



ney that designates someone to manage your affairs if you become disabled or incapacitated. Other elements of the plan include up-to-date beneficiary-designation forms for assets such as bank accounts, insurance policies and retirement funds.

For any Californian with total assets of more than \$100,000, or real property worth more than \$30,000, such a plan is not enough. Even with a valid will, at those asset levels the estate would still go through probate, the court process that decides how possessions are allocated. Probate means time (often nine to 18 months) and fees for attorneys, appraisers, accountants and the probate court that can run into thousands of dollars, all paid out of the estate's assets. It also means your assets may not be distributed the way you would like them to be.

There are a few caveats, it's true: for example, assets like insurance policies that already have designated beneficiaries aren't counted in the \$100,000 for probate purposes. But in today's market, anyone who owns a home is a likely candidate for probate.

The only way to ensure your wishes are honored is for you to make the appropriate legal arrangements for asset distribution, and that means some form of a trust, most often a revocable living trust. Such trusts allow you to transfer ownership to yourself as trustee, with control over assets during your lifetime. You designate someone to take over as trustee at your death, when he or she then distributes property to family and friends based on your written instructions. Again, the major advantage of a trust over a will is the fact that it avoids probate, with its costly, time-consuming and public court proceedings.

"For most people, a living-trust-based estate plan makes sense," says Trudy Nearn, founding partner of Generations, a Sacramento estate and trust law firm. "I would advise clients to put a living trust

Death and Taxes

TO PRESERVE YOUR LIFE'S
WORK POSTMORTEM, DON'T
PUT OFF ESTATE PLANNING

by Sharon Frederick

Once upon a time, estate planning was for the ultra-wealthy, those who lived in palatial homes filled with expensive artwork and tended by a housekeeping staff. A relatively small percentage of the population had accumulated enough assets to be concerned about niceties like trusts or nuisances like estate taxes.

Today the story is far different. Millions of Americans have accumulated assets that demand more than a simple last will and testament — if, in fact, they want to preserve as many of their assets

as possible and control what happens to those assets after death. That is particularly true in states like California, where expensive real estate makes many home-owners automatic millionaires.

At its simplest, the lofty-sounding estate plan consists of a few relatively straightforward documents: a will that specifies what happens to your property, and if appropriate, appoints a guardian to care for minor children; an advanced healthcare directive that ensures your wishes are followed with regard to your own care; and a durable power of attor-

in place whether they have \$200,000 or \$200 million. If their estate is over \$2 million, then that changes how complex the living trust is because you might create other tools on top of that base structure to help minimize estate taxes.”

Jan Rosati agrees. As a partner in Sacramento-based Macias Gini & O’Connell, a certified public accounting and management consulting firm, he says 90 percent of his high-net-worth clients have revocable living trusts as the basis of their estates. As you might expect, says Rosati, “your estate plan gets more complex as your estate gets larger and your family situation gets more complicated.”

Speaking of family, be prepared for family considerations being the bulk of any discussion you have with an estate-planning professional, say both Rosati and Nearn. In fact, be wary of any adviser who focuses primarily on tax avoidance, ignoring family issues, which, says Nearn, are a “huge” part of estate planning.

Other common trusts include the so-called AB or bypass trust specifically designed to help married couples with large estates avoid both probate and estate tax. With an AB trust, property is left first to the surviving spouse in trust, with certain restrictions, and then to other family members.

Because the second spouse never legally owns the property, the estate won’t be taxed at that person’s death, allowing the full exemption to be applied as the estate is passed on to children or others. (Estate taxes are particularly tough to plan for these days since they are moving targets, with exemptions rising until 2010, when the tax vanishes — only to automatically take hold again in 2011, with an exemption of \$1 million, unless Congress reauthorizes the earlier changes.)

If a client has a multimillion-dollar estate, then taxes can be very substantial regardless of the use of such trusts. Maximizing gifts to charitable causes is frequently an approach to reducing the

tax burden. Trudy Nearn says an estate planner would “create tools that help clients transfer as much of their estate as possible to minimize estate taxes.” Based on the individual’s situation and values, that could include giving to charities during a person’s lifetime or using vehicles such as a charitable remainder trust or charitable gift annuity, both of which are based on making a gift to a charity and then getting some payments back during one’s lifetime.

“For most people, a living trust makes sense, whether they have \$200,000 or \$200 million.”

