# UNIVERSITY OF THE PACIFIC

# A Guide To Starting Your Estate Plan

Each year University of the Pacific's Office of Estate and Gift Planning receives many inquiries about how to start an estate plan, which attorney to use, how to save taxes and ways to provide for loved ones.

Our students benefit greatly because generous donors took the time to include Pacific in their plans. This guide is our way of saying "thank you" and our hope is that it helps you find the right attorney and prepare for the consultation.

#### WHY IS PLANNING AND **CREATING A WILL IMPORTANT?**

Regardless of age, health or net worth, every adult should have a will, advance healthcare directive, durable power of attorney for finance, proper beneficiary designations on financial accounts/insurance policies and, in some circumstances, a revocable or irrevocable trust. Together, these documents form what is commonly referred to as an estate plan. Estate planning is the process of working with an attorney to draft and execute the estate plan.

A properly executed will and trust help families understand their deceased loved ones' wishes, aid in distributing their assets and limit probate court involvement. The advance healthcare directive and durable power of attorney for finance protect you during your lifetime. These documents help families provide proper healthcare and financial management for loved ones who are disabled or incapacitated.

#### WHAT SHOULD I EXPECT?

Unfortunately, many people avoid planning for unexpected life events; did you know that approximately 80% of Americans do not have an estate plan? If you count yourself in that group, then now is a good time to get started. During wthe estate planning process, your attorney will ask you to choose an executor of your will, a trustee of your trust, beneficiaries for your assets, a guardian for any minor children and

agents to represent you if you become incapacitated. This guide will help you to gather the necessary information and prepare questions for the attorney.

#### WHEN SHOULD I UPDATE MY **ESTATE PLAN?**

If you already have an estate plan that was drafted by an attorney, congratulations! You obviously understand the value of having a well-planned estate. Like most of our important documents, an estate plan should be stored in a safe place and reviewed from time to time. The following are some life events that could trigger the need for updates:

- I moved to a different state since my documents were prepared;
- There was a birth or adoption in my family-children or grandchildren;
- There was a death in my family;
- There was a change in my marital status;
- The beneficiaries in my will and/or trust are no longer living or I am no longer happy with my choices;
- The executor in my will or the trustee of my trust is no longer living or I want to change my choice;
- My assets (particularly real estate) have changed;
- My charitable giving wishes have changed;
- The estate, income or capital gains tax laws have changed.

The 5Ds are an easy way to remember when to make changes

#### DECADE

When you start each new decade of your life.

#### DEATH

Whenever you experience the death of a loved one.

#### DIVORCE

When a divorce or a more favorable family event, such as a birth, occurs.

#### DIAGNOSIS

When you are diagnosed with a serious health condition.

#### DECLINE

When you or a family member experiences a significant decline in health, especially when unable to live alone.

#### **HOW DO I FIND THE RIGHT ATTORNEY?**

These days, most attorneys specialize in a specific area of law. Attorneys whose practices focus primarily on estate planning are better able to advise and quide you through the process. Attorney-drafted documents are less likely to be challenged in court, are often easier for the executor and trustee to understand, are administered more efficiently and usually cost less overall.

Using an estate planning attorney should make the process smoother and ensure you finish in a timely manner. We keep an extensive, nationwide referral list of our McGeorge School of Law graduates who are licensed and practice estate planning. Please email us to request a copy or visit legacy.pacific.edu/attorneydirectory.

#### WHAT DOCUMENTS OR INFORMATION WILL MY ATTORNEY NEED?

- Deeds to your properties and/or timeshares
- Bank, investment (stocks and securities) and retirement account statements
- Life insurance and annuity statements
- Automobile, boat, RV information/titles
- Birthdates and legal names of the loved ones you are naming as beneficiaries
- Legal names and addresses of the persons who will act as your executor, trustee, agents, conservator and quardian
- Paperwork pertaining to your disability or a disabled loved one whom you are naming in your estate plan
- Names and telephone numbers of your CPA, financial advisor and any other attorneys
- Names, addresses and tax IDs of the charities you would like to name in your estate

### **PACIFIC'S LEGACY SOCIETY**

estate plans and let us know, we will

toward your annual required minimum distribution. Another popular option is to If you choose to include Pacific in your give appreciated assets such as securities and real estate, which can provide more welcome you into our Heritage Society. As tax advantages than a simple deduction, a member, you will enjoy special benefits including the opportunity of giving such and join other esteemed donors whom we assets to fund a life income gift that will consider the pillars of the Pacific community. provide an income stream for you and/or **GIVING WITH A WARM HAND** your loved ones. Many people who are charitably inclined find that there are tax and financial benefits Information on all these options can be to making planned gifts during their found on our website legacy.pacific.edu or lifetimes. Your planned gift does not have to by reaching out to our Office of Estate and be cash; in fact, one popular option (after Gift Planning 209.946.2294. All inquiries are turning age 70.5) is to transfer assets from kept strictly confidential and "no obligation" an IRA directly to Pacific tax-free. Plus, if gift illustrations are provided upon request. you are age 72 or older, the transfer counts

# Legal Definitions

**ESTATE PLANNING:** this is the process of deciding and arranging for care of minors as well as the management and disbursement of a person's assets in the event he or she becomes incapacitated or dies.

