

MILLER
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**Estate Planning for
Individuals**

Information and Authorization
Confidential

Name _____

Date _____

PLEASE BRING WITH YOU COPIES OF:

- G Present Wills, and/or trusts, if any.
- G Deeds to real property (for title purposes) and any information regarding title to property, cost, present fair market value, and property tax value.
- G Manner of title holding of any stock (how the ownership appears on the certificates), income tax basis and value of each stock.
- G Last three years' income tax returns.
- G Any available financial statements.
- G Copies of any gift tax returns filed.
- G Photo or snapshot of yourself and spouse.
- G Past appraisals of property, if any.
- G For encumbered property, copies of loan agreements, deeds of trust, security agreements and current loan balance information.

IF IN BUSINESS:

- G Any partnership or similar agreements.
- G Any corporate minute books and stock ledgers.
- G Summary plan description of any profit-sharing, pension plans or IRA agreements.
- G Any buy-and-sell agreements.
- G Last three years' income tax returns (partnership or corporation).

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INTRODUCTION

What is Estate Planning?

Estate Planning involves the creation of a plan for managing your wealth while you are alive and distributing it after your death. Three major benefits of estate planning are: (1) Avoiding a **Conservatorship**, (2) Avoiding **Probate** and (3) Eliminating or minimizing **Death Taxes**. An additional benefit is the opportunity to provide creditor protection to your beneficiaries.

What is a Conservatorship?

A conservatorship is a court-supervised procedure by which an agent is appointed to manage your assets and/or personal affairs when you are not able to do so. The conservatorship, and the court's involvement, continues throughout any period of incapacity. This procedure is expensive, time consuming and makes information as to the nature of your estate and your physical and mental condition a matter of public record.

What is Probate?

Probate is a court-supervised process by which information as to your assets and liabilities is gathered, your obligations paid, and your estate distributed either in accordance with the terms of a Will that is formally "admitted" to probate or, if you do not have a Will, to your heirs under

California's intestacy laws. If you have no heirs, your property will "escheat" (be distributed to) the State of California.

Probate proceedings are a matter of public record; thus your personal information (financial and otherwise) is available to anyone who wishes to see it.

Probate is also very expensive. Fees and costs, which are set by statute, can amount to approximately 2% to 10% of the gross value of your probate estate.

Probate is also a lengthy process and, at a minimum, can take six months to complete. It is not unusual, however, for the administration of a probate estate to continue for years.

What are Estate (Death) or Transfer Taxes?

Separate from the expense and delay of probate, your estate may also be liable for estate (death) or other transfer taxes. There are two types of death taxes: the federal estate tax and the state death tax. California's death tax is known as a "pick-up tax" which means, in essence, that a portion of the overall amount of estate/death taxes due are paid to the State of California while the balance is paid to the Federal Government. The death taxes due to the State of California (which relate to property located in California) are determined by the amount of the credit

that the Federal Government gives for such taxes. As a result of changes in our tax laws that occurred in 2001, the state death tax credit has been eliminated for deaths occurring in 2005-2010 thereby eliminating the California death tax for those years.

If you own property in another state, that state may have a different tax system and taxes may be due on in that state even if no Federal estate or California death taxes are due.

Overview of Federal Transfer Taxes

In general, the **federal estate tax** is designed to tax transfers of wealth from one generation to another. In order to prevent taxpayers from avoiding the estate tax by making gifts during life, a **gift tax** is imposed upon transfers made during life.

Certain deductions are allowed which can reduce the value of your taxable estate. For example, debts outstanding at your death are allowed to offset the value of your taxable estate.

An additional tax, known as the "**generation-skipping tax**" is imposed upon transfers to persons who are (or who are deemed to be) two or more generations below the donor – e.g., a grandchild. This tax, which is imposed at the highest marginal estate

tax rate (currently 47%), is designed to treat such a transfer as though it had passed through the intervening generation and was taxed upon the transfer from that generation to the next. Thus, *absent proper estate planning*, it is impossible to avoid the estate tax at each generational level.

