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Attorneys: Common Mistakes and Little-Known Issues for Your Estate Plan

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Certified as a Specialist in Estate
Planning, Trust & Probate Law By The
State Bar of California Board of Legal
Specialization

San Bernardino County Bar Association

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Certified as a Specialist in Estate Planning, Trust and Probate Law by the State Bar of California Board of Legal Specialization

Admitted to Practice Law: November 20, 2000

R. Sam Price is an experienced and highly educated attorney who's passionate about helping others. Sam's exceptional talent is to make complicated legal jargon and court procedures, simple and easy for his clients to comprehend.

Sam is the managing attorney of the growing boutique law practice, Price Law Firm, APC, which focuses on probate, estate planning, and trust administration. He made such an impression on an author client that she based a character of a probate attorney on him, in her real-life novel entitled, "Battle of the Wills."

Sam chairs the Estate Planning and Probate Section of the San Bernardino County Bar Association where he organizes monthly educational presentations and an annual Probate Symposium. Sam is also a member of the Executive Committee of the Trusts & Estates Section of the California Lawyers Association.

When he's not working on a legal matter, Sam values time spent with his family; his British TV reporter wife, Tiffany, their six-year-old son; and their beagle, Poppy.

Why Am I an Estate Planning Attorney?

I believe in:

- providing for, protecting and helping my family
- passing down my family history, values, traditions, culture, memories, and even favorite meal recipes
- leaving a legacy to provide a better future for my child



What is Estate Planning About?

Putting someone in charge

Giving them some instructions

Giving them the power to act for you in an *emergency*

Without going to court

Planning to Avoid Going to Court

Conservatorship case if Incapacitated

- Expensive
- Lose your voice
- Ongoing court supervision

Probate case at Death

- Expensive
- Time consuming





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Planning for Incapacity During Your Lifetime

When Will You Stop Practicing Law?

What will trigger a transition event?

- ▶ Temporary or Permanent Physical or Mental Disability
 - ▶ Lack competence (“competence” to apply the mental, emotional, and physical ability reasonably necessary for the performance of legal services - Rules of Prof. Conduct Rule 1.1)
 - ▶ “a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:...(3) the lawyer’s mental or physical condition renders it unreasonably difficult to carry out the representation effectively.... ” (Rules Prof. Conduct, rule 1.16, subd. (a)(3))
- ▶ Suspension or Disbarment from the practice of law
- ▶ Becomes Inactive to Practice Law (can be appointment as a judge)
- ▶ Retirement
- ▶ Death

Attorney Incapacity Planning

Conservatorship Avoidance Documents

- ▶ Power of Attorney for Financial Decisions
- ▶ Advanced Health Care Directive for Medical Decisions
- ▶ HIPAA Waiver to Allow Disclosure of Your Private Healthcare Information

Attorney Specific Document

- ▶ Agreement for a Practice Administrator

Practice Administrator

- ▶ Agreement with another attorney for a Practice Administrator
- ▶ Allows another attorney to take over the practice

- ▶ Considerations:
 - ▶ Legal obligations to clients
 - ▶ Paying the bills of your practice
 - ▶ Only an attorney can access a client trust IOLTA account
 - ▶ Other Attorney in the same practice area
 - ▶ Does the other attorney have the time or resources to take on your practice?
 - ▶ Duty of Confidentiality (Rules of Prof. Conduct Rule 1.6)
 - ▶ Conflicts of interest (Rules of Prof. Conduct Rule 1.7)



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How Will Your Family Dynamics Impact Your Estate Plan?

The Most Common Married Estate Plan



Husband



Wife

Both of Us Living: Our money is ours to take care of us while we are both living



Widow

One of Us Has Passed: When one of us passes away, our money should go to the survivor of us



Daughter



Daughter



Son



Son

We Both Have Passed: When we are both gone, we want our money to be divided equitably among our children

Married Couples with Young Children



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What if something happens to you?

Who will your children live with?

Who handles their money?

Do you have any special instructions?

Children of Different Ages



Is there a big gap in the ages of your children?

Do your children have different needs?

Do you want to give all your children the same help?

Would your family benefit from a common pot trust?



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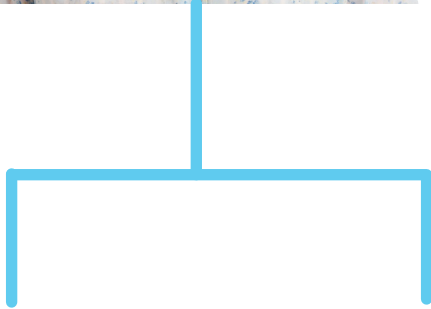
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Step-Children Do Not Inherit

How to treat your children and your step-children fairly?

What options are available?

What's best for your family?



Will Your Spouse Re-Marry After You Die?



You trust your spouse, but do you trust your spouse's future spouse?

Will your money go to your replacement?

Could your spouse be victimized?

Do you want protections to ensure your children will inherit?



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Avoid an Estate Planning Disaster

We Want to Give Money to Our Bloodline



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Our money and inheritance
should go to...

- Us while we're alive, especially if we are incapacitated
- If something happens to me, take care of my spouse
- Our children
- Our grandchildren

Our money and inheritance
should NOT go to...

- The government
- Taxes
- Probate Court costs
- Son-in-law or Daughter-in-law
- My children's creditors

Will You Protect Your Loved Ones from Losing Their Inheritance



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Your Inheritance Is a Big Pile of Cash

Most people think that the only option is to give money directly and outright to their loved ones

However, The problems with direct and outright distributions:

- You lose control after you give them the money
- They may spend it on stupid stuff
- Your son-in-law or daughter-in-law may get it
- What if you could have protected them?



