

# **JAMES W. RICKARD**

## **ESTATE PLANNING SEMINAR**

**"Stewardship is not just money, time, or talent. Stewardship is all of these and more. Stewardship is the very life God has given us and someday we shall be responsible to give an account of it all to Him."**

### **Two Precious Freedoms**

- A. Right to accumulate**
- B. Right to distribute before and after death**

**Two hundred fifty million dollars per week goes into probate court undesignated.**

**30% of adults have a will written correctly.**

**Less than 10% of adults have done any serious estate planning.**

**Eleven of twelve women will become widows and will be widows for an average of 11 1/2 years.**

**Why spend 40 years acquiring, 10 years conserving but not 2 hours on distribution?**

**Shake off any notion that you need to be rich before you need an estate plan. If you're like most Christians, tax considerations take a far back seat to the top priority of estate planning: taking care of your heirs and the Lord's work.**

**What's at stake is perhaps best seen by conjuring up the mess you can leave behind if you procrastinate all the way to the grave and die without a will. Your state's rules of intestacy will provide a one-size-fits-all estate plan for you.**

**Contrast that to the almost unlimited flexibility that's yours if you write a comprehensive estate plan including a will and living trust. You have the right to name the guardian of your choice, you can slice the pie however you choose, you want grandmother's hutch to go to a favorite niece? You're home to your church? No problem, if you have an estate plan.**

**TERMS TO BE FAMILIAR WITH...**

**Testator (Testatrix) - A person who makes a will.**

**Will - A writing that provides for distribution of property upon the death of the writer but which confers no rights prior to that time. Always use an attorney.**

**Codicil - A separate writing that amends a will.**

**Community Property - Property acquired during a valid marriage while domiciled in a community property state with the exception of property acquired by gift. California, Idaho, Nevada, New Mexico, Texas and Washington**

**Probate - The act by which the proper court accepts a will and declares that the instrument satisfies the statutory requirements as the will of the Testator. Until a will is probated, it has no legal effect. Probate costs are approximately 5-8% of the estate.**

**Executor or Personal Representative - Person who administers the estate of the decedent (deceased).**

**Guardians - Persons designated to care for minor children upon the death of parents.**

1. Favor relatives over third parties wherever possible.
2. Develop a relationship between the child and the person you've named.
3. Name at least three potential guardians.
4. State why you're selecting the guardian(s).

**Trustee - Person designated to administer money and property for another's benefit.**

**Tenancy in Common - Each owns 1/2 - leave to who you want**

**Tenancy by Entirety - Survivor takes ownership**

**Joint Tenancy with Rights of Survivorship - Survivor takes ownership**

**Estate Tax (THE EVERYTHING TAX) - An excise tax levied on the "transfer" of a person's property by the federal government in excess of the Unified Credit.**

**Inheritance Tax (State death tax) - Excise tax levied by the state. (None in California since 1982)**

**Calculation of Taxes - A prescribed method of calculating the taxable estate for both federal and state purposes as follows:**

**Gross Estate**

**Less – Exemption**

**Less - Funeral and Administration Expenses and Debts**

**Less - Charitable Bequests**

**Equals - Taxable Estate**

### **WHAT HAPPENS WHEN YOU MAKE YOUR WILL?**

1. You exercise your right to decide how your property will be distributed.
2. You provide for your heirs in the way you choose.
3. You make sure that others won't distribute your property according to their whims or uninformed opinions.
4. You keep your property from going to undeserving people.
5. You use a channel (a written will) to permit charitable bequests.
6. You provide guardians for your children (if needed).
7. You avoid misunderstandings among your heirs.
8. You have the final word in fulfilling your goals as a good provider, a good citizen, and a good steward of your property.

### **WHAT HAPPENS IF YOU DON'T HAVE A WILL?**

1. If you die without a will (intestate), the state steps in.
2. Your property is distributed according to state laws of descent and distribution.

This means that your heirs will have to go through a maze of additional legalities that a simple will could have minimized. Whereas a living trust could avoid them completely.

It also means your property will probably not be distributed according to your wishes. The laws vary from state to state. Some give most of the estate to the surviving spouse. Others favor the children. Others favor the aged parents. (Even if the law's provisions suit you fine right now, they may be changed during the next session of your state legislature.)

### **IF YOU HAVE A WILL NOW, CHECK TO SEE...**

1. Has there been a change in your marital status?
2. Has there been a change in your health status?
3. Have you moved to another state since making the will?
4. Are the beneficiaries still living, still worthy?
5. Do you want to keep the same executor, guardian or trustee?
6. Do you still own the specific properties mentioned?
7. Is your family secure enough to permit you to switch some bequests from them to charitable organizations?
8. You may need to review your Will/Trust with your attorney.

