate proceeding is a judicial process where a judge supervises the settling of an estate. Although the details of probate vary state by state, the overall process is similar:

- The decedent's will must be filed with the local court.
- Someone must be appointed as the legal representative of the estate. This person is called the "executor" or "personal representative"—they mean the same thing. This person starts the process by filing a petition asking to be appointed.
- If there's no will, and the estate requires a probate proceeding, someone files a petition with the court asking to be appointed as the legal representative of the estate, the legal representative is called the "administrator."
- The legal representative must give creditors notice of the death, which is done by publication in a local paper from a list supplied by the probate court.
- Once appointed, the personal representative must identify and value all of the decedent's property subject to the probate proceeding.
- The personal representative must make sure that all beneficiaries and heirs receive proper notice of the proceeding.
- The personal representative must make sure that all debts and taxes are paid from the estate.
- The probate ends with a court order distributing the property as set forth in the will.

If an estate is below a certain threshold, called a "small estates threshold," a formal probate proceeding isn't even necessary. Many states offer a way to transfer property using an affidavit—a simple document that states under penalty of perjury that an asset should be distributed to someone (usually a spouse or an heir). In other states, there's a simplified probate process that usually involves submitting a simple form to transfer property, not the full-blown probate summarized above.

Small estates can usually be settled outside of court and with minimal costs. The small estates limits vary greatly: In Indiana, estates with a value of $50,000 or less don't need to go through probate. In California, the threshold is $208,850 in 2026.

Example

When Gary's mother, Bernice, died at 93, her only asset was a checking account with a balance of $14,000. Her will left everything to Gary. Gary, the executor named in the will, brought a small estates affidavit to the bank, and the bank distributed the money to him. No probate was necessary to transfer the money.

How Long Does Probate Take and What Does It Cost?

Probate can take as little as two months or more than two years to complete. It's hard to predict, not only because states vary in the procedures that they use, but because all sorts of things can delay the completion of the process. Creating an accurate inventory of the decedent's assets can take a long time if the decedent didn't organize their affairs before they died. If families are in conflict, the process can stretch out for years and cost the estate thousands of dollars in attorney's fees.

In my experience practicing in California, it always took at least one year (and often two) for an executor to complete the process and receive a court order to distribute the assets. If you own property in more than one state, your estate may have to conduct probate proceedings in each of those states as well. Some states have streamlined and simplified the probate process, but no matter where you live, probate will certainly take at least a few months to complete.

The cost of probate varies widely, too. First, you'll most likely need to hire an attorney to help you through the process, because the rules of the process are complicated and can be arcane. In some states, like California, lawyers charge a percentage of the value of the probate estate; in other states, lawyers charge an hourly rate. There will be additional costs for court filings, appraisals, publication in a local newspaper, estate organization and cleaning, and notaries. It all adds up. The larger and more complex an estate is, the higher the fees are going to be.

Example 1

Joan and her sister inherited a house and a brokerage account from their mother, Grace. Together, the assets were worth $1 million. Grace lived in California, where attorneys charge a percentage of the value of the probate estate. Attorney's fees for that estate were $23,000.

Example 2

If Grace had lived in Minnesota, where attorneys charge on an hourly basis, the cost of the probate would most likely have been a lot less than $23,000. For a simple estate, a range of $3,500–$6,000 would be average.

Example 3

If Grace had lived in North Carolina, where attorneys charge on an hourly basis, the cost of the probate would range from $2,000 to $10,000.

Property and Assets That Must Go Through Probate

There's some good news here. Not all of your assets are subject to probate. Here's why: Probate exists to prevent fraud after someone dies. The idea is that the court steps in to make sure that the decedent's wishes, as expressed in the will, are respected and that their assets are identified and distributed to the proper people.

Assets that are held in a trust, have a beneficiary designation, or that pass to a surviving joint tenant are going to go to the right people because the property owner (the decedent) has signed binding legal contracts that already say that the assets go to them. Because we don't need a court order to make sure that the transfer happens, these assets don't go through probate.

Assets Outside of Probate

The first thing that I would do at an initial estate planning appointment was to draw a line down the middle of a piece of paper. On one side, I wrote "Probate," and on the other side I wrote "Not Probate." Most of my clients don't make that distinction. But it is important for estate planning. As I've just explained, judges don't need to supervise the distribution of the Not Probate side of the diagram. And wills and trusts don't distribute them. For those assets you'll need to make sure you've designated the right beneficiaries. Your will or trust is what you'll need to distribute the assets on the Probate side.

The most common examples of assets that *won't* be subject to probate include:

- **Assets in a living trust.** The main reason you create a living trust is to avoid probate for your assets on the Probate side of the list. In fact, the reason that I drew that line down the middle of the paper was to help my clients understand why they need a trust for the assets on the Probate side—these are the assets that would cost their heirs time and money to send through probate. (See Chapter 2 of course 40652B for details.)

Two Kinds of Assets	
Not Probate	**Probate**
Retirement assets	House
Life insurance/annuities	Investment accounts
Joint tenancy property	Bank accounts
Payable-on-death accounts	Tangible personal items
Transfer-on-death accounts	Partnerships, sole proprietorships
Transfer-on-death deeds	

- **IRAs, 401(k)s, and similar retirement accounts.** These accounts all have beneficiaries you've named on record with a plan administrator or an investment manager. Those beneficiaries will receive any money left in those plans when you die; normally, retirement assets are not distributed to your will or trust. (For details, see Chapter 1 of course 40656B.)
- **Life insurance policies.** The proceeds from a life insurance policy are often the major source of immediate cash for a surviving spouse or young children. (See Chapter 1 of course 40656B for details.)
- **Annuities.** Annuities are similar to life insurance policies (discussed in Chapter 1 of course 40656B). You sign a contract with a company in which you agree to deposit a certain amount of money, and the company agrees to pay that money back to you over a certain period. Sometimes the policies pay a benefit to survivors, and sometimes not.
- **Payable-on-death bank or transfer-on-death brokerage accounts.** You can fill out a form with the company that holds the accounts to make them "payable-on-death" (POD) accounts, or "transfer-on-death" (TOD) accounts, which means that they will pass to the person you designated, just like the retirement accounts with designated beneficiaries. (See Chapter 1 of course 40653B.)