For example, assume that D has a net worth of \$4 million, that he has three children and six grandchildren. D feels that his children have sufficient assets of their own upon which to comfortably live for the remainder of their lives. So, D (without consulting with his estate planning attorney) decides that he will leave his estate to his grandchildren, rather than to his children, so that these assets will not be included in his children's estates and be subject to estate taxes at their deaths. Not only will D's estate be subject to estate taxes but it will also be subject to the flat-rate generation-skipping transfer tax since D bypassed his children and distributed his estate to his grandchildren!

The Applicable Credit Amount

As some relief against the gift and estate taxes that would otherwise be due upon a transfer of wealth, the Internal Revenue Code grants each U.S. person a "credit" against transfer taxes. This credit, known as the Applicable Credit Amount, is applied

first to the gift taxes due on taxable gifts made during life (up to the first \$1 million in such taxable gifts), with the balance of any credit applied to transfers occurring at death.

Prior to 2004, the credit covered the taxes due on taxable transfers up to \$1 million (cumulatively) whether such transfers occurred during life or at death. In 2004, the excluded amount (called the Applicable Exclusion Amount) increased to \$1.5 million but the amount that could be applied to lifetime gifts remained at \$1 million. Thus, lifetime (cumulative) gifts in excess of \$1 million will be subject to the payment of a gift tax even if the value of the taxpayer's estate, at death, would otherwise be covered by the remaining credit.

Under current law, the amount of estate covered by the Applicable Exclusion Amount is as follows:

<u>Year</u>	<u>Exclusion</u>
2004-5	\$1,500,000
2006-8	\$2,000,000
2009	\$3,500,000
2010	No estate tax
2011 on	\$1,000,000

Federal Estate Tax Rules

The federal estate tax applies to all assets of your estate. This includes, among other things, real, personal, tangible, or intangible property,

retirement/pension benefits, and life insurance policies (or their proceeds if you are the insured).

The federal estate tax is imposed upon the net value of your estate (unlike a probate proceeding wherein statutory fees are based upon gross values). The tax rates currently range between 45% and 47% for estates whose value exceeds that which is covered by the Applicable Credit Amount. Thus, if you die in 2005 and your taxable estate is valued at \$2.7 million, the resulting estate tax will be \$1,109,800. Assuming that you have not made any taxable gifts during your lifetime, the actual tax due and payable, after the application of your Applicable Credit Amount, would be \$554,000 (46.17% of the balance of your estate in excess of \$1.5 million).

The "Generation-Skipping Transfer Tax Exemption"

Similar to the Applicable Credit Amount, Congress provided some relief relating to the generation-skipping transfer tax. An exemption from this tax is allowed, with such exemption being equivalent in amount to the tax exclusion afforded by the Applicable Credit Amount.

There are methods by which you may be able to pass the amount of your estate that is covered by this credit

through one or more generations, avoiding estate tax at each generation. That topic is addressed in our booklet entitled "Generation Skipping" which is available upon request.

What is a Revocable Living Trust?

A Revocable Living Trust is an arrangement by which an individual (the Trustor) transfers legal title of assets from his or her name to the Trustee or Trustees of the trust. A Trustee is designated to manage the trust property according to the terms outlined in the trust document. In California, the Trustor often acts as the initial Trustee of the trust and maintains complete control of the trust during his or her lifetime. The Trustor can thus continue to buy, sell, borrow or transfer assets at any time. The terms of the trust, including the disposition of assets at death and/or the persons named as Trustees, may be changed or revoked by the Trustor as he or she sees fit during his or her lifetime, so long as the Trustor is legally competent.

ADVANTAGES OF A REVOCABLE LIVING TRUST

A Revocable Living Trust

Eliminates Conservatorship

If you become disabled or are otherwise unable to manage your estate, a properly funded Living Trust typically allows you to avoid the need for a court-supervised conservatorship. This is because the successor Trustee named in the trust can step in and manage your affairs without government interference and/or the expenses of a conservatorship.

A Revocable Living Trust Avoids Probate

With a Living Trust, upon your death your assets pass directly to the beneficiaries named in the trust, according to the terms set forth in the trust instrument. There will be no court costs associated with assets held in trust, and there will be no court-ordered executor or attorney's fees. Furthermore, there will generally be fewer delays in distributing your assets following the payment of estate debts and expenses, and the terms of your estate plan will remain private.

