PLANNING YOUR ESTATE

INDIVIDUAL EDITION

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This Guide is designed to provide you with a summary background in the law and related issues involved in estate planning. Following the Guide is a form for you to complete with information that I will use to prepare your estate plan documents.

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USING THIS GUIDE

As a part of the Estate Plan package you have requested, I am pleased to offer to you the following Guide which I ask you to read first. Some sections may not apply to you so feel free to skip them.

I discuss each of the estate planning documents offered for your use. After the end of this Guide is a form that I ask you to complete with your personal information and choices for your estate plan. Instructions for using the form appear at the beginning of the form.

Always feel free to call or email me with any questions regarding the Guide or the use of the form. If you would prefer to have me send you a printed copy of either the Guide or the form please call or email me.

This Guide is easily searchable. Simply use the "Find" feature to go to any word or topic of your choice. Once you have read this Guide go to the form at the end and fill it in to the best of your ability.

Contents (click a title to go to it):

USING THIS GUIDE 3

Premarital Agreements, Cohabitation agreements/pre-registration agreements 4

PROBATE: AVOID OR NOT? 5

FORMS OF OWNERSHIP AND BASIC LEGAL PRINCIPLES YOU SHOULD KNOW 7

REVOCABLE (LIVING) TRUST 12

THE WILL 27

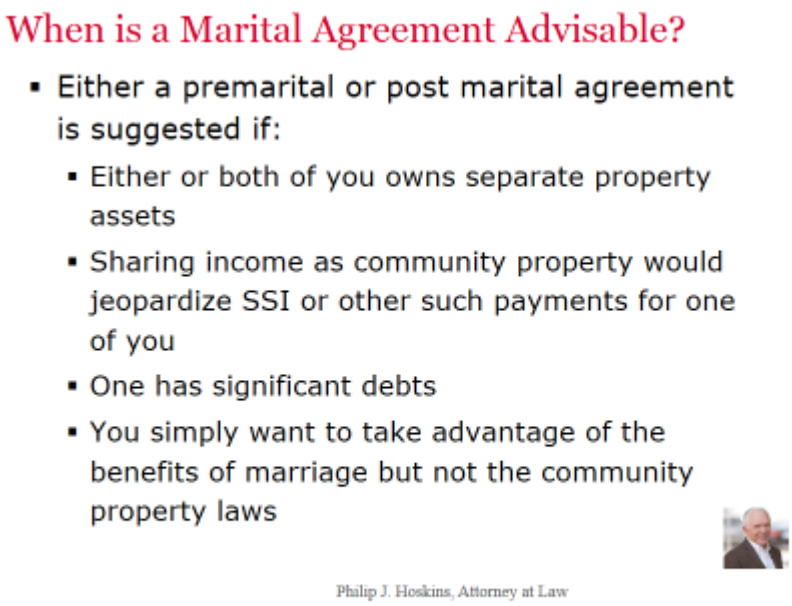
ADVANCE HEALTH DIRECTIVE 32

DURABLE POWER OF ATTORNEY FOR Property MATTERS 37

AFTER DEATH 44

SIGNING YOUR DOCUMENTS 45

PREMARITAL AGREEMENTS, COHABITATION AGREEMENTS/PRE-REGISTRATION AGREEMENTS



Clarify your decisions and agreements to help you each make appropriate decisions regarding savings, career goals/plans, sharing of assets and debts, property purchases/residential decisions. Act consistently to make sure the "paper" reality is consistent with the heartfelt reality!

Couples should consider whether California Family Law is a good fit for your particular relationship. Often it is not and modifications can be made through Agreements, either before or during a Domestic Partnership.

I can help you either prepare or review such an Agreement at affordable rates. Give me a call (310-209-8080) or an email to get started or discuss your options.

PROBATE: AVOID OR NOT?

You may have noticed that there are a number of attorneys advertising ways to avoid probate. If you don't know what that is about, consider the following:

WHAT IS PROBATE?

Probate refers to a court proceeding which requires the filing of numerous forms and documents and is meticulously supervised by the courts. The probate of an estate will usually last more than six months and may take years. During that time, property you owned together will be tied up and you may have restricted or no access to important funds and accounts. The sale of property may be complicated by the need for court approval of the terms of sale.

PROBATE CAN BE EXPENSIVE

Both the executor and the attorney for the estate are entitled to be paid fees for their work during a probate. While their fees are regulated by the state, they can be considerable and unnecessary.

The table on the next page sets forth the statutory fee schedule for the Executor of the estate *and* the attorney for the estate. A fairly modest estate of a home, automobile, furniture and IRA or pension, can easily reach $200,000 in value. The probate fees for each the executor and the attorney will be $5,150 if there are no complications, for a total cost to the estate (*i.e.* the heirs) of at least $10,300.00!

GROSS VALUE OF ESTATE	PROBATE FEES
Up to $100,000	4% of value
Next $100,000	3% of value
Next $800,000	2% of value
Next $15 million	1% of value

SHOULD I AVOID PROBATE?

The answer to that question in many situations is probably yes. Exceptions would be where there would be some value in having a court oversee the process of distribution of your estate, such as where there is a question of competence or whether your wishes will be carried out. If you have questions about this decision, discuss it with me.

Some of the effective ways of avoiding probate of an estate are discussed below. If your property fits in any of the following categories, you may be able to avoid probate in these specific situations under California law**:**

ESTATES OF LESS THAN $150,000

If your estate is below $150,000 and there is no real estate, there is a simplified procedure for handling the estate after death. Automobiles do not count in the $150,000 limit and there are several other exclusions that make this a useful approach for many people. There is an affidavit (California Probate Code §13100) to complete and much of your property can be transferred in this way.

REAL PROPERTY LESS THAN $50,000

If your real property is worth less than $50,000, it may avoid probate and can be transferred by a "Affidavit Re Real Property of Small Value" (California Probate Code §13200) (This is NOT a state printed form).

MOTOR VEHICLES

A simple, non-probate procedure is available to transfer title to automobiles and registered boats in California, but there can be a 40 day delay.

Where there is no other property that needs to be probated, a person named in a Will or an heir of a deceased person can complete a declaration and submit it to the Department of Motor Vehicles in order to transfer title to a registered motor vehicle from the deceased to themselves.

This same method is used when the vehicle was transferred to a Revocable trust. A form for this purpose is available from the DMV. You will have to present the registration form as well.

FORMS OF OWNERSHIP AND BASIC LEGAL PRINCIPLES YOU SHOULD KNOW

Following are some basic legal principles for your review and background information. While some of this information may have no application to you now, please at least skim through to see if any topic grabs your attention. I urge you to keep this Guide in your library for handy reference in the future, when you may need some of the information that does not apply today.

SOLE OWNERSHIP

When title to property is in one person's name, the law regards that person as the sole owner. Any other person claiming rights to that property has a steep uphill battle to establish such a claim.

The named owner has the exclusive rights to sell or transfer the property. Upon the death of the named owner, it will pass to the people named in the owner's Will or, in the absence of a Will, to the owner's heirs. Any tax deductions related to the property will be limited to the named owner.

Where the two of you pool your income and purchase an item with money from that common fund, you should make certain that any document relating to the item of property reflects your dual ownership. It is unwise to depend upon private assurances between the two of you that are different from the written statements of ownership. Don't rely on verbal statements or your "understanding" or assumptions.

JOINT OWNERSHIP (JOINT TENANCY)

When you own items of property jointly, it is called a joint tenancy. This is a unique form of ownership and can be a useful tool of financial planning, but must be approached with caution.

A sample phrase that is used in joint tenancy situations is:

"Mary Brown and Christopher Hodges, as joint tenants with right of survival."

RIGHTS OF JOINT TENANTS

Each joint tenant enjoys complete and full rights of ownership. Either can sell the entire property without the permission of the other (although you will find few buyers willing to take the risk), even though you would both be entitled to share equally in the proceeds of the sale.

You own what is known as an "undivided joint interest" which gives you extensive

rights to occupancy and decision-making regarding the property. Either one of you could occupy the property to the exclusion of the other.

You cannot pass your joint ownership interest by Will. Since this is even more extensive than the rights married couples have in their community property, joint tenancy is to be entered into only after considering all its ramifications.

