

**ISSUE #25**  
**Summer 2009**



# estate planning today

## **Six Common Estate Planning Mistakes: Avoid These Financially and Emotionally Costly Errors**

### **MATSUMURA LAW FIRM**

Wills, Trusts, Probate  
And Estate Planning

*Michele Matsumura,  
Attorney, LL.M. (tax)*

### **Avoid Family Disputes and Loss of Assets By Addressing These Six Estate Planning Issues**

With daily life so hectic in the Bay Area, it is easy to overlook the bigger picture in caring for our family and our legacy. Unfortunately, we all are vulnerable to illness, incapacity and death. At these critical milestones, it is imperative that we leave clear and legally recognizable instructions to our loved ones so they can help us. Hopefully, your estate planning avoids the following common mistakes:

Will, nevertheless, will require probate. (For this reason, people establish trusts to avoid probate.)

**2. Not Having Powers of Attorney.** Many people mistakenly think that they do not need estate planning because they “do not have anything.” However, even if you do not own anything, you will still need estate planning to plan for your incapacity. If you would like your wishes to be carried out for medical care if you become incapacitated, then you will need a Power of Attorney. A Power of Attorney allows you to control your own medical treatment even if you cannot communicate to your doctors yourself. A Power of Attorney allows you to appoint an agent to carry out your wishes for you. (The medical Power of Attorney is critical to avoid situations such as Terri Schiavo’s in 2005.)

Besides medical wishes, separate Powers of Attorney are needed for asset management. Please note that even a spouse needs a Power of Attorney to grant authority to his or her spouse. The law does not automatically give a spouse the right to manage the other’s financial affairs. A properly-drafted Power of Attorney can help you avoid the expense and publicity of a conservatorship in the courts.

**1. Not Having a Will.** Every person over age 18, and especially anyone with minor children, should have a Will. Parents should have Wills to designate primary and alternate guardians of minor children. If you do not have a Will, then the California Probate Code (our politicians) will decide how your estate is settled. If you do not have a Will, then you rely on relatives and friends to come forward to “fight” to serve as guardian of your minor children. You will always be able to plan your own estate and choose your children’s guardians better than our legislators.

Even people who have revocable trusts still need a Will to catch any assets that may not be owned by your revocable trust at death. A Will made by a person who has a revocable trust is called a “pour-over” Will since it dictates that any assets not owned by the trust should be “poured-over” into the trust. Please note that the use of a

**3. Assets Not Property Owned By Your Revocable Trust.** In order for your trust to work as you intend, the trust needs to own your assets, i.e. be on title. The trust document can only control what the trust owns. A revocable trust will not avoid probate and will not avoid a conservatorship for you (and thus will not

5674 Stoneridge Drive  
Suite 202  
Pleasanton, CA 94588  
(next to the courthouse)

Tel | 925.218.8984  
Fax | 925.218.2372

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### Six Common Estate Planning Problems to Avoid (continued)

achieve your estate planning goals) if assets are outside of it. If assets outside the trust exceed \$100,000 or include any real property, a probate may be required. Your revocable trust should be funded immediately after it is established. Furthermore, any new non-retirement assets should be titled in the trust when opened or created. Additionally, title to real property should be re-examined after refinancing since many banks require properties to come out of the trust for lending purposes. After the refinance is complete, title should be restored to the trust.

### Estate Planning Can Remove A Family's Anguish Over Your Intentions for Money and Family

#### 4. Not Coordinating Your Beneficiary Designations With Your Estate Plan.

It is important to be aware of who the designated beneficiaries are of your life insurance, retirement accounts and annuities. These beneficiary designations have very important income and estate tax implications. Furthermore, designating a minor child as beneficiary (even a contingent beneficiary) should be avoided. When a revocable trust is created, it is crucial that the beneficiaries be reviewed and updated to coordinate with the overall plan. Updating a trust does not serve to automatically update beneficiary designations on life insurance and retirement accounts.

#### 5. Relying Upon Joint Tenancy.

Joint tenancy is commonly used by married couples and by parents and children. However, the title, "joint tenancy" carries with

it a bundle of legal consequences and these consequences are often misunderstood. A common scenario is a parent adding a child as a joint tenant on a bank account for convenience. This action can create a number of problems, including subjecting the account to the child's creditors or to divorce problems. It may also subject the account to substantial litigation if the beneficiaries of the estate or trust differ from the joint tenant. A better way to control assets and ensure that they are protected is through a trust.

**6. Waiting Too Long.** Estate planning is something that no one is very eager to prepare. It addresses difficult family and money issues that we usu-



ally side-step in daily living. Estate planning asks who in your family is the most reliable or financially organized, and may require spouses to identify family members whose values differ. Estate planning asks how well you get along with your parents and siblings. Uncomfortable as these questions may be, such discomfort is significantly outweighed by the regret of family members if planning is not done. Once a person passes away, his or her estate plan is set. If trusts for minor children were not previously memorialized via a revocable trust or if ex-spouses were not removed as beneficiaries of life insurance, family members anguish over the fact that "this was not what was intended". Timely planning avoids this regret.

**Conclusion.** Although planning addresses difficult issues, the reward is peace of mind for yourself and your family. ☺

**About Me & My Practice.** I graduated cum laude from the University of the Pacific in Stockton, CA. I received my law degree from UC Davis and graduated from Golden Gate School of Law with a Masters in Taxation. For the last 10 years, I have practiced exclusively in the area of estate planning, probate and trust administration. In my off hours, I support Pacific and Cal athletics, the SF Giants, the Sacramento Kings, and play (and watch ) tennis! ☺