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## Probate

### The Purpose of Probate

The real purpose of the Probate Court is to insure that an objective judicial body, trained in the administration of such matters, will be responsible for the evaluation of the will and the administration of the estate. It is theoretically better for a trained professional to handle such affairs rather than a lay person. With the objective Probate Court standing by, it is more difficult for fraud or circumvention contrary to the Testator's will makers wishes to occur.

### The Disadvantages of Probate

Despite the good intentions of the legal system, there are many fundamental disadvantages associated with the probate process. Because of the tremendous number of forms, filings, and court appearances necessary to complete a probate in many states, the process is very lengthy. In California, for example, the average probate requires almost 2 years before the court is able to transfer title of the assets to the heirs. The high cost of probate is also a problem. Combined, all the expenses incurred for attorneys, accountants, executor, court, appraisers, ad the probate referee may add up to over 8% of the estate's gross value!

It should be noted that without proper estate planning many of the forms of holding title eventually end up in probate. In many cases community property must go through probate. Quasi-community property is also subject to probate. Separate property goes through probate when no beneficiary has been designated. Any interest owned by a deceased Tenant in Common must go through probate, as well. Even where Joint Tenants might have owned property, at the death of the final surviving Joint Tenant the property must still be transferred though the probate process if the surviving Joint Tenant failed to properly designate a beneficiary using proper estate planning document.

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## About Kelsall & Associates PC

For over six-teen years Samuel Kelsall V has provided a complete range of advanced estate planning services to insure that a comprehensive and effective estate plan is created for each client. Mr. Kelsall, managing partner and the president of Kelsall & Associates PC, is leading member of the estate planning community. Mr. Kelsall is a licensed member of the California State Bar. He graduated from the University of San Diego School of Law with a Juris Doctor and also has a B.S. degree from the University of Denver.

Mr. Kelsall is a well-known speaker on advanced estate planning. He has lectured on the benefits of sound estate planning and advanced planning techniques at many of public events, for financial institutions, corporations and for retirement communities and professional organizations.

Kelsall & Associates PC clients include some of the most sophisticated and wealthy business owners and investors in California. With proper estate planning clients benefit from the knowledge that their loved ones will not have to go through the expense and delay of probate. For clients with larger estates, Irrevocable Trusts can provide the added tax-free-liquidity to protect the estate from federal estate and gift taxes. Kelsall & Associates also prepares in Charitable Remainder Trusts, Family Limited Partnerships and Qualified Personal Residence Trusts and other advanced planning techniques.

Even after a client's estate planning is completed, Kelsall & Associates remains committed to providing ongoing assistance for the client, and ultimately for the client's subsequent trustees and beneficiaries, including estate settlement and Trustee services through our client maintenance program.

Kelsall & Associates PC looks forward to serving your estate planning needs!

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AN  
ESTATE  
PLANNING  
GUIDE PROVIDED  
BY  
KELSALL & ASSOCIATES PC

2921 Roosevelt Street  
Carlsbad, CA 92008  
Tel.: (760) 434-2100 Fax: (760) 434-2102

*For more info visit us on the web:*  
**[www.kelsall-associates.com](http://www.kelsall-associates.com)**

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## Legal Services

### Basic Estate Planning Documents & Services

- Living Trust
- Grant Deeds
- Attorney Certification
- Insurance – Gift Counseling
- Durable Powers of Attorney at Law
- Advance Health Care Directives
- Trust Funding Documents
- Advanced Tax Planning
- Pourover Will
- Liquidity Analysis
- Declaration of Intent

### Revocable Living Trusts

- Single Female Trust
- Married Simple Trust
- Married QTIP Trust
- Married Female Trust
- Single Male Trust
- Married AB Trust
- Married Male Trust

### Irrevocable Living Trusts

- Insurance Trust
- Asset Protection Trust
- Charitable Remainder Trust
- Grantor Retained Income
- Qualified Personal Residence Trust
- Special Needs Trust

### Business Entities & Services

- S- Corporations
- General Partnerships
- Retirement Plans
- Limited Liability Companies
- Limited Liability Partnerships
- Deferred Compensation Agreements
- Professional Corporations
- C- Corporations
- Buy Sell Agreements
- Business Trust

### Tax Exempt Organizations

- Private Foundations
- Public Foundations

### Trustee Services

- Trust Divisions
- Estate Tax Returns
- Arbitration
- Estate Settlements
- Trust Maintenance
- Estate Litigation

### Probate Services

- Probate
- Will Contests
- Spousal Petitions

## Estate Taxes

Depending on how much you own when you die, your estate may have to pay estate taxes before your assets can be distributed to your heirs. Estate taxes are not the same as to probate expenses (which can be avoided with a revocable living trust) and income taxes (on income you receive in the year you die). Some states also have their own death/inheritance taxes.

Federal estate taxes are expensive – they start at 37% and quickly go up to 55%. Estate taxes must be paid in cash, usually within nine months after you die. Since few estates have this kind of cash, assets often have to be quickly liquidated. But estate taxes can be substantially reduced even eliminated – if you plan ahead.

### Who has to pay estate taxes?

Your estate will have to pay estate taxes if its net value when you die is more than the “exempt” amount set by Congress at that time. Here is the current schedule:

Calendar year	Estate and GST tax death time transfer exemption	Highest estate and gift tax rates
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	\$3.5 million	45%
2010	N/A (taxes repealed)	Top individual rate under the bill (gift tax only)

With proper estate planning most estate taxes can be reduced or completely eliminated.

## The Importance Of Proper Estate Planning

### What is Proper Estate Planning?

Estate planning is a comprehensive process that assists the client in accumulating assets and in building an estate, in protecting assets for the client’s use and enjoyment, and ultimately in distributing remaining assets to the client’s chosen heirs and beneficiaries.

Of course estate planning involves much much more than just creating a Living Trust. The Living Trust may be one of the most important tools used in estate planning. The Living Trust and the sometimes-accompanying Irrevocable Trusts primarily serve as the organizing structures that supports the proper application of a larger quantity of estate planning principals that may be combined to increase the client’s income, flexibility, privacy, retirement benefits, and asset protection.

Many clients have been engaged in some form of estate planning most of their adult lives. As a result, many clients have some limited knowledge about a number of areas of law and estate planning principals. However, many clients lack a complete understanding and a comprehensive approach to achieving all of their estate planning goals. The experienced Estate Planner can offer clients a comprehensive, yet finely tailored Estate Plan that will expand the client’s understanding and address all of the client’s estate planning needs.

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