OBLIGATIONS OF JOINT TENANTS

Each joint tenant is fully liable for any debts secured by or connected to jointly owned property, whether he or she had anything to do with the creation of the liability or not. Each joint tenant is responsible for the maintenance of the item of property, whether the other one contributes or not. As far as the law is concerned, joint tenants are considered to be one person and completely interchangeable for most purposes regarding liability to the outside world.

INHERITANCE FOR JOINT OWNERS

On the death of one joint tenant, her or his interest immediately ceases to exist. Therefore, the surviving joint tenant is the only owner. That means that one joint tenant cannot will his or her interest to someone. There is nothing to pass by Will.

This is one of the major features of joint tenancy from an estate planning perspective. Since title to the interest of the deceased joint owner passes by law to the surviving joint owner, there is no need to put the property through probate. This will save you probate fees and possibly attorneys' fees as well.

Upon the death of one joint tenant in real property, the survivor merely needs to file a declaration and record it to transfer title in most states. If you have a joint bank account, the survivor is entitled to immediate and uninterrupted use of the account, although banks will require you to complete a form when one joint tenant dies.

TAXES WITH JOINT OWNERSHIP

Upon the sale of jointly owned property, each of you will be responsible for income taxes on any resulting net income. Each of you is fully obligated for any property taxes connected with the property. If you are subject to inheritance taxes (if the gross value of your estate is in excess of the exclusion amount), you should seek the advice of a tax professional regarding the taxation of jointly owned property.

Upon the death of a joint tenant, the IRS may assume that the entire value of the jointly owned property should be included in the taxable estate of the decedent. This assumption can be rebutted by showing that the survivor paid for part or all of the property.

OTHER SPECIAL ISSUES WITH JOINT OWNERSHIP

One of the features of joint ownership is that either joint owner can end it. A joint owner can convert title to the property to tenancy in common by recording a deed transferring title from oneself as a joint tenant to oneself as a tenant in common under the law in California and some other states. You should seek legal advice in this regard if the need arises.

The advantage of this is that if the two of you wish to end your relationship but retain ownership in the property, either of you can protect your rights by recording a deed. Each of you would then be equal co-tenants and could, for practical purposes, control the sale of the property as well as limit your liability with respect to the property.

TENANTS IN COMMON

If the two of you are unmarried or not Domestic Partners, and want to establish shared property rights, tenancy in common is probably your best bet. When you own property as tenants in common, you can establish your respective rights as either equal or unequal. For example, if one of you earns twice as much as the other, you may want to reflect this fact in how you own your assets.

You can place title to real or personal property items in both names to result in equal ownership rights as follows:

> "John Jones and Bruce Williams as tenants in common"

Or, you can specify ownership shares, as follows:

> "John Jones as to an undivided ¾ interest and Bruce Williams as to an undivided ¼ interest, as tenants in common"

Such flexibility is often important as a way of expressing your financial relationship. Marriage laws of states such as California, by contrast, automatically provide for equal ownership between spouses.

RIGHTS OF TENANTS IN COMMON

Each owner can dispose of his or her ownership interest in the property by Will.

Each owner of a tenancy in common has the right to occupy and use the item of property. This right does not permit the exclusion of the other tenant in common, however. Neither owner can force the other to sell the property except through a court order. However, either owner can sell his or her rights in the property without the approval of the other.

Absent a Will, an owner's interest will pass by law to their heirs under the law, which usually does not include the co-owner (a good reason why you will want to complete your own Will and/or Living Trust).

OBLIGATIONS OF TENANTS IN COMMON

Each tenant in common is responsible for liabilities connected with the property to the extent of their ownership interest. For example, where you buy a house or condo and take title as tenants in common, a ¾ interest to one and a ¼ interest to the other, claims against you, as owner of the property will reflect the same ratio. Of course, if you sign for a debt related to the property, whatever terms are specified in that document prevail.

For practical purposes, however, remember that if one of you defaults on a secured debt, the other is going to have to find a way to pay both shares if she or he wants to maintain ownership of the property that secures the debt. As a result of paying more than your share, there may be rights of repayment between you, but as far as your lender is concerned, they just want the payments.

Should there be a loss connected with the item of property, such as an injury for which the property owners are liable, both of you will be liable for the loss to the same extent that you hold ownership rights.

Personal liability is different, as, for example, where you drive a car owned by both of you—you are personally liable for the full amount of damages caused by your accidents. Both of you also may have liability in that case as owners of the car, to the extent of your ownership interest.

INHERITANCE BY CO-TENANTS

As indicated above, one tenant in common has no rights of inheritance in the interest of the other tenant in common (co-tenant). Where you own an item of property as co-tenants and you want your interest to go to your partner upon your death, you will need to take care of that in your Will or Living Trust.

TAXES AMONG CO-TENANTS

Any income earned in connection with property owned by co-tenants, such as on the sale of the property, will be subject to income tax in proportion to the respective ownership interests. Income generated as a result of personal effort, however, will be taxed entirely to the person expending the effort. If you are in doubt about any of this or wonder how it might apply to you, your best bet is to see a tax or legal professional.

Property taxes are apportioned in the same ratio as the ownership interest, although once again, both will want to make sure the full taxes are paid to protect your interest.

JOINT TENANCY VS. TENANCY IN COMMON

JOINT TENANCY

- Immediate transfer upon death
- IRS presumes survivor paid for it all. To disprove this you would need documentation.
- There is "basis" increase on deceased's portion only to extent he or she paid for the property
- If couple owns jointly and separates, property may pass to wrong person

TENANCY IN COMMON

- Each owns their share
- Each can give their share on death as they desire
- Tax basis increase on death for portion owned by deceased owner
- If couple separates, each has legal right to pass their share to who they wish

REVOCABLE (LIVING) TRUST

The Revocable Trust is a basic tool for modern estate planning. By using one, you can manage your assets during your life and pass them on at death without need of a court supervised, lengthy and expensive probate proceeding. Since Revocable Trusts can be complicated, you will probably not want to use this tool unless the nature of your assets makes it worthwhile. If your estate will be growing, it may be wise to create a Revocable Trust even when you have a small estate at the moment.

HOW DOES IT WORK?

The participants in a trust are:

1. a *settlor* or *trustor*, who is the person who creates the trust and transfers property to it,
2. a *trustee*, or the person who receives the things and acts on behalf of the settlor, and
3. a *beneficiary*, who is the person who benefits from the terms of the trust.

California state law imposes many terms and conditions under which the trustee must act with regard to the trust property. Others are provided by the document that creates the trust. The trustee is bound to follow both the conditions imposed by law and those in the trust document.

Foremost among the terms provided by law is that a trustee is a fiduciary, or a person who has a high standard of conduct and must act only for the benefit of the intentions of the settlor. This is also the standard with which married people must treat each other under some state laws, such as California.

The title "Revocable Trust" is used to refer to a trust that is set up to circumvent the problems inherent in probate proceedings and allow for estate planning and tax saving.

Revocable Trusts usually contain instructions for managing the property placed in the trust during the lives of the trustees and also provides for what will happen when each dies. In this sense, it replaces most of the function of a Will (I suggest, however, that you have a Will in addition to a Revocable Trust).

The settlor, or person who creates the trust, place some or all of their property into the trust. That means you transfer title to those items to a trustee to manage the property according to the instructions in the trust document.

In the case of a Revocable Trust, the settlor(s) are almost always also the trustee(s) and the primary beneficiaries. The law, in its almost mystical wisdom, allows you to split yourself up in this way—you can be a settlor, trustee and beneficiary all at the same time.

SHOULD YOU USE A REVOCABLE TRUST?

As you may know, there are differing points of view about whether the Revocable Trust mechanism is for the average person. A common concern is the sometimes-complex steps necessary to transfer assets to the Revocable Trust and transfer them back out if you decide to terminate the trust. This is a valid concern and only you can make that determination.

There are some situations in which it is not wise to avoid the supervision over the distribution of assets that is available in a probate proceeding. The estate might be more complex than your alternate trustee is capable of handling without assistance, for example.

In general, I am of the view that a Revocable Trust is appropriate for any situation where there is a desire to avoid probate **and** there is a person or institution upon which you can rely to carry out your instructions. The reason that use of a Revocable Trust is a way to avoid probate is that for purposes of probate law, any property owned by the trust is not in your estate. Therefore, it is not subject to the probate laws.

REVOCABLE TRUSTS

"Revocable" means that your Revocable Trust can be changed, amended or ended at any time during your life, so long as you are mentally and physically capable of doing so.