Additional Benefits of a Revocable Living Trust

A Living Trust can provide for the care, support and education of your children or other young beneficiaries by providing management of the assets by the Trustee. The assets can be distributed to the children at an age or

ages chosen by you. This also avoids the costs and burdens of a court supervised guardianship of assets passing to a beneficiary (which supervision continues until the minor reaches age 18).

A continuing trust can also be helpful if a beneficiary is disabled and/or receives government benefits. Even insurance proceeds can be paid to the trust so your successor Trustee can manage the proceeds for the benefit of your survivors.

REVOCABLE LIVING TRUST PACKAGE

A **Revocable Living Trust Package** will include your Revocable Living Trust, a pour-over Will, an Advance Directive for Health Care, a Durable Financial Power of Attorney for Assets and a Declaration and Authorization to Physicians.

While your goal will be to transfer all assets to the trust during life, sometimes assets are missed. The **pour-over Will** is a safeguard which acts to transfer to the trust any assets remaining outside of your trust at your death. It is also the vehicle by which you name guardians for any minor children.

The **Advance Health Care Directive** will allow your agent to

make health care decisions for you in the event you are unable to do so, and without the costs and delays of a conservatorship.

The **Declaration to Physicians** authorizes your doctor to terminate life support if you are terminally ill or in an irreversible coma, and the **Medical Authorization** allows your health care providers to release medical information to the persons you specify.

Sometimes a person may be in a coma or otherwise unable to act and it is discovered that assets titled in that person's name have not yet been placed in the trust. By creating a **Durable Financial Power of Attorney**, the holder of the power of attorney (usually a child, relative or trusted friend) can transfer the title of the property to the trust and avoid having the asset subject to probate at death.

Decisions for You to Make

In order to prepare the documents included in your Living Trust Package, we will need information regarding your wishes and goals. To accomplish this task, we have included the Instruction Forms which follow these materials. Please fill out the forms as completely as possible, as well as the "Family Information and Estate Asset Summary" booklet. If you have any questions, please feel free to contact us.

INSTRUCTION FORMS

Trusteeship

Will you serve as the initial Trustee of your trust? **G** Yes **G**
No

Please list the individuals (and their relationship to you) and/or bank (or trust company) you wish to serve as successor Trustee, in order of preference. It is usually advisable to name a corporate Trustee as the ultimate successor Trustee so that you will have a final choice in the event that none of the individuals named can serve.

Would you like to set an age limit (recognizing possible failing capacities as age advances) at which time you would be joined by a Co-Trustee (e.g., age 75 or 80)?

Do you want an age limit? **G** No **G** Yes, Use Age_____

Powers to Change Trustees

We generally give the trust beneficiaries the right to change the Trustee of the trusts for their benefit. The most broad power would allow them to be able to appoint any person or institution, but that could give the beneficiary the right to appoint someone (like a spouse or best friend) who might operate the trust to unfairly benefit the current beneficiary and/or who may not have the skills to be an appropriate Trustee. In that respect, the term "qualified person" as used below is typically limited to an attorney, CPA, trust officer or similar individual with a business or trust background. It is also common to allow a beneficiary to become his or her own Trustee at some point. Please indicate below what powers to change the Trustee you would like to grant your beneficiaries.

Beneficiary	Power (select all that apply)
Children/Beneficiaries	<input type="checkbox"/> G Can select any person or institution <input type="checkbox"/> G Can select any non-subservient person or institution <input type="checkbox"/> G Can select any qualified person or institution <input type="checkbox"/> G Can select only a different institution <input type="checkbox"/> G Can appoint self as Co-Trustee at age _____ <input type="checkbox"/> G Can appoint self as sole Trustee at age _____
Other issue (Grandchildren, etc.)	<input type="checkbox"/> G Can select any person or institution <input type="checkbox"/> G Can select any non-subservient person or institution <input type="checkbox"/> G Can select any qualified person or institution <input type="checkbox"/> G Can select only a different institution <input type="checkbox"/> G Can appoint self as Co-Trustee at age _____ <input type="checkbox"/> G Can appoint self as sole Trustee at age _____

Invasions of Principal

Distributions for health, education, maintenance and support are generally required to take into consideration a beneficiary's other resources. For example, if a beneficiary needs \$75,000 per year for basic maintenance and earns \$60,000 per year, the Trustee would generally invade principal to make up the difference. In this way, we preserve the trust principal as much as possible for the tax minimization and long term benefits it provides. However, if you prefer, we can draft the trust so that the Trustee does not need to consider outside resources. Under our example, the Trustee could then distribute the full \$75,000 per year to the beneficiary, regardless of how much he or she earns.

