



Truths

- An estate plan that utilizes a “fully funded” revocable living trust avoids probate. Fully funded means that all appropriate assets are titled in the name of the trustees of the trust. Please note, retirement plans should not be retitled to your trust!
True

- A fully funded Revocable Living Trust can be the centerpiece of a comprehensive estate plan.
True
 - A Revocable Living Trust provides for incapacity planning and assets distributed through a Revocable Living Trust can avoid probate.
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- If you die with no estate plan or use a Will to distribute your estate, assets may have to be probated.
True
 - Because a will takes effect at death, it provides no incapacity planning
 - Probate is the process by which the court determines distribution of your assets in the event of your death. Probate is a relatively expensive and lengthy process.
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- When a parent transfers a primary residence to a child – the child may keep the parent’s Proposition 13 property tax assessment.
True, if appropriate and timely documentation is filed with the County Assessor’s Office.

Myths

I have no will; I have no Trust. Everything I own will go to the State of California.

False

- Under a “Do Nothing Plan”, The State of California provides a statutory framework for the distribution of your assets. This is called Intestate Succession, and the probate court transfers assets to your next of kin, as determined by the court through analyzing the laws of intestate succession.

I have a will; it avoids probate and distributes all my property

False

- A will forces property into probate, which is substantially more expensive than trust administration, with fees on average between 3% to 7% of the gross estate, and with an average waiting period of some 15 months.

A living trust eliminates estate tax

- False: Assets held by U.S. Citizens, including foreign assets, are subject to U.S. Estate Tax

The Estate Tax Exemption amount (the amount I can pass to others without estate tax) is permanent

False

- The Estate Tax Exemption amount has fluctuated over the years.
- The current exemption amount is \$11.54 million per U.S. citizen or resident alien, over \$23 million for a married couple. There is a sunset clause set to lower the exemption to between 6 and 7 million, as well as the possibility of the 2020 elections changing the exemption amount.

Single Folks and couples without kids do not need an estate plan

False

- A comprehensive estate plan, which includes a revocable living trust, an Advance Health Care Directive and Financial Power of Attorney, is very necessary. These instruments identify your incapacity team, and give members of that team the legal authority to make decisions for you in the event of incapacity.
- A trust based estate plan is helpful to avoid a conservatorship, a type of living probate.

A Guardian is also a Trustee

False

- A Guardian is the person you identify to take care of your children if they are under 18. You may choose to designate your trustee to also be the Guardian of your children if you so desire. The Trustee is charged with the obligation of managing the assets of the Trust for the benefit of the children.

There is only one type of trust- a revocable living trust

False

- There is a wide variety of trusts such as Special Needs Trusts, Trusts for pets, Substance Abuse Trusts, Children's Education and Maintenance Trusts, Lifetime Trusts, and Spendthrift Trusts. For whatever your needs may be, McDowall Cotter can design a Trust centered estate plan to meet your needs.

Our estate planning process includes planning for incapacity, and provides consultations for making well-reasoned estate planning decisions whether you are married, have children, are single, or are part of a blended family. Our goal is to provide you with an estate plan that provides for dignity and privacy in the event of incapacity and provides for the efficient and cost-effective transfer estate assets in the event of death.

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