He's Smart, But Will He Keep His Money?



David
Intelligent
Successful Career
High maintenance wife
Lawsuits from business



Daughter-in-law



Son



Is He Old Enough to Handle It All?



Jeff
Young
Has never handled
money before



Son or Grandson

Will Your Grandkids Get Their Money?



Jennie
Married
Young children



New Wife



Son-in-Law



Daughter



Grandchildren



Will She Keep Her Government Benefits?



Susan

Has special needs

Receives SSI

Medi-Cal pay health costs

IHSS pays for a caregiver



Daughter



Asset Protection Trusts for Your Loved Ones

- Don't give the inheritance directly to your beneficiaries
- Keep the funds held in a protective sub-trust with Spendthrift Clauses" (Probate Code §15300, et seq.) after you die for your beneficiaries
- Give the money to the right people at the right time, and keep out the wrong people
- Your beneficiary will have access to the money for their needs
- The sub-trust can pay bills for your beneficiary, instead of directly to your beneficiary, to save them from wasting it

Protections:

Living Trust



Asset
Protection
Trust

Spendthrift
Trust

Divorce
Protection
Trust

Special
Needs
Trust



DAVID
BETTER PROTECTED
Daughter-in-law
Forcing to Spend
Lawsuits

JEFF
BETTER PROTECTED
Spending the money
recklessly
Creditors/Bankruptcy

JENNIE
BETTER PROTECTED
Keeps assets separate
Makes sure grandkids
get their inheritance

SUSAN
BETTER PROTECTED
Keep Government Benefits
Still get inheritance



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What Assets Do You Own? How Will That Impact Your Estate Plan?

Asset Alignment

Funding the Trust Bucket



After you sign your trust documents, there is a second step

Fund your trust by transferring assets to your trust

- House
- Bank accounts
- Brokerage accounts
- Corporation / LLC / Partnership

Professional Corporations

- ▶ Allows for one owner, or multiple owners
 - ▶ However, only licensed attorneys can be an owner the professional law corporation
- ▶ Allows for Internal Revenue Code Subchapter S Election that allows for reduction of the Employment Tax
- ▶ Options for probate avoidance of professional corporation when only one spouse is an attorney:
 - ▶ Shareholder Agreement between multiple owners
 - ▶ Buy-sell agreement between the professional corporation and an owner with the proceeds going to the joint trust
 - ▶ Individual trust for the attorney spouse

Your Home, Rental Real Estate, Timeshare, and Land



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- #1 asset that puts an estate in probate
- If you own home or any other real estate in your name when you die, there must be a court order to transfer it to your heirs
- Joint tenancy doesn't always avoid probate
- Asset Alignment: Transfer your home to a trust to avoid probate



Never Transfer to Your Revocable Trust



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These assets should have a beneficiary named

But do you need to add protections?

Can the beneficiary be your revocable trust?

Do you need a separate retirement trust?

Should you use an irrevocable life insurance trust?

- Life Insurance
- Annuities
- Retirement Accounts

Is your potentially largest asset left unprotected by your Living Trust?



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Retirement Plans

IRA

Roth

TSP



401k

403b

457b

Benefits of an IRA Inheritance Trust



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The Issue: Undistributed funds in an Inherited IRA offer no protections for the Beneficiary. *Clark v. Rameker*, 573 U.S. 122, 134 S.Ct. 2242 (2014) (9-0 U.S. Supreme Court Decision!)

Protection: A Retirement Trust protects your beneficiary from divorce, lawsuits, creditors and bankruptcy

Accumulation Trust: The Retirement Trust is designed to be an accumulation trust that can accumulate income

Taxation: With Beneficiary Deemed Owner Trust provisions, the beneficiaries are taxed on the Inherited IRA distributions, even though the funds are accumulated in the Retirement Trust



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Do I Need an Ongoing Relationship With an Estate Planning Attorney?

Will Your Estate Plan be Properly Maintained and Serviced?

Biggest Area Where Other Trust Plans FAIL!

Over Time:

- Your Family Will Change with Births, Deaths and Divorces
 - Your Assets Will Change
- Your Goals and Wishes Will Change

Regular checkups for your estate plan must become a habit





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What About Asset Protection?

Asset Protection For Your House



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California's Automatic Homestead

- Protects up to \$600,000 of the equity of your primary residence
- Only if you are forced to sell your home
- You are not protected if you voluntarily sell your home

Declared Homestead

- Protects up to \$600,000 of the equity of your primary residence
- If you are forced to sell your home
- You are not protected if you are forced to sell your home or if you voluntarily sell your home
- You must reinvest the sales proceeds in another primary residence



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How Can I Avoid Capital Gains Tax?

Avoiding Capital Gains Tax

Step Up in Basis for Individuals

Event	Purchase Price	FMV	Tax Basis	Sales Price	Gain
During Life	\$300,000	\$900,000	\$300,000	\$900,000	\$600,000
Lifetime Gift	\$300,000	\$900,000	\$300,000	\$900,000	\$600,000
Inheritance	\$300,000	\$900,000	\$900,000	\$900,000	\$0

Step Up in Basis For Married Couples

Event	Purchase Price	FMV	Tax Basis	Sales Price	Gain
Joint Lifetime	\$300,000	\$900,000	H \$150,000 + W \$150,000	\$900,000	\$600,000
Joint Tenancy - Husband Dies	\$300,000	\$900,000	H \$450,000 + W \$150,000	\$900,000	\$300,000
Community Property - Husband Dies	\$300,000	\$900,000	W \$900,000	\$900,000	\$0

And Enjoy Perhaps
the Greatest Benefit:



PEACE OF MIND

Knowing that you and your loved ones are Protected

Questions?



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