—Trudy Nearn,
founding partner, Generations



PHOTO: TIFFANY WEIGEL

Given the importance of estate plans generally and trusts specifically, one might assume that most people have at least basic plans in place. Yet estate planners say that often is not the case. Jan Rosati acknowledges that many of his high-net-worth clients come to him either with a poor estate plan or none at all.

“Just because you’ve accumulated wealth doesn’t mean you’ve done good estate planning,” he says. “Some people have done nothing; others did something 20 years ago and have never updated it.”

Why do so many people, even those with significant wealth, ignore estate planning? Carol O’Neill, vice president of wealth management at the Mechanics Bank in Walnut Creek, consults with business clients on estate and busi-

ness-succession planning. She sees two barriers that clients find difficult to overcome: time constraints and psychological issues.

“Many people are caught up in their everyday lives, especially if they’re running a business,” says O’Neill. “They see themselves as hale and hearty; they tell themselves they don’t have to worry too much because California is a community-property state.”

Still others have trouble dealing with mortality, O’Neill says. “I recall talking with clients, a couple, about the terms of a trust for their children, and the wife burst into tears, saying ‘I just can’t bear to think about what it would be like for my children to lose their mother.’”

The wake-up call that often gets people moving on an estate plan is the

death of a parent. “Either the parents’ estate has gone horribly wrong or very smoothly, and clients want to either avoid the first scenario or guarantee the second for their family,” says O’Neill. “Sometimes it’s even to stop the nagging of their accountant, who every year asks what they’ve done about estate planning!”

Once individuals decide to do an estate plan, they typically work with one or more of their existing financial advisers — a financial planner, accountant, insurance agent or banker — and then link up with an estate-planning attorney who actually drafts the legal documents. Either the client or a key adviser typically plays the quarterback role, lining up the team and coordinating its work.

As an independent financial planner and managing director of the Shah

When kin act like kindergartners

An estate plan can be workable from a legal perspective but pure disaster from a family perspective, say estate-planning professionals. Be wary of any planner who focuses primarily on tax strategies without spending time understanding family dynamics and issues.

“When all is said and done, what most clients want is for their families to be protected,” says Trudy Nearn, founding partner in Generations, an estate and trust law firm. And that doesn’t happen without an honest assessment of family relationships. Nearn spends most of a client’s first two-hour meeting hashing out family issues and giving blunt feedback on where problems may arise. Most common is for children to have a falling-out over money.

“During the grieving process, adult children tend to revert to childhood sibling relationships,” says Carol O’Neill, vice president of wealth management with the Mechanics Bank.

Nearn agrees with O’Neill that children may appear to be fighting over tangible personal property but “are not really fighting over those things. Instead, they’re fighting over old issues: ‘Your college cost \$100,000 and mine didn’t,’ ‘You’re the girl and you always got more,’ ‘Mom always gave you everything you wanted.’”

Sometimes there actually has been a tangible difference in treatment of children. Nearn gives the example of a family where one child is given or loaned a significant amount of money during the parents’ lifetime.

“If \$500,000 was given as a gift, that’s already used up part of the tax exemption for the estate, so the other children may end up paying more estate tax, plus they get shares of an estate reduced by that \$500,000.”

For these reasons, say both Nearn and O’Neill, there are often problems when one child is designated trustee of the estate. Nearn cites one case where the trustee wouldn’t allow

a California house to go to the one sibling living in California, so the entire family went to court over it. In another, the sibling who was executor simply refused to distribute the estate. Of course, going to court to force distribution was an option, but not a pleasant one for other family members.

Families where the parent divorces and remarries, with each partner bringing children to the new marriage, are also frequently problematic. “Blended families may get along just fine, but once parents pass away it’s a different story,” says Bob Daly, an executive with River City Bank. “I’ve seen situations in even the best of families that are not a pretty sight.”

Those problems are magnified when one or both partners own a business. For example, one spouse wants the other supported by income from the business, which is run by a child from the first family. After the first spouse’s death, the child may try to cut out the second spouse — or the surviving spouse may try to suck the business dry.

When children marry, yet another set of issues surfaces: the spendaholic daughter-in-law, the son-in-law with a substance-abuse problem, etc.

“People are very often worried about a child’s spouse and the prospect of their child losing part of the inheritance they’ve worked so hard to provide,” says Nearn.