You may want to add a provision making the trust irrevocable if you become incapacitated. In this way, your alternate trustee will not be able to change the terms of the trust when you are no longer able to overrule them. Almost always a trust becomes irrevocable upon your death.

Making a trust irrevocable from the start or at a later date other than death has consequences that may be unexpected and undesirable. It may appear today to be a good idea, but later in life circumstances may change dramatically and the inability to alter the terms of the trust may then be a big problem.

Please discuss this with me if you have any questions.

TRANSFERRING ASSETS

You will need to transfer title of assets you presently own to the trust in the same way that you would transfer title in a sale.

For real property that means a deed; for a car a pink slip, etc. For many assets, such as furnishings, artwork, etc., you do not need to do anything more than list the items on the appropriate pages of your Revocable Trust document and they are considered transferred when you sign the Revocable Trust.

Since most people have a mortgage on their real property, your home for example,

transferring title from you as individuals to a trust will affect your lender since the person who borrowed the money secured by your property (you) will no longer own it (your trustee will). You should contact your lender to determine their attitude toward transfers to your Revocable Trust. Almost all now will permit such a transfer without charging points or requiring a new loan. The normal procedure is for you to create your trust, transfer the property by deed and *then* submit a request to transfer the mortgage to the trust as well on forms they provide.

If your mortgage lender gives you any resistance, please contact me.

The same goes for things like a pink slip if you have a loan against the car. The transfer to the trust is legally effective when you sign the document of title in most cases, allowing you to record it at a later time. There are some situations, however, where this is not the case and I urge you to discuss this matter with me if this situation confronts you.

Of course, if you apply for a new loan against the property, you should disclose the existence of the trust and the transfer of title to it. Please discuss any anticipated issues and problems with me.

At the end of the Revocable Trust I produce for you, there will be a page or pages listing the assets that are transferred to your Revocable Trust. **First, be aware that this statement does not replace the need for a separate document transferring any asset that has a document of title connected with it**.

In addition, unless you state otherwise, I will prepare for you a simple document that transfers your personal property, which typically has not document of title, to the trust.

WHAT ABOUT NEW ASSETS PURCHASED AFTER THE TRUST IS FORMED?

After you have established your Revocable Trust, you will need to take title to newly acquired assets in a very special way. You will no longer take title to a house or other real property as "John Jones", but you should always take title to any property or asset that has a document of title as:

"John Jones, Trustee of the John Jones Revocable Trust"

All assets you acquire that have a document that shows you are the owner must reflect this new form of title. For example, when you buy a new car, open a new bank account or purchase stocks, all the documents should show your ownership in the above form.

Occasionally the lender will require that you first take title in your individual name and then transfer the property to your trust. This is an extra step that requires diligence on your part.

DEBTS AND REVOCABLE TRUSTS

A Revocable Trust **does not** protect your assets from the reach of creditors. Anyone to whom you owe money is entitled under California law to enforce that debt against assets you hold in a Revocable Trust to the same extent as though there was no Revocable Trust.

There are special provisions that can provide limited protection of assets in Revocable Trusts, such as "spendthrift" provisions and "special needs trust". You should discuss this with me in this regard if appropriate.

ESTATE TAXES AND REVOCABLE TRUSTS

The use of a Revocable Trust does not, by itself, alter the liability for estate and gift taxes. Even though for purposes of probate any property held by your trust is not in your estate and is therefore not subject to the requirement of probate law, for purposes of tax laws, it is still your property. Therefore, the value of any property held in a Revocable Trust is included in the taxable estate, both for gift and death tax purposes.

There are a number of techniques that can be utilized to minimize or even eliminate estate tax liability, and if this is of concern to you, I ask that you discuss it further with me.

TAX RETURNS

Ordinarily, there is no need to file a separate tax return for your Revocable Trust. Of course, if property transferred to the trust earns income, you must report that income on someone's return. In most situations, this will be the tax return of the person who owned the property prior to transferring it to the trust. If you have questions about this, please consult your tax advisor.

REVOCABLE TRUST ISSUES

You can either use your name or any other designation as the name of your Revocable Trust. In order to make it easy to avoid transfer taxes and encourage banks and other institutions to honor your instructions transferring assets to your trust, you may want to include your name in the trust title.

Where you give a specific piece of property, unless you provide otherwise, any debts connected with that item of property will have to be paid by the person receiving that property. For example, if you give someone a car that is not yet paid for, they would have to make the remaining payments. If you want to have the estate to pay off the debt, you must say so in your Revocable Trust.

In making a distribution of the remainder, you can name one person or organization or several in shares. If you name one person or organization as the primary beneficiary, it is important to also name an alternate. If you have named several people or

organizations as the primary beneficiaries of the remainder, you can omit naming an alternate.

TRANSFERRING ASSETS TO YOUR TRUST

WARNING REGARDING TRANSFERRING ASSETS TO YOUR TRUST.

YOUR TRUST IS ONLY AS EFFECTIVE AS THE STEPS TAKEN TO TRANSFER ASSETS TO IT. IF AN ASSET IS NOT TRANSFERRED TO YOUR TRUST THE PROVISIONS OF YOUR TRUST DO NOT APPLY TO THAT ASSET AND IT MAY BE SUBJECT TO PROBATE.

Please take this warning seriously. Many a person has taken the trouble and expense to create a Revocable Trust but then forgot to transfer their assets to it. With this additional step, the trust is of no value.

Remember, if there is a piece of paper that says who owns a particular asset, there has to be a new piece of paper saying that the trust owns it after the trust is created. Actually, the title is in the name of the trustee of the trust. For example:

John Jones, trustee of the John Jones Revocable Trust

Once the property is transferred to the trust, you do not need to create a new document simply because the trustee changes. Once transferred, the successor trustee will have ownership for the trust.

Deeds are required to convey interests in real estate to your Revocable Trust. In the future, should you acquire any additional real estate, you should title such real estate in the name of your Revocable Trust. You should obtain the assistance of an out-of-state attorney to transfer any non-California real estate into the Revocable Trust.

If any property being transferred to your Revocable Trust is held in joint tenancy even though it was originally purchased with community property funds, it will be necessary to prepare two deeds to transfer the property to your Revocable Trust. The first deed will convey the property from joint tenancy to community property in order to establish it as community property in the County Recorder's records. The second deed will then convey the property to your Revocable Trust.

Transfers of property to your Revocable Trust will not cause the property to be reassessed. However, you must complete a "Preliminary Change in Ownership Report" and send it to the County Recorder along with each deed you record. These reports are required in order to avoid penalties. I will prepare one of these forms for each of the deeds which transfers property to your Revocable Trust. After the deed transferring your home to your Revocable Trust has been recorded, you should expect to receive an

application for homeowner's exemption in the mail. You should complete this form and return it to the assessor's office to preserve your homestead exemption.

TITLE INSURANCE

With regard to each piece of real estate you transfer to your Revocable Trust, you may want to review the title insurance policy associated with each such property to determine whether title coverage will continue after the property has been transferred to your Revocable Trust and subsequently, after your Revocable Trust terminates and the property is distributed to your beneficiaries (or to trusts for their benefit). To obtain coverage, it may be necessary secure an endorsement from the title insurance company, and an additional premium may be required. You should contact the title insurance company to determine whether any additional steps are necessary.

CASUALTY AND PROPERTY INSURANCE

With regard to casualty and property insurance, you should consult with your insurance agent to make certain that transferring your personal property into your Revocable Trust will not result in a business rating on your insurance policy causing an increase in your insurance premium. Also, you should ask your agent if your policies need to be amended to include and cover your Revocable Trust and all of its property. Sometimes this can be accomplished by adding your Revocable Trust as an additional insured to your policy, and for automobiles owned by the Revocable Trust, listing you as an insured driver.

MORTGAGED PROPERTY

With regard to any mortgaged property, Federal law generally prohibits your lender or the holder of the mortgage from enforcing a "due on sale" clause with regard to most residential real properties. Only residential properties that contain six or more dwelling units, as well as all commercial properties, are subject to having notes accelerated by the lender. Even though your home and other residences may fall under this exception, you should still inform your lender or lenders that you have transferred your property to your Revocable Trust so that they may change their records accordingly. If you have mortgaged, pledged or allowed a lien to be placed upon any real estate other than your home and any other residences that fall under the foregoing exception, you should first obtain the written permission of your lender or lenders prior to transferring such real property into your Revocable Trust. Permission for this type of transfer is

regularly given, so you should have no problems with your lenders.

