



# Estate Planning Basics

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1. **What is estate planning?** Estate planning is the process of organizing your affairs in a manner which allows for an orderly transition at death and which accomplishes the following goals:

- a. Minimizes administrative costs and state and federal taxes
- b. Provides continuity in the management and transfer of assets
- c. Ensures the transfer of assets to intended beneficiaries
- d. Provides sufficient liquidity to pay liabilities and estate taxes

2. **Who needs estate planning?** You do. Regardless of your net worth, you should have a basic estate plan in place.

If your estate is small, your estate plan will govern who should serve as guardian of your minor children, who will receive your assets at death, who should manage your estate, pay your last debts and handle the distribution of your assets at death.

If your estate is large, an estate plan may provide ways of maximizing the transfer of your assets to your beneficiaries by reducing or postponing the amount of transfer taxes which otherwise might be payable at your death.

3. **What is included in an estate plan?** Generally, an estate plan will include the following documents:

- a. Revocable Living Trust
- b. Pour-over Will
- c. General Assignment
- d. Advance Health Care Directive
- e. Durable Power of Attorney for Financial Matters

4. **What is probate?** Probate is a court-supervised process in which your executor is required: to marshal all of your assets and liabilities; pay or otherwise provide for the payment of all your liabilities including all applicable taxes; and subsequently distribute your remaining assets to your beneficiaries in the manner which you direct. Since probate is a court-administered process, the executor will likely need to hire an attorney to ensure that the estate complies with all Probate Court procedures. Legal fees in probate cases are set by statute and are based upon the gross value of the decedent's assets.

5. **What are the differences between a Will and a Revocable Living Trust?**

A Will is a legal document that names the individuals you would like to receive your assets after death; nominates guardians for your minor children; and nominates an executor who will manage your estate, pay your debts, expenses and taxes, and distribute the remainder of your estate in accordance with the instructions you leave in your Will.

A Revocable Living Trust is a legal document you enter into with yourself (and your spouse) which will hold legal title to your assets during your life and allow you to accomplish the items addressed in the Will.

The principal differences between a Will and a Revocable Living Trust are as follows:

a. *The avoidance of probate.* A Will becomes effective upon death via a probate proceeding to administer the Will. A Revocable Living Trust is effective upon execution and its administration is done privately without court involvement. Because probate is a court proceeding, you will be required to adhere to the court's calendar which can take longer than the administration of a Revocable Living Trust. Any delays will affect when your beneficiaries receive distributions from your estate.

b. *No protection for incapacity.* Should you become incapacitated, a Will does not make provisions for who will manage your estate during the interim period after incapacity and before death. Whereas, a Revocable Living Trust will allow for you to appoint someone to step-in and make decisions on your behalf should you become unable to do so for yourself. Therefore, allowing for continuity in the management of your assets.

c. *No estate tax planning.* A Will only provides for the designation of beneficiaries, executors and guardians and does not provide for the reduction or postponement of transfer taxes. Whereas, certain mechanisms may be provided in a Revocable Living Trust to reduce or postpone gift tax, estate tax, and generation skipping transfer tax.

In summary, regardless of the size of your estate, you should have an estate plan. Whether your goal is to ensure that your loved ones are properly taken care of or to reduce the transfer taxes at death (which increases the assets ultimately transferred to your beneficiaries), an estate plan can accomplish these goals and more. For more information, please consult with an estate planning attorney.

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Nha Man is the daughter of Dr. Duc Chanh Phan and Mrs. Tuyetmai Phan. She was born in Nha Trang, Vietnam and immigrated to the United States with her parents in 1982. She grew up in Southern California where she graduated *cum laude* from the University of California, Irvine in 2000, receiving her B.A. in Political Science. She received her J.D. from the Pennsylvania State University's Dickinson School of Law in 2004; and her LL.M in Taxation from Northwestern University School of Law in 2007.

Nha Man is admitted to practice law in the State of California and is a member of the Beverly Hills Bar Association and Los Angeles County Bar Association, Trusts & Estates Sections.

Nha Man is currently an Associate in the Business and Tax Department at Silver & Freedman, APLC in Century City. Nha Man practices in the areas of tax, estate planning, probate, trust administration, and trust and estate litigation. She assists clients with all phases of estate planning and trust administration, including drafting and implementing the initial estate plan and closing the estate and distributing the assets. She focuses her trust and estate litigation practice on representing fiduciaries, beneficiaries, and other interested parties in estate, trust, and conservatorship litigation matters. Nha Man works with clients to minimize adverse tax consequences related to income, estate, gift and property taxes. In addition, she advises individuals concerning formation, compliance, and ongoing maintenance of tax-exempt entities.