### **WHAT TO DO IN CASE OF THE DEATH OF YOUR SPOUSE...**

1. **Don't make hasty decisions. Seek advice.**
2. **Immediate contacts - relative, friend, pastor - list specific names.**
3. **Mutually agree on one person who can be objective in counseling on financial matters. Someone you both trust.**
4. **Identify the procedure whereby the spouse can gain access to immediate cash.**
5. **List by company, agent, amount, beneficiary and location of policies all life insurance currently in force.**
6. **List all checking and saving accounts, certificates of deposit, IRA's and all other investments that are easily converted to cash. Identify institution and branch location. Check to see if the accounts are held jointly, with rights of survivorship, so spouse has easy access.**
7. **Contact local Social Security/VA office benefits or any changes in benefits.**
8. **Contact attorney who prepared the will. Make sure spouse knows who the executor is.**
9. **Get multiple copies of Death Certificate - must submit with insurance claims, etc.**
10. **Contact employer/union for possible benefits.**
11. **List other investments/assets - such as: credit cards, real estate, stocks and bonds; location of titles, deeds, marriage license, will, Community Property Agreement (if appropriate), etc.**
12. **Carefully consider and discuss options and alternatives offered by local funeral director.**
13. **Don't loan money to relatives without independent counsel.**
14. **Don't listen to any advice on investments and don't make investments of any sort until your mind is working more normally and you have had ample time to get the advice of competent, objective advisers concerned only with your welfare. Don't buy or sell any securities. Don't make any loans. Don't buy annuities. Don't in short, do anything. Your money supply is limited; take your time and get the best advice possible.**
15. **Have an up-to-date inventory of all possessions. Use 3 x 5 cards dividers by asset.**

**Too often, a lot of time and money could be spared if a departed spouse could return for twenty minutes and answer a few simple questions.**

## **TRUSTS**

**Living or Inter Vivos Trust - A trust created during your lifetime.**

**Testamentary Trust - A trust created at death by either your will or Living Trust.**

**Trustee - A person who manages a trust. Through the Trust Agreement you can give your**

trustee as much or as little discretion as you choose.

## LIVING TRUSTS

### Facts Regarding a Revocable Living Trust

- A. They are not only for the "rich"
- B. An estate of from \$60,000 to \$100,000 can benefit

### Advantages of a Revocable Living Trust

- A. It will bypass probate
- B. There will be minimal or no attorney fees at death
- C. Distribution can take place immediately
- D. You can revoke or change it at any time
- E. It is confidential
- F. It is more difficult to successfully contest than a will

### Disadvantages of a Revocable Living Trust

- A. All property you wish to be distributed through the trust must be put into the trust (it is work)
- B. The trust must be maintained over your lifetime
- C. More expensive to create

### Charitable Remainder Unitrust/Annuity Trusts

- A. Receive income for life
- B. Receive an income tax charitable deduction
- C. Avoid capital gains tax on the transfer of appreciated property
- D. Avoid management worries
- E. Avoid the cost and delays of probate
- F. Pass the funds to your charity at death

### Trusts can be created for protection:

1. You want to assure a loved one an income for life.
2. You want one person to have the income from your property for the rest of their life and another to get the property later.
3. You want a loved one (like a son or daughter) to be protected against their inexperience in managing property until later in life.
4. You want a loved one to have the income for life and your favorite charitable institution the property later.

## POWERS OF ATTORNEY

**"Powers of Attorney" provide a means by which you can authorize another person to make decisions or do things for you that you would normally do for yourself.**

**General Power of Attorney - is essentially a blank check given by you to another person by which that person has immediate and unlimited power over all your assets!**

**Special Power of Attorney - limits the extent of the authority you have given to another person to either specified assets and/or specified actions that can be done with your assets.**

**Health Care Power of Attorney - authorizes another person to follow your guidelines or instructions to give or withhold consent regarding your medical treatment when you are unable to give or withhold the consent yourself.**

**Durable Power of Attorney - simply means the person you have empowered to act in your behalf continues to have that power if you have become mentally incompetent but have not died.**

**Springing Power of Attorney - is dormant so long as you are capable of attending to matters in your own behalf, but "springs" to life during times of your verified incompetency.**

**Living Will - is an expression of your preferences to receive or reject certain medical treatment in the future. It is not, however, legally binding and does not empower another person to give or withhold consent when you are unable to do so.**

**HIPAA Agreement – Health Insurance Portability and Accountability Act – requires appropriate safeguards to protect the privacy of personal health information.**

***\*\*\*All Powers of Attorney, Living Wills and HIPAA Agreements are legal documents requiring care in drafting in order to be valid and appropriate for your situation. Whenever documents of this nature are needed, an attorney familiar with their legal requirements should always be consulted.***