STOCKS AND BONDS NOT IN "STREET NAME"

Most often, stocks and bonds are held in "Street Name" accounts, meaning the brokerage firm holds the securities in its "street name" so it is easier for you to trade. By changing the name on the account, you automatically change the beneficial ownership of all the securities in that account. However, many people hold the actual stock or bond certificates, and in such a case, it will be necessary to place the securities into a brokerage account in the name of your Revocable Trust or to re-register the securities so that they are in the name of your Revocable Trust.

SAVINGS BONDS

The first step is to complete Treasury Department Form PD F 1851, Request To Reissue United States Savings Bonds To A Personal Trust. This form can be obtained on the internet at the following website: www.savingsbonds.com/forms/sav1851.pdf. You must then mail the form, the original bond certificates, and a copy of your Certification of Trust to the nearest Savings Bond Processing Site listed on page four of the form. Importantly, you should make a copy of all of the documents before you mail them. As a further precaution, you should send the package via registered and insured mail. If the Federal Reserve needs additional information to complete the transfer, they will notify you directly. If you have not heard back from the Federal Reserve within six weeks, you should follow up with another letter.

CLOSELY HELD CORPORATION STOCK

If you own an interest in a closely held corporation (generally, a corporation that is not publicly traded), then it will be necessary to sign a Stock Assignment form and issue a new certificate in the name of your Revocable Trust. Often, the assignment language is found on the back side of the stock certificates. If you want me to assist with any such transfer, please provide me with your corporate record book and the relevant stock certificates.

It may be the case that a buy-sell agreement is in place restricting the transfer of shares of stock you own in a closely held corporation. Most of the time, a buy-sell agreement will permit the transfer of closely held stock to a trust established for the

benefit of the shareholder making the transfer. Even so, you will want to determine if a transfer to your Revocable Trust is permitted. If the buy-sell agreement does not permit any such transfer, then it will be necessary to amend the agreement or obtain the consent of the other shareholders.

If a closely held corporation in which you are a shareholder has elected to be treated as an "S Corporation," the transfer of your shares to your Revocable Trust will not affect that election since your Revocable Trust is a "grantor trust" for income tax purposes. You will still be treated as the direct owner of the shares even if ownership is transferred to your Revocable Trust.

PARTNERSHIP INTERESTS

Each partnership has its own rules. If you are a partner in a limited partnership, you will need to contact the general partner, and subject to the limited partnership's rules, you should be able to retitle your partnership interest to the name of the Revocable Trust. It may be necessary to obtain the approval of some or all of the partners in the partnership before you are permitted to assign your interest to the Revocable Trust. The limited partnership may be able to provide you with the proper assignment form, but if they are not able to do so, please contact me. Upon receipt of a copy of the agreement of limited partnership, I will prepare an assignment form for you.

If you are a partner in a general partnership or limited liability company, you should contact the partner or member who manages the company and request that your interest be transferred to your Revocable Trust. Just as with an interest in a limited partnership, it may be necessary to obtain the approval of some or all of the other partners or members before you are permitted to assign your interest to the Revocable Trust. The general partnership or LLC may be able to provide you with the proper assignment form, but if they are not able to do so, please contact me. Upon receipt of a copy of the entity's agreement, I will prepare an assignment form for you.

BANK, SAVINGS AND OTHER ACCOUNTS

You must change the name on each bank, brokerage, money market, credit union, or mutual fund account (referred to in this Section as an "account" or as "accounts") that you wish to be owned by the Revocable Trust. However, under California law, each person may have up to $100,000 of real or personal property in his or her own name upon death and still avoid probate. This amount of property may be claimed by affidavit 40 days after death without the need for a probate administration. Accordingly, it is not

necessary that all of your accounts be transferred to the Revocable Trust, as long as the total amount of property outside the trust is less than $100,000. It is possible, though, that you may become incapacitated or disabled, and any property outside the Revocable Trust would need to be handled by an agent acting under a power of attorney. This may not be in line with what you desire. It is possible as well that the power of attorney may not be accepted by a bank or brokerage house or that all agents named in the power of attorney will be unable to serve, and in such case, a court order would be needed to access the funds. It is advisable, therefore, that all of your accounts be transferred to the Revocable Trust.

New account cards should be completed at each financial institution changing the current owner of the existing accounts to the Revocable Trust. With regard to accounts which have checking privileges, it may be possible to retain your existing checks which list your name on the face of the check, provided the ownership of the account is properly changed. I recommend that you check your account statements from the various institutions to verify that they reflect your Revocable Trust as the proper owner. The following is a summary of the steps you must take to transfer ownership of accounts to your Revocable Trust:

Local Institutions:

1. Talk to a person at the New Accounts desk (or your private banker).

2. Ask to have the title on your account(s) changed to the name of your Revocable Trust. If your Revocable Trust names more than one trustee, you should point out that any one Trustee may transact business on behalf of the trust alone, and therefore, the signature cards should only require one signature for bank transactions. If the bank permits it, ask to keep the same account numbers on your account(s). Also, request that your checks remain printed as they are and not in the name of your Revocable Trust. Having the name of your Revocable Trust on your checks will not cause you any difficulties, but it will mean that persons or businesses to whom you write checks will know you have a Revocable Trust.

3. The bank may want a copy of your Declaration of Trust. If so, tell them you would prefer instead to give them a copy of your Certification of Trust which shows the proper name for the account and that the Trustees have authority to open this type of account in the name of your Revocable Trust. The bank may not accept the Certification of Trust, but may instead require a copy of the Declaration of Trust. You should then ask them to accept only the first page and the last two pages, as the other pages are of a personal nature. If they still insist on having a copy of the entire Declaration of Trust, you can either provide it to them or find a different bank which does not have a similar requirement.

4. Sign the new signature cards. (You should not have to use the word "Trustee" as part of your signature.)

Out-of-Town Institutions:

1. If you have a bank account at a financial institution out of town, send them a Memorandum Requesting Transfer of Account to Your Revocable Trust along with a copy of the Certification of Trust. Note though, some institutions may not accept the Certification of Trust and may want a copy of your entire Declaration of Trust. If you are asked to provide a copy of the entire Declaration of Trust, ask them if they will accept only the first page and the last two pages, as the other pages are of a personal nature. If they still insist on having a copy of the entire Declaration of Trust, you can either provide it to them or find a different bank which does not have a similar requirement.

2. When you receive the new signature card in the mail, make sure the Revocable Trust is properly listed as the owner, and sign it and send it back to the institution. (You should not have to use the word "Trustee" as part of your signature.)

3. If you have a brokerage account which is held by a firm whose offices are out of town, you should call your broker's toll free number to find out exactly what steps you must take. It will likely be necessary to have your signature guaranteed and that can be accomplished at the offices of most major brokerage firms or at certain commercial banks or trust companies. Call your local bank or brokerage firm to see if they provide this service. It is best to have a "Medallion" guarantee instead of a regular guaranteed signature. The brokerage firm will tell you what other forms will be needed in addition to the signature guarantee.

WHAT IF THE BANK OR CREDIT UNION WILL NOT ALLOW REVOCABLE TRUST ACCOUNTS?

Some banks and credit unions do not allow their customers to open Revocable Trust accounts. Often the problem is that the person you are talking to does not realize the bank really does allow you to have a trust account, so the solution may be as simple as talking to another more senior person at the bank. If it turns out that you are definitely not able to have a trust account, you can either open your account at a bank which does offer trust accounts, or you can set the account up as a Joint Tenants With Rights of Survivorship account or as a Payable on Death account so that the account will pass directly to the surviving joint tenant or to the named beneficiary without having to go through probate. Of course, if an account does pass directly to a person, it is possible that the planning contained within your Revocable Trust may be nullified or disrupted.

CERTIFICATES OF DEPOSIT:

Most, but not all, financial institutions will change the certificate owner to a Revocable Trust without a penalty. If your financial institution will impose a penalty, you may want to wait until the certificate of deposit matures before changing it to your Revocable Trust. In addition, you should check with each of your financial institutions to make certain that all of your certificates of deposits have been properly styled in the name of your trust in a manner that will qualify for FDIC or FSLIC insurance coverage.

