CREATING YOUR ESTATE PLAN

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We regularly see clients regarding their estate planning needs. When they come to see us, they assume that estate planning involves the drafting of a will or living trust. They are unaware that estate planning does not involve any one particular document, but a complete review of your situation in life — e.g., marriage, children, age, working or near retirement, wealth accumulated, etc. — to determine which of a wide range of estate planning tools you may need.

In this issue, we will discuss the will, one of the most common estate planning tools. Advertisements tout the benefits of estate planning, and particularly a living trust, as a method of avoiding probate. While in certain circumstances that may be true, and avoiding probate may be a laudable goal, not everyone needs a living trust. Most, however, would benefit from a will.

What is a Will?

A will is a written document that describes: who you want to administer your estate (that is, the wealth you have accumulated in life), known as the executor; if you have minor children, who you want to raise your children; and how you want your estate distributed.

Wills are available from a variety of sources: one you write by your own hand, known as a "holographic" will; one created from a commercially prepared computer program, such as "Quicken Family Lawyer"; a State Bar approved "form" will, available in many stationary stores; and those prepared by an attorney. Each has its benefits and detriments.

What is a Probate?

Upon death, the will is submitted to court for administration in an action known as a "Probate." The will is attached to the petition filed with the court. If the executor specified in the will is still living and is willing to assist in the administration of the will, then the court will approve the appointment of the executor, who will take the steps necessary to gather the assets of the estate and distribute them as specified in the

will. For this privilege, the executor will receive payment from the probate estate. The fee is a percentage of the amount of assets administered. There are also additional fees for attorneys hired by the estate and any "referee" retained to represent the estate. Other professionals (e.g., accountants, appraisers, auctioneers, etc.) may also need to be hired. They too are paid from the estate's assets.

What If I Do Not Have a Will?

If you pass on without a will, or if the will you have prepared is otherwise invalid, and you have assets to pass along, such as real and personal property and life insurance benefits, the Court, not you, will decide who gets what in a court action that is heard in the probate department of the court. The probate action, like one where a will is found, is initiated by an heir of the estate. The court will appoint someone to administer the estate, known as an administrator, who, like an executor, will see to it that an accounting of the assets is created and a distribution of assets is approved by the court. Like a probate, the court and all professionals will be paid from the assets of the estate. Thus, if you do not prepare a will, your heirs may not receive what you want them to from your estate.

Do I Need to Hire An Attorney?

Like most matters in which attorneys can be hired, whether you need an attorney depends on your unique needs. We believe, however, that because the cost of a will can be small when compared with the benefits you would receive from a properly prepared will, an attorney should be consulted so that you can make an informed decision.

To make the process of estate planning as beneficial as possible, whether merely to prepare a will, review an existing will or living trust, or to have a sophisticated estate plan prepared, you should be prepared to disclose your particular circumstances and needs, including: all of your children and their ages, whether you plan to assist your children with their finances as they grow older; your retirement plans; your assets, including the value of your real and personal property, available life insurance, etc.; your plans for charitable giving; your plans for who you want to administer your estate, or otherwise be authorized to sign checks on your behalf (i.e., to have "power of attorney"); important health care decisions, such as whether you want life saving care given in the event of a catastrophic injury to you; and any other information you

believe is pertinent. Most experienced attorneys will have a form that will help you with these difficult decisions.

From this information, your attorney will help you decide on whether you need a will, a living trust, or more.

William H. Coleman, a partner at Coleman & Horowitt, LLP, is the head of the firm's Estate Planning and Business Transactions Department. Mr. Coleman has over 20 years of experience in the estate planning field and is certified by the State Bar of California Board of Legal Specialization as a specialist in estate planning, probate and trust. If you have any questions about this article, or would like to meet with someone to discuss your estate planning needs, please call them at (559) 248-4820. They can also be reached by e-mail at info@ch-law.com

If you are a previous client or interested in the services William offered please contact Michael Dowling.

About the Firm:

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