

This document is meant to provide you with some “food for thought” in designing your estate plan.

- If you were to become incapacitated, would you want to remain in your own home as long as you weren’t a danger to yourself or others? If so, do you have sufficient resources to be able to do that? Note that in this area, it typically costs \$35 - \$45 per hour (times # of hours) per day for someone to remain in his or her home with outside assistance.
- Do you want to make any provisions for your pets?
- If you were to pass away, do you want to distribute your assets “outright” to your children/loved ones with no additional protection against a divorcing and/or controlling spouse, creditors, predators, themselves, the unintentional disinheritance of grandchildren and Living Probate (conservatorship) proceedings should a loved one become incapacitated etc.

If yes, at what age (18/21/25/other)

If the children/loved ones are under that age, who should manage the assets for them until they reach that age?

- **Note: Outright distributions:** Distributing your estate “outright” provides **maximum simplicity** for your beneficiaries. These provisions meet the goal of some clients who have very modest estates and/or feel they don’t “**Want to Control from the Grave**” for their older and responsible children/loved ones. The **downside** is the absence of protection against a divorcing and/or controlling spouse, creditors, predators, themselves, the unintentional disinheritance of grandchildren and Living Probate (conservatorship) proceedings should a loved one become incapacitated etc.
- **Staggered distributions:** Stretching distributions out over time or in different phases to less mature children/loved ones meet the goal of some clients who have very modest estates and/or younger or less responsible children/loved ones so they can mature into their inheritance.

The **downside** to staggered distributions is that it provides only limited and temporary protection against a divorcing and/or controlling spouse, creditors, predators, themselves, the unintentional disinheritance of grandchildren and Living Probate (conservatorship) proceedings should a loved one become incapacitated etc.

- If you want “Staggered Distributions”, do you want to provide your children/loved ones with an **increased** level of protection for the financial legacy you leave them by giving them **flexibility** to either take their inheritance outright or protect their inheritance against a divorcing and/or spendthrift spouse. In short, you provide them with the ability to protect themselves, but they make their own

decision.

- OR, if you want staggered distributions, do you want to provide your children/loved ones with an **even greater** level of protection for the financial legacy you leave them by providing protections against (1) Divorcing Spouses; (2) Controlling and Spendthrift Spouses; (3) Frivolous lawsuits; (4) Themselves; (5) Living Probate (Conservatorship) Court proceedings should a child/loved one become incapacitated; and (5) the Unintentional Disinheritance of your grandchildren/loved ones etc., while still giving them control and convenience.
- Do you want your children to have the right to purchase your home (or other real property) and keep the property tax basis? If you have more than 1 child, who will decide which child(ren) get to purchase it from the others?
- Do you want to provide “incentive” trusts for your children – for example:
 - rewards for superior academic performance
 - rewards for obtaining a bachelor’s or advanced college degree
 - “income matching” distributions limited to the income the child earns (so if they child wants to sit on the beach all day & only work occasionally, the trust pays only an amount equal to what the child earns at work)
 - Do you want to provide a special distribution to assist a child in purchasing a residence even if it isn’t “time” under the terms of the trust to release that money? Any limits on the amount (e.g., “not more than an amount equal to a 20% down payment”)
 - Similar, but money to start a company? Any limits on the amount?
 - Do you want to make a special distribution to pay for the child’s first (or subsequent) marriage?
 - Do you want to provide a special distribution to permit the child to travel?
 - Do you want to provide a special distribution to permit the child to work for the Peace Corps or another activity that makes a positive contribution to the community but that does not pay a living wage?
 - Do you want to provide a wage if your child is working in the home as a parent in charge of his/her children or is taking care of other family members?
 - Do you want to withhold distributions if your child is abusing substances or is engaging in other addictive behavior?
 - Do you want to withhold distributions if your child is not capable of

managing money in a responsible manner as demonstrated by past conduct?

- ☐ **Generational Legacy Planning:** Do you have grandchildren to whom you want to leave a portion of your estate?
- ☐ **Retirement Plans:** Do you have a large IRA, 401k, or similar retirement plan? If so, under the new federal law (the SECURE Act of 2019), you can only “stretch” the distributions to your beneficiaries (in most cases) for a maximum of 10 years. If you have a \$2,000,000 retirement plan, that means your beneficiaries will receive \$200,000 per year. If you want to “stretch” the distributions out longer than that, we will need to discuss setting up a special retirement plan trust.
- ☐ **Guardians for your children:** If you have children under 18:
 - 1) Do their proposed guardians live more than a 2 – 3 hour drive from your home.
 - 2) If their proposed guardians live outside of California, can they take time off of work until the Court appoints them as guardians? How will their expenses be paid during that time?
 - 3) Have you thought about any guidelines you might like to provide the guardians about how to raise your children (e.g., cultural or religious)
 - 4) Do you want the guardians to receive a stipend for taking your children into their home? If so, how much/year?

Other Provisions

- ☐ When the first spouse dies, should the survivor have “unfettered” access to all of the trust assets without concern that s/he might remarry and leave them to his/her next spouse?
- ☐ Is either spouse a non-US citizen?
- ☐ Is either of you engaged in a professional practice (e.g., law, medicine, licensed family therapist, dentist) in which the privacy of client/patient data is a concern?
- ☐ Is your estate likely to be over the estate tax limit and, therefore, require additional planning to reduce or eliminate estate taxes?
- ☐ Have either of you filed a gift tax return in the past?
- ☐ Do either of you have children by a prior marriage?
- ☐ Do either of you own (either 100% or less) an interest in a subchapter S corporation?
- ☐ Do you have rental properties which require (or may require) an LLC or a limited partnership agreement?