LEASES

You may own rental properties which you will transfer to your Revocable Trust. In such a case, you should explain to your tenant that you have assigned the property to a trust and that all future payments should be made to the trust. You may even want to amend your lease agreement with the tenant. (Of course, all future leases should reflect the Revocable Trust as the landlord.) There is no need to send any portion of your trust document to the lessee. If the next rent payment you receive is made out to your Revocable Trust, you will know your tenant has received your letter and understands what needed to be done. If the next rent payment is made out to you personally, you should contact the tenant one more time and ask that future payments be made out to the trust. Note, there is no real problem if the tenant continues to make payments to you personally. Rent checks received by you personally can be deposited into a Revocable Trust checking account.

MINERAL INTERESTS

If you own any mineral interests, the record titleholder of such interests (e.g., royalty interests, working interests) needs to be changed to your Revocable Trust. I recommend that you assign your mineral interests into your Revocable Trust and obtain transfer orders and/or division orders from the purchasers of the production. The assignments should be filed in the counties where the properties are located and the division orders should be signed and sent to the oil companies. However, this task exceeds the scope of our initial engagement. I recommend that you consult with an oil and gas attorney to ensure that such assignments are properly made. Depending upon the location of the mineral interests, I may be able to recommend an attorney to you.

PROMISSORY NOTES

If you already have existing promissory notes which are payable to you personally, they should be endorsed or assigned to your Revocable Trust, and the party making the payments should be notified of the assignment with the request that future payments be made to the Revocable Trust. If there are any real property liens securing the payments of these notes, the liens should also be assigned to your Revocable Trust, and evidence of such assignment should be filed of record in the county in which the property is located. In the future, if you should loan money to anyone, or if you sell property and the borrower or buyer gives you a promissory note for the purchase price, have that person make your Revocable Trust the "payee."

There is no need to send any portion of your trust document to the payee. If the next payment you receive is made out to your Revocable Trust, you will know the payee has received your letter and understands what needed to be done. If the next payment is made out to you personally, you should contact the payee one more time and ask that future payments be made out to the trust. Note, there is no real problem if the payee continues to make payments to you personally. Checks received by you personally can be deposited into one of your Revocable Trust accounts.

VEHICLES

It is generally not advisable to transfer ownership of your automobiles, recreational vehicles, and boats (referred to in this paragraph as "vehicles") to your Revocable Trust. Transferring title to vehicles can be accomplished easily after death without the need for probate. Nonetheless, if you desire to transfer title to your vehicles to your Revocable Trust, then you should either seek assistance from the California State Automobile Association or the Southern California Automobile Association, or you should visit a local Department of Motor Vehicles.

CLUB MEMBERSHIPS

Each private club will have its own rules regarding the transfer of a membership to a Revocable Trust. Some clubs have their own forms to accomplish the transfer, while other clubs do not allow a Revocable Trust to own a membership interest (although they may have a transfer on death agreement which accomplishes the transfer of any value to your Revocable Trust upon death). You should contact your club's membership

director to find out what steps must be taken to transfer your membership to your Revocable Trust.

DEALING WITH LIFE INSURANCE, PENSION PLANS

The trustee of the Revocable Trust should usually not be named either as the owner of the life insurance policy or as its beneficiary. Remember that transferring an insurance policy to your Revocable Trust does not alter its status for purposes of estate tax computation. The payoff value of your policy is included in your estate in calculating its size under federal estate tax laws. You can remove it from your estate by transferring all incidents of ownership to a person not under your control. I urge you to discuss this with your insurance agent or a trained professional.

- ✓ **You do not need to include your pension plan in your trust. In fact, you definitely should not include any existing IRA, 401K or other plan in your trust because of tax consequences. Again, consult a tax professional in this regard.**

You probably do not want to name the trust as beneficiary of such a plan. Instead, name the beneficiaries in the plan itself because they may have more options as to how to take such benefits. Consult your plan administrator in this regard.

SPECIFIC GIFTS

Example specific gift:

> "I give my collection of Joni Mitchell records to Joan Brindell, my library of art books to the Los Angeles County Library, and $5,000 to Aids Healthcare Foundation."

Here you can provide for giving a specific item or an amount of money to a specific person or organization upon your death. For each gift:

- ✓ **Name the item with sufficient specificity that it can be identified by someone who isn't familiar with the item; and**
- ✓ **Indicate to whom that item will go.**

Note that if the item you name is not in existence at the time of your death, no substitution will be made of another item unless you so specify. If the person you name to receive a specific gift does not outlive you, the gift lapses and is distributed as part of the Residue unless you specify an alternative person.

Where you give a specific piece of property, unless you provide otherwise, any debts connected with that item of property will have to be paid by the person receiving that property. For example, if you give someone a car that is not yet paid for, they would have to make the remaining payments. If you want to have the estate to pay off the

debt, you must say so in your Revocable Trust.

TRUST RESIDUE

Whether you have made provision for specific items or not, you need to provide for the remaining part of your estate. The *Residue* refers to everything in your estate that has not otherwise been distributed as a Specific Gift.

- ✓ **You can name one person or organization to receive all of the remainder of your estate. You should then name an alternate person/organization in case the first one you named is not alive or is not willing to take your bequest.**
- ✓ **You may name more than one person/organization (or combination) and if so, specify the percentage each is to receive, making sure that the total is 100%. You should then name an alternate person/organization in case the first one you named is not alive or is not willing to take your bequest.**

You can also distribute the Residue of your estate to more than one person and/or organization in percentage shares. If one of the named recipients does not survive you, their share goes to the other named recipient(s), or, you can provide for an alternative beneficiary.

THE "NO CONTEST" CLAUSE

I recommend and will include in your trust (unless you tell me not to do so) a provision that disinherits anyone who contests your Will or Trust, especially if you expect any significant opposition to your plan for disbursing your estate after your death, this provision may not be sufficient, alone, to meet such a challenge. You need to take special care to document your mental health, your independence in decision making and that your trust is, in fact yours and not the subject of any undue influence.

If you expect a significant challenge, I urge you to discuss this with me. I will add a no contest clause unless you instruct me, after a discussion, that you do not want one.

GIVING SOMEONE THE POWER TO CHANGE YOUR TRUST IN A POWER OF ATTORNEY

One of the choices you will be asked to make is whether you want to give someone the power to make changes to your trust during a period in which you are unable to do so yourself. An example would be if you are incapacitated temporarily or permanently.

If you are choosing to create a durable power of attorney as a part of this package of documents, you can give this power to amend you trust in that document.

THE WILL

I will prepare for you a Last Will whether you use a Revocable Trust or not. If you use a trust, the type of Will is known as a "pour over" and is designed to capture any assets you have inadvertently not transferred before death to your trust. The Will does so upon your death, but will not avoid probate if the amount of assets not owned by your trust exceeds $100.000.

If you are using a trust, and if all of your assets are transferred to the trust, skip go directly to "Disposing of Property if you also have a Revocable Trust" in this section below.

If you either are not using a Revocable Trust or if you have not transferred all of your assets to your trust, please read the following topics which will then apply *only* to the assets not transferred to your trust. If there are specific assets that will not be transferred to your trust and you wish to distribute through your Will, please tell me about them.

SPECIFIC GIFTS

In your Will, as in your trust, you can make a gift of a specific item or amount of money. Example specific gift:

> "I give my collection of Joni Mitchell records to Joan Brindell, my library of art books to the Los Angeles County Library, and $5,000 to Aids Healthcare Foundation."

For each gift:

- ✓ **Name the item with sufficient specificity that it can be identified by someone who isn't familiar with the item; and**
- ✓ **Indicate to whom that item will go.**

Note that if the item you name is not in existence at the time of your death, no substitution will be made of another item unless you so specify. If the person you name to receive a specific gift does not outlive you, the gift lapses and is distributed as part of the Residue unless you name an alternative.

Where you give a specific piece of property, unless you provide otherwise, any debts connected with that item of property will have to be paid by the person receiving that property. For example, if you give someone a car that is not yet paid for, they would have to make the remaining payments. If you want to have the estate to pay off the debt, you must say so in your Will (or Revocable Trust).

WILL RESIDUE

Whether you have made provision for specific items or not, you need to provide for

the remaining part of your estate. The *Residue* refers to everything in your estate that has not otherwise been distributed as a Specific Gift.

