

# ORANGE COUNTY BUSINESS JOURNAL

## CALLAHAN & BLAINE

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### Wealth Management Through Estate Planning

**B**usiness-savvy individuals realize wealth management requires careful planning to provide maximum benefits for surviving loved ones. Effective estate planning is essential to accomplish that objective. At a minimum, an estate plan will include a revocable family trust, a pour-over will and an advance healthcare directive.

#### Revocable Living Trust

A revocable family trust ("trust") serves at least two, and beginning 2011, three fundamental purposes. First, the trust will direct the disposition of an individual's estate at death.

Second, the trust serves as an alternative to probate. Those who wish to avoid the delay and expense of a probate proceeding and to maintain privacy over their personal financial affairs will ensure that virtually all of their assets are transferred into trust, with the ultimate disposition of those assets controlled by the trust.

Minimizing estate tax is the third essential purpose of a trust. Prior to 2010, many estates were required to pay federal estate tax, depending upon the value of the estate and the amount of available estate tax exemption. That exemption increased gradually over the past decade. For those who die in calendar year 2010, it is likely that no estate tax will be payable. However, most estate practitioners predict that commencing 2011, federal estate tax will again come into play. A trust may lessen the impact of federal estate taxes upon the estate of the first spouse to pass.

A person who establishes a trust is known as the "settlor." The settlor typically manages his or her own trust. Pending death or incompetency, the settlor retains full control over the trust, including without limitation the right to amend its provisions, to add and remove assets from the trust and to revoke the trust entirely. A designated successor trustee takes over upon the settlor's death to ensure that the settlor's wishes, as expressed in the trust, are carried out insofar as the management and disposition of the estate assets are concerned.

#### Pour-over Wills

A "pour-over will" ensures that assets not otherwise part of the trust prior to the settlor's death are placed in trust, after death. A pour-over will is a backstop that catches any asset inadvertently omitted from the trust during the settlor's life and directs disposition of such asset according to the trust, despite the oversight.

#### Advance Healthcare Directives

An Advance Healthcare Directive ("AHD") allows an individual to dictate their own level of healthcare, should intervening injuries or illness prevent the individual from making those decisions while disabled. An AHD identifies one or more agents to ensure that the patient's instructions set forth in the AHD are carried out when the patient is no longer able to personally communicate those instructions. Utilizing an AHD is absolutely critical to minimize intra-family disputes concerning the disabled patient's medical care.

#### Other Planning Devices

An Irrevocable Life Insurance Trust ("ILIT") has one primary purpose: to

ensure that death benefits payable upon the settlor's life are not included in the settlor's estate at death. By transferring large life insurance policies into an irrevocable life insurance trust, the insured may still designate the beneficiaries yet minimize estate taxes.

Another device known as a Family Limited Partnership ("FLP") provides a very convenient vehicle through which one may gift unappreciated assets, while retaining the right to manage those assets as the general partner of the partnership. This device will therefore minimize the estate tax which would otherwise be payable were the assets gifted after they appreciate. Additionally, many estate planning practitioners recommend the use of an FLP to help legally shield an individual's otherwise attachable assets from the reach of creditor's claims. While certainly not bulletproof, an FLP constitutes a formidable obstacle in the path of any creditor.

More sophisticated estate planning solutions exist for those with particularly large or complex estates or extraordinary needs. Nevertheless, the use of a revocable family trust, pour-over will and AHD, complimented as necessary by an ILIT or an FLP, will provide for the orderly disposition of an individual's estate upon death, minimize estate taxes post-2010, protect the privacy of the family's financial affairs otherwise disclosed through probate and offer asset protection.

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#### Callahan & Blaine APLC

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