

Life Planning Newsletter
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Long Beach CA, Carson City NV.
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Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests the effectiveness of your Estate Plan with actual California and Nevada Cases. We are particularly involved in Medicaid and Medi-Cal Estate planning. We create Special Needs Trusts and Estate Plans to ensure our clients meet the eligibility requirements, lower their share the cost expense, and reduce or eliminate the potential recovery by the State.

Our law firm integrates low cost Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

This newsletter is provided to our clients free of charge via e-mail and on line at www.jabusse.com

INSTRUCTION CORNER
Why a Pour Over Will?

A Pour over will is often drafted to compliment a Revocable Trust. Some find the pour-over-will confusing. Why is it needed? Does it have to be probated? Those are the two most common questions. The first is easy to answer; the second gets the regular lawyer's answer of "it depends."

To explain why a pour-over-will is needed to compliment a trust requires a brief explanation of a Revocable Trust . A revocable

Trust is nothing more than a bucket where you may place your stuff. If you do not place your stuff in the bucket by changing title, your stuff is not disposed of by the Trust. A pour-over-will fixes that by pouring over the forgotten or ignored stuff into the Trust. The operative language is usually something like; "All the assets I have that are not now in the Trust shall be distributed to the Trust." That way you only need to put your distribution scheme in the Trust.

A pour-over-will may need to be probated. It is a will and therefore is subject to the estate size requirements covered in the next section. If you have real property that is not in the trust, you will have to file a probate in the jurisdiction where the property is located. So, if you forgot to put your Washington Coast vacation condo in the Trust , you will have to probate that property under the laws of Washington and in the local Washington County Courthouse. Usually the probate of property to a trust is pretty simple and is done in the minimum time.

If you do not have a regular will or a pour-over will, that property not titled in the Trust will be disposed of as if you had neither a trust nor will. It will go to your intestate heirs as determined by the laws where the property is located. So if your trust excludes your wayward son and you forget to put your house in the trust by changing title to the house, your son would stand to inherit his share of the house no matter your intent to exclude him. The Pour-over-will is an easy way to fix that problem.

PLANNING BASICS – Estate Size & Probate

Estate size determines the procedure used to distribute the estate; That is, the Estate to

be disposed of by Will. There are many good reasons to use a Will and probate to dispose of your estate so don't run out and change your estate plan based on this information. See your attorney first.

One way your estate size is defined by Code is as follows: There are others and different states have different rules. but this is typical. California Probate Code 6600

(a) Subject to subdivision (b), for the purposes of this chapter, "decendent's estate" means all the decedent's personal property, wherever located, and all the decedent's real property located in this state.

(b) For the purposes of this chapter:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, shall be excluded in determining the estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, Pay on Death, "POD." payee, or beneficiary.

It can be a bit complicated and understand that neither exemptions (1) or (2) apply to the IRS estate tax law so see your attorney before moving things around to try and avoid probate.

Now for the rules. If the Estate is valued at \$20,000 or less it may be transferred by a simple "Small Estate Set Aside" procedure. This usually can be done within 60 days of the decedent's death. If the Estate has real property and is valued at \$100,000 or less it may be disposed of by a simplified probate procedure resulting in an Order Determining Succession taking around 2 1/2 months after the decedent's death. If the estate has no real property and is valued at \$100,000 or less it may be disposed of by a simplified procedure under California Probate Code 13100. The petition can be filed 40 days after the date of the decedent's death and takes around 7-30 days to process depending on the court's workload. Any estate valued over \$100,000 requires a full probate taking 6 or more months. Doing anything else puts the executor and the attorney doing the alternate procedure at risk.

The lesson here is that if you have a trust, you may want to be sure your assets not in the trust or otherwise disposed of, are valued at less than \$100,000.

NEW LAW

California implements new recovery rules.

On May 16, 2006 California Department of Health Services implemented Regulation 50961 directing:

The Department shall claim against the estate of a decedent, or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:

(1) All payments made by the Medi-Cal program on behalf of the decedent, except for those payments specified under subsection(c) that are not included in the claim; or,

(2) The decedent's equity interest in the property.

There are some specific rules, exceptions, and exclusions so you need to look at 50961 or see your attorney for a reading to see exactly how it applies to your situation.

50961(i) allows collection from irrevocably transferred life estates transferred after May 21, 2006.

The department now has proposed that section (i) be revoked. A public hearing is scheduled for August 2, 2006 meaning if the revision is adopted you will be able to irrevocably transfer out of your estate your real property and retain only a life estate, which limits MediCal Recovery. However right now the new law is in effect and Life Estates established after May 21, 2006 technically provide no recovery protection. More next time.....

To see how these new regulations may affect your Estate Plan, contact:

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