What can be done to try to avoid such problems? According to estate planners, parents can pay attention to family dynamics and how they might play out after their deaths, then put very detailed instructions in their estate plan.

They can choose an estate planner who helps them ask all the questions they might not have thought about with regard to family issues — and then try to answer them honestly, with no sugarcoating. And they may need to avoid giving any child a role as a trustee in the estate.

Group in Sacramento, Cyril Shah begins the estate-planning process by identifying needs and issues, looking at the amount and type of assets, identifying different strategies for transferring assets, and finally implementing the plan with an estate-planning attorney.

“I usually see myself as the coordinator of all of the resources and relationships that a client already has, or bringing in others as needed,” says Shah.

Banking executives like Bob Daly, program manager in River City Bank’s financial services group in Sacramento, also often play the financial adviser role, whether working with an existing bank client or a referral, typically from a CPA.

“If it’s my client, then I start the ball rolling,” says Daly. “We review their assets and liabilities, their values and dreams, and then I give the client names of two or three estate-planning attorneys to contact so they can choose the person they can best work with. We have a group of attorneys who we know have a good understanding of the law, can communicate well and are reasonably priced ... that last factor is important to our clients.”

Even if the client starts the process with an estate-planning attorney, the plan itself is still a team effort, says Trudy Nearn — that is, if you want the best result.

“For example,” says Nearn, “I was working with a client to transfer a piece of real property to a family limited partnership and it was exactly the right kind of property for this purpose. But when I called his accountant, I found we couldn’t do it because the client was using losses on that property to offset gains in another business. My client didn’t think about it that way, so didn’t mention it to me. Frequently an accountant knows things the client might not think to tell me.”

Nearn acknowledges, though, that clients are sometimes reticent about connecting her with other advisers. “Someone will say, ‘No way I’m going to

pay you and my accountant to sit in a room together!’ But if the accountant and I spend an hour and a half meeting, we can save a lot of money and get a much better result than if we’re not coordinated.”

Thus, estate planning demands advisers who are team players. Says Carol O’Neill, “There is no place in estate planning for adverse relationships; for example, the CPA proposing one plan, the attorney another.”

Nor is there any place for poor communicators. If a planner can’t speak in understandable language, he or she is not a good planner. “If a client doesn’t understand a planner, it’s the failing of the planner,” says Nearn.

Communication is central because estate planning is such a personal process, says O’Neill. “A planner probably knows more about you than friends or family do. You must have a very high comfort level with the person, and you must feel you can ask them anything.”

Besides the right personal qualities, common sense dictates that an estate planner should have the right background and experience. Cyril Shah advises choosing someone who has advanced training in taxes as well as general estate planning, “a person with experience in asset protection.”

“Try to get a referral,” adds Jan Rosati. “Look for individuals who are active in the field; for example, participating in estate-planning professional activities.” When it comes to choosing an attorney to draft the legal documents, look for a specialist, not a sole practitioner who is a jack of all trades.

With your estate-planning team in place, the process should be relatively smooth — though not necessarily easy. The personal and family discussions and decisions involved in planning can be emotionally tough, but the result, say planners, is well worth the effort: an estate plan that protects your family and your assets and respects your wishes for the legacy you worked so hard to create. ©

Getting the best plan: advice from the experts

What are the most important points to keep in mind if you want to get a top-notch estate plan?

1. Do something now. Don’t put off dealing with estate plans because you are uncomfortable thinking about your death. Estate planning is so much more than simply arranging for disposition of property; it’s about your legacy, what you want to accomplish for your family and for charity. The longer you wait, the more limited your options may be.

2. Estate planning is a process, not a product. The law changes and your situation changes, and your estate plan needs to reflect that. Review and update your plan whenever you have a major change in your life, or every two years. An outdated plan using outdated economic data, can be downright dangerous, especially if you own a company.

3. Don’t let the tax tail wag the estate-planning dog. Yes, you want to minimize estate taxes, but more important are your personal objectives. Decide what those are and structure the plan accordingly.

4. Pay attention to details. Too often an estate plan is never completed because, for example, an individual never gets around to transferring certain assets into a trust.

5. An estate plan will impact many different individuals, most of them family members; make sure you have communicated with them — at whatever level is appropriate — so that they are not surprised by your decisions.

6. If you own a business, pay particular attention to addressing the issues of equity between a child who is in the business and one who is not. Also, make sure your estate plan is coordinated with your business-succession plan.