**ESTATE PLAN:** generally comprised of a will, advance healthcare directive and durable power of attorney for finance. If probate avoidance is a concern, a living trust (used interchangeably with the terms "family trust," "revocable trust," "AB trust," or "marital trust") should be added to the plan.

WILL: also known as a Last Will & Testament, this is a legal document that expresses a person's wishes as to how their assets (estate) shall be distributed after his or her death. It names a person (executor or personal representative) to manage the assets until

the final distribution to the named beneficiaries. If minor children are involved, this document lists the quardian nomination (these are the persons who will care for the minor children). The person making a will is called a "testator" (male) or "testatrix" (female).

#### **REVOCABLE TRUST**: a

revocable trust can be amended or revoked at any time. Unlike an irrevocable trust, which generally cannot be revoked or amended, a revocable trust offers flexibility during the lifetime of the trust's creator.

#### **IRREVOCABLE TRUST:** an

irrevocable trust is a type of trust where its terms cannot be amended or revoked without the permission of the probate court or of the named beneficiaries. In some situations, an irrevocable trust can be used to provide tax savings or protect assets from liability.

**ADVANCE HEALTHCARE DIRECTIVE:** in some

states called a living will, personal directive, advance directive, medical directive or advance decision. It is a legal document in which a person designates an agent and specifies what actions should be taken for his or her health if no longer able to make decisions for themselves due to illness or incapacity. It can include a nomination of a conservator. It should not include a "do not resuscitate" directive; a DNR should be a separate document. A "conservator" is a person with legal decision making power over an incapacitated person. Dementia care directives should be included or drafted in addition to this directive.

#### **DURABLE POWER OF ATTORNEY FOR FINANCE:** is

a legal document in which a person designates an agent and specifies what

actions should be taken to handle his or her finances if no longer able to make decisions for themselves. There are two kinds, springing or non-springing. A springing power of attorney "springs" into effect when a particular event occurs (such as when a doctor determines a person is incapacitated). A nonspringing power of attorney is in effect the day it is executed and is a powerful legal document that should be handled with care.

#### **EXECUTOR:** a person

or financial institution appointed by a testator to carry out the terms of his or her will. Sometimes this role is under supervision of the probate court and the person is referred to as a personal representative.

#### TRUSTEE OR SUCCESSOR **TRUSTEE:** the original

trustee is usually the same as the trustor (the person

creating the revocable trust). The successor trustee is a person or financial institution given control or powers of administration over the trust property with a legal obligation to administer it solely for the purposes specified.

#### **AGENT FOR HEALTHCARE:**

also referred to as an attorney-in-fact, this is a person designated to make decisions in an advance healthcare directive.

#### **AGENT FOR FINANCE:**

also referred to as an attorney-in-fact, this is a person designated to make financial decisions in a durable power of attorney for finance.

**BENEFICIARIES:** the person, persons or charitable organizations who benefit from inheriting a person's assets under a will or a trust.

**SPECIFIC BEQUEST:** the gift of a specific dollar amount, percentage or particular item/property that is distributed pursuant to the terms of a will or trust.

#### **RESIDUAL BEQUEST OR**

**RESIDUARY:** the gift of the amount left in an estate after the specific bequests, final taxes and debts are paid.

#### **CONTINGENT BEQUEST:**

this bequest is only paid if the primary beneficiary or beneficiaries of the bequest die before the testator or trustor.

**TRUSTOR:** The person who establishes, i.e. creates a trust, is called the trustor, settlor or grantor. These terms are used interchangeably.




## Notes and Additional Information to Give Your Attorney

### WILL

Everyone over 18 years old needs one

- Operational at death only
- "Housekeeping" document because it outlines wishes-a set of instructions and wishes for your executor or the court to follow
- Does not avoid probate
- Not a legal entity, cannot own assets

#### **Notes/wishes**

#### Executor:

Second/alternate Executor:

Care for children/Guardian:

Burial wishes:

Care for pets:

## TRUST

People with certain types of assets or minor beneficiaries should have one

- Operational when signed and throughout your lifetime
- Revocable and amendable or irrevocable
- Avoids probate if properly funded
- Legal entity that owns assets such as real property, stocks and accounts when they are re-titled into the trust

#### **Notes/Wishes/Things to Consider**

Trustee: Second/alternate Trustee: **Beneficiaries:** 

Specific or charitable bequests:

- Can include AB/marital provisions for tax planning
- Bridges life and death because it is "living"
- Staged distribution for children and grandchildren or other beneficiaries
- Confidential, does not get recorded
- Allows planning for incapacity and death
- assets from medical recovery claims/liens

# • Planning for special needs, protects

### Includes guardian nomination

- Includes burial instructions
- Includes care of pet provision
- Personal property distribution goes in this document including cars, boats, RVs, personal property
- Allows planning for death, but not for incapacity
- Can be used in conjunction with a trust

## **ADVANCE HEALTH CARE DIRECTIVE**

Everyone over 18 years old needs one

- Also known as a durable power of attorney for health care or living will
- Only valid while alive, invalid after death
- Companion document to durable power of attorney for finance
- Allows planning for long- and short-term incapacity

#### Notes/wishes

## Agent: Second/alternate Agent: End of life choices: Dementia care decisions: Care for long term disability/Conservator:

## **DURABLE POWER OF ATTORNEY FOR FINANCE**

Everyone over 18 years old needs one • Only valid while alive, invalid after death

- Two kinds: springing vs. non-springing
- Companion document to trust and advance health care directive
- Allows planning for incapacity

#### Notes/wishes

Agent: Second/alternate Agent: End of life choices: Dementia care decisions:

Care for long term disability/Conservator:

- Nominates conservator to provide care during long-term incapacity
- Can include organ donation instructions
- Makes your medical wishes known
- Dementia care planning
- Avoids family conflicts over medical and end-of-life wishes

- Allows agent to "stand in your shoes" to make financial decisions
- Agent works in conjunction with the successor trustee and health care agent or can be the same person

## Sample Wording for Will and Living Trust Bequests

#### **1. Unrestricted Bequest**

I/we, [full legal name(s)], of [County, State] give and bequeath to University of the Pacific, a nonprofit 501(c) (3) corporation organized under the laws of the State of California and located in Stockton, California, the sum of \$\_\_\_\_

dollars (or \_\_\_\_% of my estate or description of property), to be used as the University may direct.

#### 2. Bequest for Unrestricted Endowment

I/we, [full legal name(s)], of [County, State] give and bequeath to University of the Pacific, a nonprofit 501(c) (3) corporation, organized under the laws of the State

of California and located in Stockton, California, the sum of \$

dollars (or \_\_\_\_% of my estate), to be invested and preserved as part of the scholarship endowment fund of the University.

#### 3. Bequest of Real Estate

I/we, [full legal name(s)], of [County, State] give and bequeath to University of the Pacific, a nonprofit 501(c) (3) corporation organized under the laws of the State of California and located in Stockton, California, all that unencumbered real property described as\_\_\_\_

(Insert property address) along with the

appurtenances in fee simple, for the use and benefit of the University [or state purpose here].

#### 4. Residuary Clause

l/we, [full legal name(s)], of [County, State] give all the rest, residue, and remainder of my/our estate, [real, personal and mixed], of whatever kind of nature, and wherever situated, to University of the Pacific, a nonprofit 501(c) (3) corporation organized under the laws of the State of California and located in Stockton, California, to be used as the University may direct [or state purpose here].

5. Bequest for Restricted **Endowment Scholarships** 

I/we, [full legal name(s)], of [County, State] give \_\_\_[state specific school or unit]\_\_\_\_at the University of the Pacific, a nonprofit 501(c) (3) corporation organized under the laws of the State of California and located in Stockton, California,

\$\_\_\_\_\_ \_\_\_ (or % of my estate), to [establish or enhance] "The

Endowed Scholarship. The fund shall be used to establish or enhance a scholarship or scholarships as outlined in my

this step. Change Form

\*\*Please insert the appropriate school designation after "University of the Pacific" to direct support to a specific school, unit or program. For example: University of the Pacific, McGeorge School of Law. University of the Pacific's Tax ID: #94-1156266

Notes

University of the Pacific gift agreement. \*Note: restricted endowments must be accompanied with a gift agreement, please contact the Office of Estate and Gift Planning to assist you with

# 6. Beneficiary Designation

List spouse as primary (first) beneficiary and University of the Pacific, a nonprofit 501(c)(3) corporation organized under the laws of the State of California and located in Stockton, California as secondary (contingent) beneficiary.

#### 7. Bequest Designation for **Retirement Account**

The beneficiary is my spouse as long as [he/she] survives me. If my spouse does not survive me, l give and bequeath \_\_\_\_% of my retirement account held at \_ to the University of the Pacific, a nonprofit 501(c) (3) corporation organized under the laws of the State of California and located in Stockton, California, to be used as the University may direct [or state purpose here].

# Notes and Questions for the Attorney



## For more information:

Office of Estate and Gift Planning 3601 Pacific Ave. Stockton, CA 95211 209.946.2294 legacy@pacific.edu



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