

ADVANCE DIRECTIVES, ESTATE PLANNING, AND LEGAL ISSUES

Attorney Rosemary Meagher-Leonard
Law Office of Rosemary Meagher-Leonard
4456 Florida Street
San Diego, CA 92116
(619) 295-8705
RosemaryLeonardLaw@gmail.com



Trust Basics: Terms and Definitions

- **Trust**
 - a management device for holding and managing property
- **Trustor/Settlor**
 - Person who creates the trust and whose property is used to fund the trust.
- **Beneficiary**
 - Person who benefits from the trust.
- **Funding**
 - the process of transferring title into the name of the trust.

Trust Basics: Types of Trusts

- Living Trust
 - Any Trust that is established, funded and in effect during the trustor's lifetime
- Testamentary Trust
 - A trust that is intended to take effect after the death of the one creating it
 - May be part of a will or included as a subtrust within a living trust

Revocable Trust

- Revocable during the lifetime of the trustor
- Becomes irrevocable when the trustor dies
- In most instances, the trustor is also the initial trustee and beneficiary of their own trust
- Spouses or domestic partners often establish a joint trust

Special Considerations: Minor Children

- A trust and/or will should contain nomination for guardian of the person and/or estate if there is a minor child or children
- The trustor decides how old the child should be to receive outright distribution
- If no provision, the court will have to decide who to appoint as guardian of the person and/or estate
- Therefore, nominations tend to avoid family conflict and ensure that your wishes are followed

Irrevocable Trust

- Not revocable once it is created
- Trustee for the irrevocable trust must be someone other than the grantor
- The most common reason is for Medicaid planning
- The trustor, trustee, or beneficiary can petition the Probate Court to amend or terminate the irrevocable trust for good cause

Irrevocable Insurance Trust

- A trust established during the lifetime of the insured for the purpose of owning a life insurance policy
- To increase liquidity of the trust estate or for tax purposes
- The trustee must be someone other than the trustor or the trustor's immediate family

Special Needs Trust

- Created for the benefit of an individual with special needs (physical, mental or emotional) who receives public benefits or who is anticipated to qualify for public benefits
- Public benefits include supplemental social security (SSI), Section 8 housing, Medi-Cal (California's Medicaid Program) and/or food stamps, and certain state/federal disability programs
- Beneficiary of a Special Needs Trust should also have his or her own trust or will for disposition of his or her estate after death

Special Needs Trust (Continued)

- Can be revoked by the trustor
- Trustee has authority to terminate SNT if Beneficiary is no longer disabled or if the funds remaining in the SNT can be distributed without disqualifying the beneficiary from his or her public benefits

3rd Person Special Needs Trust

- Funded with assets of a third party to benefit a special needs beneficiary
- Can be created to fund lifetime of the trustor or as part of decedent's estate plan by will or by trust
- Can be established for a special needs beneficiary of any age

1st Person Special Needs Trust

- When the special needs beneficiary has assets to shelter to maintain or establish eligibility for public benefits
- The most common source of funds that require this type of trust are those received from a lawsuit settlement or from an inheritance
- Can only be established by an individual if under 65 years of age.
- Can be self-established or established by a court order.

Pooled Income Trust

- A trust established and administered by a non-profit organization
- A separate account is established for each beneficiary of the trust, but for the purposes of investment and management of funds, the trust pools these accounts
- Can be self-established or established by a court order

Will

- A document that sets out the wishes of an individual (“testator”) for his or her estate upon his or her death
- Nominates an executor or an alternate executor
- Probated after death

California Statutory Fees & Commissions

- Both personal representative (executor or administrator) and the attorney representing the personal representative are each entitled to statutory fees.

- | Gross Value of Estate | Executor/Attorney |
|------------------------------|-------------------|
| \$425,000 first \$ 100,000 | \$8,000 |
| \$350,000 next \$ 100,000 | \$13,000 |
| \$275,000 next \$ 800,000 | \$18,000 |
| \$1,000,000 next \$9,000,000 | \$23,000 |
| \$1,250,000 | \$25,500 |
| \$1,500,000 | \$28,000 |
| \$2,000,000 | \$33,000 |

Pour-over Will

- Designed to work with a trust to avoid probate
- The language of this type of will “pours” any of the Trustor’s property that is not or cannot be titled into the trust and names the trust as the Beneficiary

Power of Attorney (Financial)

- Grants to a trusted individual (agent) the authority to transact financial, legal and other transactions on behalf of the granting individual when that individual is unavailable or incapacitated
- To be used during an individual's lifetime

Types of Powers of Attorney

- Non-Durable Power of Attorney
 - For a defined period of time only
- Durable Power of Attorney
 - In effect until revoked by the grantor
- Special or Limited Power of Attorney
 - For a certain transaction only
- Springing Power of Attorney
 - Goes into effect when a specific condition or event or date occurs

Advanced Health Directive

- Document by which an individual appoints another to act on their behalf with respect to medical decisions
- Takes effect when the granting individual is incapable of making his or her own medical decisions
- Includes the granting of individual's wishes as to end-of-life decisions

Questions?

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