Please indicate below your preference in this regard:

- G** Have the Trustee consider outside resources and preserve the trust property as much as possible.
- G** Increase the income beneficiary's potential benefit by not requiring outside resources to be counted.

Charitable and Specific Bequests

Please list below any specific bequests you wish to make to charities, friends or family members (e.g., the vacation cabin to Aunt Susie; \$10,000 to the American Red Cross). For gifts to individuals, please indicate if the gift will lapse if that person does not survive you, or if it should be distributed to someone else.

Recipient (and alternate(s))	Gift

Distribution to Children

If you have children, would you want the property (based on current circumstances) to be divided equally among the children? If not, what proportions should each child receive?

Name	Percentage

Generation Skipping

Although it is common to have property going to your children vest in the children during their lifetimes, significant estate tax advantages can be achieved by having property held in trust through the children's lifetimes. In such a trust, the child may be given the right to receive all the income and have principal available for support (if required), as well as having relatively broad powers to control distribution of trust assets, either during life or at death.

Even with these rights in your children, as much as \$3,500,000 (plus any increase in value during the child's lifetime), may be exempt from tax at the child's death. This concept is known as "generation-skipping" (or a Dynasty Trust or Family Income Trust) and is frequently used as a protective device for a child as well as for the tax savings it may produce.

In addition to avoiding estate tax at the deaths of your children and possibly even your grandchildren, generation-skipping confers additional benefits such as:

- The child can act as his or her own Trustee, if appropriate, and thus control assets;
- All income can be made available to the child;
- The child can have the right to say where the property would go at his or her death;
- Trust assets are protected from attacks by creditors or divorce courts.

Would you like to consider generation-skipping for your children and discuss this more fully?

- G** Yes (If yes, please call us and we can send you a booklet that reviews generation-skipping concepts.)
- G** No

Step Distributions

For assets that will be distributed to children (or perhaps grandchildren or great-grandchildren if generation skipping is used), at what ages should the property be distributed to them? A typical distribution might be one-fourth at each of ages 25 and 30, and the balance at 35. (We usually do not recommend any distributions of principal prior to age 25, as this often can disrupt the children's college education and also perhaps result in misuse of the funds received at such an early age).

G Use ages 25, 30 and 35 as described above.

G Use the following ages and/or proportions:

_____ % at age _____

G Other _____

You might consider whether you would want the Trustee to make funds available to the children for a down-payment on a house; for establishing a business or professional practice; or for a wedding, and the amounts which might be available for such specific purposes.

Purpose				Amount
House	<input type="checkbox"/> No	<input type="checkbox"/> Yes		\$
Business	<input type="checkbox"/> No	<input type="checkbox"/> Yes		\$
Wedding	<input type="checkbox"/> No	<input type="checkbox"/> Yes		\$
Other (Specify)				\$

Children's Rights to Appoint Property

Typically, any trust for your children will provide for their share to go to their children if they die while property is held for their benefit, with the assets typically to pass to their brothers and sisters if any child dies leaving no issue. However, many clients elect to give the children a power to "appoint" or direct the distribution of all or a part of their shares so the property is distributed in whatever fashion the children like. There are numerous variations on such a power, limiting who is a permitted recipient of the property, but some of the most common are as follows. Please indicate which of the choices below seems most appropriate for you:

G Allow the child to appoint the property to anyone he or she wishes, except that no appointments may be made to the child or for the child's own benefit (this is typically the most broad power that can be granted to the child).

G Allow the child to appoint the property to his or her spouse, or as among his or her issue and the spouses of his or her issue.

