

Of Counsel  
David A. Solitare

Law Offices of  
**MICHAEL N. BALIKIAN**  
A professional Law Corporation  
Suite 900  
21550 Oxnard Street  
Woodland Hills, California 91367

Telephone  
818-347-3700  
Facsimile  
818-346-9400  
E-Mail  
Mike@balikianlaw.com  
Web Address  
www.BalikianLaw.com

## **ESTATE PLANNING – SINCE YOU CAN'T TAKE IT WITH YOU**

I want control of my life and my 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.

### **WHY PLAN**

1. What Happens If You Do Not Plan:
  - (a) Title to your asset can dictate ownership
    - (1) Joint Tenancy – Not the best solution
      - (a) Child's creditors
      - (b) Loss of "step-up" in basis
    - (2) Beneficiary Designation
      - (a) Retirement Plans (IRAs, 401K, etc.).
      - (b) Life Insurance
  - (b) Probate
    - (1) The process by which the Court supervises the following process:
      - (a) Inventory and appraise assets
      - (b) Determine and pay creditors
      - (c) Distribute assets among beneficiaries
    - (2) Cost of Probate: 4-5% of gross estate (includes loans)

(3) Reasons to Avoid Probate:

- (a) Cost (4-5% of gross estate)
- (b) Time delay (18 months)
- (c) Loss of privacy (probate documents are open to public)
- (d) Inconvenience (beneficiaries will not receive assets until closed)

2. Traditional Planning Tools:

- (a) Do nothing – Probate - intestate succession
- (b) Beneficiary Designations (IRAs, 401K, etc.)
- (c) Joint Tenancy
- (d) Will – Probate – unlike “do nothing”, you can select beneficiaries
- (e) Living Trust

3. Tax Laws:

(a) Unlimited Marital Deduction – Unlimited property may pass between spouses – by gift or upon death, with no estate tax.

(b) Estate and Gift Tax Exemption (currently \$15,000,000). The following is a summary of the history of the Exemption:

1999	-	\$600,000
2000	-	\$675,000
2002	-	\$1,000,000
2004	-	\$1,500,000
2006	-	\$2,000,000
2009	-	\$3,500,000
2010	-	0
2011	-	\$5,000,000
2017	-	\$5,490,000
2019	-	\$11,400,000
2026	-	\$15,000,000

(c) Portability. Starting in 2010, if the first spouse to die gives his or her share of the estate to the surviving spouse (using the Unlimited Marital Deduction), the surviving spouse can now also claim the exemption of the first spouse to die, thus doubling his or her Estate Tax Exemption at his or her death. The exemption is now “portable”.

## TRUSTS

1. An agreement between the owner of assets (the “Trustor”) and the Trustee (the manager of the assets) to hold, administer and distribute the Trustor’s assets consistent with the Trustor’s desires.
  - (a) During the life of the Trustor, the Trustor will typically act as the Trustee.
  - (b) After the death of the Trustor, the Trustor designates a successor Trustee.
  - (c) The successor Trustee will be responsible to handle what would have occurred in probate (gather assets, pay creditors and distribute the assets to the named beneficiaries). The difference is it is not court supervised. This results in substantially reducing the time and expense to administer the estate.
  - (d) Benefits:
    - (1) Avoids the time and expense associated with probate.
    - (2) Simplifies administration of assets after death.
    - (3) You decide the following in advance:
      - (a) Who is to handle your affairs (the Trustee)
      - (b) Who is to receive your assets (the beneficiary)
      - (c) When they will receive the assets and with what conditions
      - (d) Can protect children from a prior marriage.
2. Examples:
  - (a) FACTS: husband and wife have combined estate of \$1.5 Million. Husband dies and through his Will leaves his assets to his wife. Then wife dies and leaves all of their assets to their children.

Probate cost: \$60,000
  - (b) FACTS: Same facts as (1) above, but a trust is utilized instead:

Probate cost: 0; Savings from prior example: approx. \$60,000!
  - (c) FACTS: husband and wife have combined estate of \$2.5 Million. Husband dies and in his Will leaves all of his assets to his wife; then wife dies with the estate still \$2.5 Million and in her Will leaves all assets to children.

Probate cost: \$80,000
  - (d) FACTS: Same fact as (3) above, but a trust is utilized instead.

Probate Cost: 0

3. Types of Trusts

- (a) Single person
- (b) AB Trust (children from prior marriage)
- (c) Disclaimer
- (d) Irrevocable (life Insurance)
- (e) Special Needs (for disabled beneficiary receiving governmental benefits)

4. Documents needed in typical family estate plan:

- (a) Trust
- (b) Will. Pour-over provisions; Guardians for minor children
- (c) Advance Health Care Directive
- (d) Asset Power of Attorney
- (e) Assignment
- (f) Deeds transferring title of real estate into the Trust

5. **CONCLUSION**

There are significant financial and non-financial reasons to make sure your estate plan is correct and up to date.