- ✓ **You can name one person or organization to receive all of the remainder of your estate. You should then name an alternate person/organization in case the first one you named is not alive or is not willing to take your bequest.**
- ✓ **You may name more than one person/organization (or combination) and if so, specify the percentage each is to receive, making sure that the total is 100%. You should then name an alternate person/organization in case the first one you named is not alive or is not willing to take your bequest.**
- ✓ **You can also distribute the Residue of your estate to more than one person and/or organization in percentage shares. If one of the named recipients does not survive you, their share goes to the other named recipient(s), or, you can provide for an alternative beneficiary.**

DISPOSING OF PROPERTY IF YOU ALSO HAVE A REVOCABLE TRUST

If you are also creating a Revocable Trust, I recommend that you not provide separately for the disposition of your assets in your Will except to include the following language in the portion of the Will dealing with your estate:

> "I give my estate to the John Jones Revocable Trust. If for any reason any dispositive provision of said Revocable Trust is found to be invalid, I hereby incorporate each and every dispositive provision thereof as though fully set forth herein."

This is known as a "pour over" Will. That way, all assets you own will be distributed through your Revocable Trust and not your Will. It is important to have this kind of a Will if you establish a Revocable Trust because sometimes people fail to transfer title to existing assets or acquire new assets in the name of the trust.

Of course, if there is a reason you would rather subject the item to probate, leave it in your Will and exclude it from your Revocable Trust.

THE EXECUTOR OF YOUR WILL

The Executor is the person who is charged with carrying out the terms of your Will and wrapping up your estate. If you are establishing a Revocable Trust, the person you have named as a successor trustee will ordinarily also be named as executor.

Depending upon the nature of your estate, your Executor may need to file a petition with the Probate Court for this purpose. If so, the Court is not bound to appoint the person you nominate, although it ordinarily will do so. The Court will require your Executor to post a bond equal to the value of your estate as security for her/his actions

unless you provide in your Will that such a bond is waived.

Ordinarily, if you think the person you nominate as Executor is trustworthy beyond reproach, waiving the bond is sensible. It is a cost that will be taken from the value of your estate if required. If you have any doubts, however, the cost of the bond is minimal in comparison with the possible loss of valuable assets.

I recommend that you name an alternate Executor in case the person you name as your primary Executor is unwilling or unable to serve in that capacity. The same considerations as mentioned above apply to the issue of a bond.

OUT OF STATE PROPERTY

If you own property in another state that has not been transferred to a Revocable Trust, that property will have to be probated under the laws of that state and *in that state*.

I urge you to let me know about any such property and to name in your Will an executor for that property who lives in that state. This would be in addition to the executor named under the provision described above.

THE "NO CONTEST" CLAUSE

The Estate Planning Guide Sample Will includes a provision that disinherits anyone who contests your Will.

If you expect any significant opposition to your plan for disbursing your estate after your death, this provision may not be sufficient, alone, to meet such a challenge. You need to take special care to document your mental health, your independence in decision making and that your Will is, in fact yours and not the subject of any undue influence.

If you expect a significant challenge, I urge you to discuss this with me.

BURIAL INSTRUCTIONS

I recommend that you state in a separate writing your burial instructions. You can address it either to someone who you will entrust with carrying them out or to your executor. This can be in the form of a simple letter signed by you and giving clear instructions to someone who you can trust to implement your instructions. A sample of such a letter is at the end of this section.

Typical instructions relate to whether or not you want your remains cremated, where you would like to be buried, and whether there are specific instructions regarding your funeral ceremony.

SAMPLE BURIAL INSTRUCTIONS

Dear John:

As my trusted friend, I am giving to you instructions for the treatment of my body and for my funeral after I die.

First of all, I want you and only you to make all the decisions regarding these matters. I have designated _____ as my agent under a Durable Power of Attorney for Health. They have the authority to take my body upon my death.

What I want done is that I want my body cremated and the ashes strewn at sea at sunrise. I want you to invite my close friends and family except for _____ to gather before hand for a brief ceremony. I have written out a short statement that I would like you to read to them. I specifically do not want _____.

Thank you for taking care of this for me.

_____

[Your signature]

PROVIDING FOR A GUARDIAN OF A MINOR CHILD

If you are a parent of a minor child, you may wish to provide in your Will for who will take care of the minor child if you die during their minority. To do this, you include in your Will a provision naming a guardian of the minor child.

LIMITATIONS

The law provides, in general, that if one parent dies, the other parent is the legal custodian of any minor children of the couple, whether they were married or not. There are exceptions to this general principle.

For example, if the mother has custody of a child and she dies when the child is 8 years old, the father will be presumed to have custody. If the mother names a third person as guardian of the child in her Will, that will not take precedence over the normal rule about custody.

However, naming such a third person in a Will does give that person legal standing to challenge the father regarding custody, based upon the best interests of the child.

NAMING A GUARDIAN

In selecting a person to serve as the minor child's guardian after your death, you should select someone who is capable of taking care of the child, is familiar with any possible conflicts with other family members, and who is familiar with the child. If you are naming someone other than a biological parent and you foresee a possible argument

regarding who should have custody of the child, consider the background and characteristics of the person you name in the light of a challenge being made to their capacity to serve.

ADVANCE HEALTH DIRECTIVE

A power of attorney for health care is a written instrument designating an agent to make health care decisions for the principal and is known as the Advance Health Care Directive in this Guide.

SCOPE OF POWERS

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. The directive provided by me lets you do either or both of these things. It also lets you express your wishes regarding your personal care, donation of organs, and the designation of your primary physician.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a co-worker).

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you and all decisions regarding your personal care. You do not need to limit the authority of your agent if you wish to rely on your agent for all health care decisions and personal care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.

(b) Select or disapprove health care providers and institutions.

(c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.

(d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

(e) Make anatomical gifts, authorize an autopsy, and direct disposition of remains.

(f) Make personal care decisions, including determining where you will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment for you.

GENERAL SCOPE OF AUTHORITY GRANTED

The statement of the Health Care Directive regarding the scope of authority you would be giving is as follows:

GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority (a) to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so, including, without limitation, decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive; and (b) to make personal care decisions for me to the same extent that I could make those decisions for myself if I had the capacity to do so, including, without limitation, determining where I will live, providing me meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment for me.

WHEN DOES THE HEALTH DIRECTIVE TAKE EFFECT?

You can provide either that your health directive will take effect immediately or only after your primary physician has determined that you are unable to make these decisions for yourself.

Ordinarily I recommend the latter choice as a precaution to preserve your power to make your own decisions. There may be situations where the immediate grant of power makes more sense. For example, if you are in an accident far from home, your primary physician may not be able to make the needed determination and this could delay the ability of your health surrogate to make decisions for you.

ANATOMICAL GIFTS, AUTOPSIES, DISPOSAL OF REMAINS

In your Health Care Directive you can provide for what happens to your body after your death. This includes an option giving your health care surrogate the power to make gifts of your body parts (all, none, or specific parts); the power to authorize an autopsy; and the power to dispose of your remains, including giving funeral directions.

NOMINATION OF CONSERVATOR OF PERSON

The use of a Health Care Directive is a means of avoiding the necessity for someone to go to court on your behalf to gain the authority to make health care decisions for you. If no health care directive existed, such a person would ask the court to appoint them as conservator of your person.

Even when you have a health care directive, it sometimes happens that a well-meaning person may ask the court for appointment as your conservator if they feel the health care surrogate you named in your health care directive is either not following your instructions or is not acting on your behalf in some way. In such an event, I recommend that you nominate someone to be your conservator if the court is going to

appoint one. While the court does not have to follow your nomination, it often does.

Usually you would nominate the same person that you selected as your health surrogate, but you may wish to nominate someone else. You can also name anyone who you do not wish to be able to apply to the court for appointment as your conservator or to petition the court regarding your health care directive.

HEALTH CARE INSTRUCTIONS

There are two primary choices of health care instructions used by most people. You can select one of them for inclusion in your health care directive:

(a) Choice Not To Prolong Life

I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

OTHER TYPES OF INSTRUCTIONS

Another commonly used instruction is:

RELIEF FROM PAIN: I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death.

Other instructions may be added to reflect your specific wishes. Two optional phrases I provide are:

> "I wish to live in my home for as long as that is reasonably possible without endangering my physical or mental health and safety and to receive whatever assistance from household employees or personal care givers may be necessary to permit me to do so; provided, however, that in the event my agent determines that appropriate household employees or personal care givers are not available without putting my financial position or physical or mental health or safety at risk, then I wish to live in the least restrictive and most home-like setting deemed appropriate by my agent. I further request that I live as near as possible to my primary residence in order that I may visit with friends and neighbors to the degree my agent believes that I will benefit from such relationships. I wish to return home as soon as reasonably possible after any hospitalization or transfer to convalescent care. If my agent determines that I am no longer able to live in my home, I wish that my agent consider alternatives to convalescent care which will permit me as much privacy and

autonomy as possible, including such options as placing me in an assisted living facility or board and care facility."