G Allow the child to appoint the property as among his or her issue and the spouses of issue, but limit any appointment to the child's own spouse so that the spouse receives only income (all or a portion thereof) for life, with the principal passing to the child's children at the spouse's death.

G Limit the power to appoint so that appointments may only be made to the child's issue (e.g., keep the property within your family line).

G Other (please specify) _____

Definition of Spouse

California allows unmarried heterosexual and homosexual couples to register with the state as "domestic partners" and thereby gain standing similar to that held by a spouse. However, in your trust, the term "spouse" would normally mean married couples only. Would you want the term "spouse" as used in your trust to include a registered domestic partner?

G Yes

G No

Definition of Education

Would you want to allow the Trustee to apply trust principal for your issue's advanced education, such as graduate or professional training?

Yes No

The term "education" generally includes private school, music, art or dance instruction, travel or other items, as well as books, tuition, room and board and reasonable spending money.

Please strike any items above you do not want to include.

Add below any additional items you would want to include

If travel is included above, would such travel be limited only to travel connected with an educational goal?

Yes No

Alternate Distribution

If the entire family (all your children and their issue) should be deceased, to whom should the property be distributed (e.g., to your heirs, or to friends or charities)? Please specify what percentage each individual or organization would receive.

Distribute to my heirs

Use the information specified below

Individual/Organization	Percentage

529 Plans

Would you like to discuss the possibility of making gifts to a college fund for children or grandchildren (a "529 Plan")? Such a plan permits a gift within the gift tax annual exclusion of \$55,000 per child and has income tax benefits. You can get more information on such plans at the web site SavingforCollege.com or at California's web site scholarshare.com.

Yes No

Financial Power of Attorney

Having Durable Financial Powers of Attorney would allow your agent to act on your behalf with regard to your assets that may be held outside the trust. This would be very helpful if you were ill or hospitalized. Would you like to have such a power of attorney?

No Yes. If yes, please read the material below.

You can either create a power of attorney which is generally restricted to putting assets into your trust, if you are unable to do so, or you can give someone an unlimited power with regard to your assets. Please indicate below whether the power of attorney should be restricted or unlimited:

Restricted Unlimited

Please indicate below the primary and alternate choices for the person to hold the power for each of you:

Primary Choice	
Alternate Choice	

Advance Health Care Directive

Would you like to name someone (and an alternate) to be able to make decisions as to your health care in the event of any disability? If so, please indicate whom you would choose (e.g., a relative or friend).

Primary Choice

Alternate Choice

In relation to your health care, you have the right to request that your life not be artificially prolonged if you become incapacitated and there is no hope of recovering your faculties. Would you wish to make such a statement in your Advance Health Care Directive?

Yes

No

Beyond that, if you would want life support terminated, would that extend beyond removing machine support to withholding nutrition and hydration (e.g., tube feeding)?

Yes, tube feeding may be withheld

No

Do you want to require your power holder to instruct the doctors to withhold or terminate life support, or would you prefer to leave the decision to the power holder's discretion?

Required

Discretionary

After your death would you wish your health care power holder to have the right to make gifts of parts of your body?

Yes

No

For transplant purposes only, but not for research or education

Guardians

If you have children and if any of them are minors, please indicate your first and second choices of guardian for them if something should happen to you:

Name	Relationship	Address	City, State, Zip

Executor

The Executor under your Will would serve only if there are assets in excess of \$100,000 outside the trust at your death. Most clients name as the Executor the same person(s) and/or institution named as Trustees of their trust so there is coordinated management between the probate estate and the trust. Please indicate below whom you would like to name as the Executor:

G Same as Trustee

G The following persons, in succession:

Judgments and Claims

As part of your overall planning, we may suggest the creation of one or more partnerships (or other entities), and the making of gifts to family members. These transfers may not achieve their intended results if you are insolvent after the transfer is made. For that reason, it is crucial that you tell us if you have any judgments or claims against you, or any reasonably foreseeable judgments or claims (such as lawsuits over a slip and fall, auto accident or malpractice).

G I have no judgments or claims currently or in the foreseeable future.

G I do have judgments or claims currently or in the foreseeable future, as described below (include estimate of dollar amounts): _____

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