...and

A. My agent is authorized to make all health care decisions not to prolong my life including but not limited to: (1) the delivery of oxygen by means of mechanical ventilation; (2) cardio-pulmonary or pharmacologic resuscitation; (3) kidney dialysis; or (4) to provide or continue the artificial delivery of nourishment or hydration by nasogastric tube, gastrostomy tube, or intravenous line. I want to be kept free of pain even if this requires addictive drugs or drugs that may hasten the moment of my death.
B. I do not wish to have life-sustaining treatment or procedures in the event my life would be a mere biological existence, devoid of cognitive function. However, I authorize my agent to require treatment and procedures, if my agent, in my agent's sole discretion, determines that such treatment is withheld or withdrawn because of no available payment source

PRIMARY PHYSICIAN

You will be asked to provide the name, address and telephone number of your primary physician and, if you choose, an alternate primary physician. Select the physician who is most familiar with you and your health needs.

You do not need to name a primary physician. The advantage to doing so is that it gives you the ability to name the physician who has the power for purposes of the health directive to determine whether you can make your own decisions or not. If you do not designate your primary physician, that decision may be left to a physician who is unknown to you. The disadvantage is that if you do designate the primary physician (and alternate), you would have to change your health directive if you change physicians. Those using HMO's without a primary physician may not even be able to make this designation.

ADVANCE HEALTH CARE DIRECTIVE REGISTRY

The Secretary of State maintains the Advance Health Care Directive Registry as required by Probate Code section 4800 which allows a person who has executed an advance health care directive to register information regarding the directive with the Secretary of State. This information is made available upon request to the registrant's health care provider, public guardian, or legal representative. A request for information must state the need for the information.

An advance health care directive can be made a part of the Secretary of State's registry by attaching it to the Registration of Written Advance Health Care Directive filed with the Secretary of State. As an alternative to providing the written directive to

the Secretary of State, its location can be indicated on the registration form.

An advance health care directive lets your physician, family, and friends know your health care preferences, including the types of special treatment you want or don't want at the end of life, your desire for diagnostic testing, surgical procedures, cardiopulmonary resuscitation and organ donation.

Once the advance health care directive has been prepared and executed, information regarding the advance health care directive may be registered with the Secretary of State by completing the Registration of Written Advance Health Care Directive. The Registration of Written Advance Health Care Directive is a voluntary filing. The registration form is provided at http://www.ss.ca.gov/business/sf/forms/sfl-461.pdf. It is to be mailed to:

Secretary of State
Advance Health Care Directive Registry
P.O. Box 942877, Sacramento, CA 94277-0001.

There is a $10 fee for filing a new registration form or a revocation of prior directive and new registration.

The same form can be used to amend information on a previously filed registration form or revoke the registration by checking the applicable box on the form. There is no fee for filing an amendment or revocation.

The advance health care directive, or the location of the directive, can be made a part of the Secretary of State registry by attaching the advance health care directive to the Registration of Written Advance Health Care Directive filed with the Secretary of State.

A registrant must re-register upon execution of a subsequent advance directive.

TAKE A COPY OF THE DIRECTIVE WITH YOU

I urge you to make a copy of your Health Care Directive and take it with you when you travel in case you need it then. Having the directive at home when you are unconscious a thousand miles away is not helpful.

I also urge you to give a copy to your primary physician and certainly to give it to your hospital admissions if you undergo surgery.

DURABLE POWER OF ATTORNEY FOR PROPERTY MATTERS

The Individual's Durable Power of Attorney for Financial and Property matters is based on forms commonly used throughout California. It is, therefore, a form that most people can use and one that banks and other institutions are by law obligated to honor.

DO I NEED ONE OF THESE?

Being appointed by the court can be time consuming and costly.

The purpose of a durable power of attorney for financial, non-health related matters is to give someone the authority to act on your behalf regarding financial matters, either immediately or if you become incapacitated or disabled. Without such a document, there may be no one with the necessary legal authority to manage your financial affairs in your absence (immediate power) or, during your incapacity (springing power), unless a court appoints a conservator of your estate.

Family members are not always available or committed to carrying out your desires. The durable power of attorney provides an economical, effective tool so that someone you trust can handle your property and finances.

CONSERVATORS

As an alternative to the Durable Power of Attorney, there is a procedure called a "Conservator of the Estate" that provides another method by which someone else could gain authority to make decisions for you regarding financial and property matters. A Conservator of the Estate could be appointed by the court to administer your financial affairs if needed. The same or a different person could also be appointed to serve as "Conservator of the Person". That conservator would handle all personal and health matters.

This power of attorney is designed to avoid that situation. Virtually anyone may petition the court to be appointed your conservator, although ordinarily the person appointed would be someone familiar with you.

A Conservatorship tends to be expensive and time intensive. Most major events need court approval and your affairs become public record. Where someone can be trusted to carry out your instructions, I feel that a Durable power of Attorney for Property Matters is a better alternative. I suggest that you also name a conservator nominee, however. Usually this is the same person as your agent. It is unlikely you will need a conservator, but this is a precaution so that if one is called for, your wishes in who that should be are on record.

WHAT IS A "DURABLE" POWER OF ATTORNEY?

A power of attorney can be used in a variety of circumstances, such as when you would be out of town and want to authorize someone to sign a document on your behalf in your absence. A normal power of attorney is valid and gives the agent you appoint power to act on your behalf until you are incapacitated or die. Because there are many situations in which you may want your agent to act on your behalf during a period of incapacity, the legislature created something called a *durable* power of attorney.

The durable power of attorney is valid even when the person who grants it is not capable of acting himself or herself. This is, therefore, an important tool in designing a plan for the orderly management of your affairs.

WHAT IF I ALSO HAVE A REVOCABLE TRUST AND/OR HEALTH CARE DIRECTIVE?

Even if you create a Revocable Trust and a Health Care Directive (or Durable Power Of Attorney for Health Care), I recommend that you also consider one of these standard durable powers of attorney. If you have a joint Revocable Trust, all assets are owned jointly and have been transferred to the trust, and either trustee can act alone, your need for the Durable Power for Financial Matters is minimized.

In any other circumstance, however, there may be a need to grant to someone the legal authority to act on your behalf with regard to a wide range of financial matters.

With regard to your Health Care Directive, if you create one, by California law you cannot combine in one instrument the power over health matters *and* power over financial matters. Therefore I have included both kinds of documents in this Guide and as part of the Estate Document Set.

SELECTING AN AGENT

You may have a trusted friend to whom you feel you can entrust these decisions. Remember that without such a power, there may be no one who can act on your behalf in an emergency with regard to your accounts, property, receiving checks and depositing them, etc., except for an immediate family member. Even such a family member is likely to encounter resistance and delays in handling your affairs.

You should make certain that the person you choose is likely to be available and will follow your instructions faithfully. If you have a question about the person, it is not wise to appoint that person.

When you have decided who the agent will be, talk over your intentions with them. Let them know what financial and property matters they may have to take over if you need them. Make certain they understand that this may be a significant imposition on them and check to see that they are willing to take it on.

WHEN SHOULD MY DURABLE POWER BEGIN?

It depends upon whether you want the power to begin immediately (immediate power) or whether you prefer to wait for the power to take effect only if you are unable to act yourself (the so-called "springing power").

An immediate power is one that goes into effect when you sign it. This is could be appropriate where there is a need to give another person the to act on your behalf right away.

WHEN IS AN "IMMEDIATE" POWER EFFECTIVE?

An immediate power of attorney is effective as soon as you sign it. This can be helpful in situation where you are frequently out of the country or otherwise not available to take action with regard to your property interests. You may want to give the power to take those actions to another, trusted person acting on your behalf.

WHEN DOES A SPRINGING POWER TAKE EFFECT?

A springing power simply means that it has no effect until either a court or two physicians determine you to be unable to act. The springing power is very advantageous because it is effective only when you need it. That determination must be placed in writing and attached to your durable power of attorney.

The powers described are extensive. Please be certain that you understand each statement of power before you give that power to anyone.

HOW DO I GIVE MY AGENT POWER?

The Power of Attorney that I offer is based upon the statutory form developed by the state and is, therefore, universally accepted. Among the powers that you may wish to grant your agent are:

_____ **(A) Real property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, tear down, alter, rebuild, improve manage, insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds, and in any way or manner deal with all or any part of any interest in real property whatsoever, including specifically, but without limitation, real property lying and being situated in the State of California, under such terms and conditions, and under such covenants, as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt.

_____ **(B) Tangible personal property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are

recognized under the Uniform Commercial Code as adopted at that time under the laws of the State of California or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper.

_____ **(C) Stock and bond transactions.** To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me.

_____ **(D) Commodity and option transactions.** To buy, sell, exchange, assign, convey, settle and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the principal could if present and under no disability.

_____ **(E) Banking and other financial institution transactions.** To make, receive, sign, endorse, execute, acknowledge, deliver and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part. To have free access at any time or times to any safe deposit box or vault to which I might have access.

_____ **(F) Business operating transactions.** To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in. To organize or continue and conduct any business which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability.

_____ **(G) Insurance and annuity transactions.** To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts.

_____ **(H) Estate, trust, and other beneficiary transactions.** To accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the principal that terminates at the death of the

principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could exercise if present and under no disability; provided, however, that the Agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the Agent unless specific authority to that end is given.

_____ **(I) Claims and litigation.** To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper.

_____ **(J) Personal and family maintenance.** To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper.

_____ **(K) Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service.** To prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service, and governmental benefits, including but not limited to Medicare and Medicaid, which the principal could exercise if present and under no disability.

_____ **(L) Retirement plan transactions.** To contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

_____ **(M) Tax matters.** To prepare, to make elections, to execute and to file all tax, social security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable.

If you are uncertain about whether you want to grant a specific power on the form, I recommend that you do not do so. Discuss any questions with me. When you have read the powers in the Sample form, check off the ones you want to include in your document on the Information forms that follow this Chapter.

DURATION OF A DURABLE POWER

A Durable Power of Attorney is effective from the date designated in the document for it to begin until the date your terminate it in writing. You can, however, provide that the power will terminate as of a designated date in the future, such as three years from the date of creation.

SPECIAL INSTRUCTIONS

You can place your own special instructions or limitations on the powers you grant or the methods and occasions on which your agent exercises those powers. Such as:

> "My agent has authority to make charitable contributions on my behalf only to organizations that support human rights. I prefer that he make such contributions to the following organizations: [list them]"

ALTERNATE AGENTS

You may provide for up to two alternate agents. These are people who could take over in the event that the previously named agent was not able or willing to serve as your agent. This can be very important especially where your Durable Power has been in existence for a period of years. It can also be useful when situations arise that your primary named agent is for one reason or another unwilling or unable to deal with a particular situation.

CHECK WITH THE PERSON YOU SELECT BEFORE NAMING THEM

Before you name someone in your Durable Power, it is very important that you discuss the appointment with him or her. Discuss with them what you want done in case you need their help and make certain that they are willing to carry out your instructions.

Also, discuss with them whether they are likely to be available when needed, whether they are willing to take on the substantial responsibility involved in the appointment, and whether they understand how the power of attorney works.

SIGNING YOUR DURABLE POWER

Your Durable Power for financial matters needs to be signed and dated by you **and notarized**. The power does not need to be recorded but that may be necessary as a part of a real estate transaction undertaken on your behalf by your agent.

Your agent will also be asked to sign your Power of Attorney confirming their acceptance.

COPIES OF YOUR POWER OF ATTORNEY

I recommend that you keep the original of the durable power of attorney but that you give a copy to your agent and anyone who is likely to interact with your agent. This

might include your bank, creditors, mortgage company or others that you would expect your agent will have to deal with.

TERMINATING YOUR POWER OF ATTORNEY

You can terminate a durable power of attorney by any writing which cancels it. You can use any written statement, similar to that found in this Guide. Problems could arise, however, if it is claimed that you do not have the mental capacity to cancel your durable power of attorney. If this occurs, you will need an attorney.

The other problem that could arise is where there are copies of your durable power of attorney in the hands of people you do not know about. An agent who has evil intentions might be able to act on your behalf with such people even after you have terminated the power. Again, consult with me if this seems to be the case.

SAMPLE REVOCATION OF POWER

I, Henry Adams, of Los Angeles, California, executed a durable power of attorney dated January 1, 1992, appointing Brian Jones, my true and lawful attorney with such powers as are described therein.

I hereby revoke that durable power of attorney and all power and authority contained in it effective immediately.

Dated:_____

_____
Henry Adams
[NOTARY STATEMENT]

AFTER DEATH

Upon your death, certain steps must be taken to distribute your assets and pay your last debts according to the plan you have created here. Those steps will vary depending upon what your plan has been.

If you use a Revocable Trust, your successor trustee will have the responsibility for handling these affairs for you. They will have to gather your debts and arrange for their payment, gather your assets and distribute them according to your plan.

There are a number of requirements of your successor trustee that the law imposes. I urge your successor trustee to consult legal counsel to make certain your wishes are followed and your plan is implemented.

If you do not use a trust I also suggest that your executor (named in your will) consult legal counsel.

In order to facilitate the work of the successor trustee or executor, I have included on the next page a form for you to list the names, addresses and telephone numbers of all people and/or organizations that will receive property from you or who may be important in carrying out your plan. I urge you to update this page as needed.

SIGNING YOUR DOCUMENTS

PREFACE

Below are the instructions for signing each of the various documents you have requested. Please note that these instructions may describe documents you have not requested, in which case ignore that portion.

WITNESS QUALIFICATIONS

The purpose of having people witness your signatures is to provide eye witness testimony about the conditions of your signing the document at some future time when someone might challenge whether you, in fact, signed it or whether, when you did, you were mentally competent.

It is therefore recommended that you choose people who are of an age that they might survive you, be reliable witnesses and be available. That means you should choose people who can be located easily and who are willing to vouch for your signature.

In addition, some of the documents have specific requirements for witnesses. Please read the following carefully.

Health Care Directive

Your Health Care Directive is to be signed and notarized.

Please note that if you print this form from an email, the last page is actually the cover sheet.

UNIFORM STATUTORY POWER OF ATTORNEY

You must have your signature notarized. This is mandatory.

Please note that if you print this form from an email, the last page is actually the cover sheet.

WILL

Initial each page at the bottom of the Will. Then sign and date it. Your Will must be signed in the presence of at least two witnesses. The witnesses cannot be anyone who will inherit from you either from your Will or your Living Trust. We strongly recommend three and have provided for that number. Have them carefully read the declaration before they witness your signature.

Please note that if you print this form from an email, the last page is actually the cover sheet.

REVOCABLE TRUST

Insert the date you are signing the Trust on the first page. There are two places for you to sign on the signature page, one as Settlor and one as Trustee. We strongly recommend that you sign your living trust before a notary public. Although this is not required unless you will transfer real property to your trust, it is strongly urged in all cases. No other witnesses are required.

Please note that if you print this form from an email, the last page is actually the cover sheet.

CERTIFICATION OF TRUST

Insert the date you are signing the Trust on the first page. There are two places for you to sign on the signature page, one as Settlor and one as Trustee. This form must be notarized.

DEEDS

All deeds must be signed before a notary. There may be a blank line in two places on your deed – one for the APN, or Assessor's Parcel Number and the other for the date of the trust. The APN can be found as a series of numbers on your property tax statement. Insert that number where indicated. The date of the trust should be inserted if there is a blank at that place on the deed.

If you have deeds, then we have also prepared a Preliminary Change of Ownership notice for each parcel for your signature. If blank, insert information such as the property address and/or APN on the first page. You do not need to fill out any other portion of this form. Return the original deeds and Preliminary Change forms to us for recording.

PRELIMINARY CHANGE OF OWNERSHIP FORM

This document must be filed with your new deed at the County Recorder's office. It only needs to be signed, not notarized.

If you are sending the deed and Preliminary Change form to the County Recorder yourself, send a check as well. I usually insert for the amount "not to exceed $20 to make sure the fee is covered. Otherwise, the fee can be found on the website of your county recorder's office.

ASSIGNMENT OF PROPERTY TO TRUST

This document transfers to your trust the described assets. On the first page, insert the date you have signed your trust. This document should be signed before a notary.