

# PRESTON ESTATE PLANNING

A PROFESSIONAL LAW CORPORATION

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## DO YOUR TRUST DOCUMENTS WORK?

Most individuals who have created a revocable living trust would be hard-pressed to explain the reasons why they did. Traditionally, there are three primary reasons most people create trusts:

1. Avoid probate (a court proceeding that takes place *at death*);
2. Eliminate or reduce estate taxes (the Government's claim on your estate *at death*);
3. Distribute your estate to your beneficiaries (*at death*).

Does your trust accomplish these objectives? If you think it does, the next question is; "How do I know?" You may have noticed a common theme when reading the three primary reasons most people create trusts. Notice that each objective is accomplished "*at death*." For this reason, we refer to a traditional trust as a "Death Plan." Consequently, in order to be sure that your trust works properly...you need to die.

## RATHER THAN DYING, THERE IS A MORE PRACTICAL WAY TO DETERMINE WHETHER YOUR TRUST WORKS

Although it is true, dying to determine whether your trust works is obviously impractical. This presents a huge dilemma. You cannot fix a problem after you die and you don't know what needs to be fixed until you do. A more practical approach would be to obtain a "second opinion" from a lawyer that specializes in estate planning. Obtaining a "second opinion" makes even more sense when you realize that **86% of trust documents contain errors, omissions, inconsistencies, or outdated language.**

## RECEIVE A 14-POINT WRITTEN ANALYSIS OF YOUR TRUST DOCUMENTS

The Attorneys at Preston Estate Planning, A Professional Law Corporation, have been exclusively practicing this area of law for over 35 years. Our firm has created literally thousands of trust documents. However, over 15 years ago our firm began reviewing trust documents prepared by other firms. Having reviewed thousands of these documents, **we have become highly proficient at finding problem areas.** We begin each analysis by looking for 14 provisions. Rarely do we find documents that include all 14 provisions. In fact, we often discover additional problems beyond the 14. The results of this review are provided in writing.

## A CONSULTATION IS SCHEDULED TO DISCUSS THE 14-POINT ANALYSIS

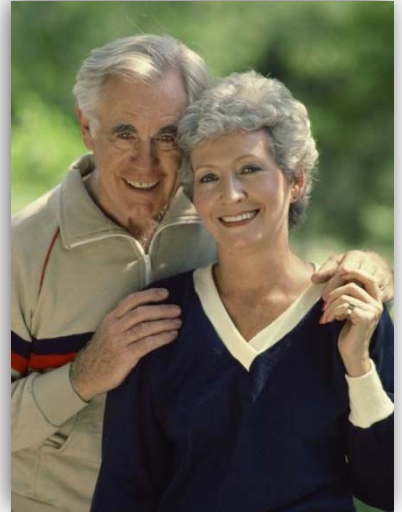
After preparing the 14-point analysis we meet with the Trustors to explain, discuss and answer any questions regarding our review of these documents. During this meeting we often discover that many of the assets are not registered properly. In fact, in a recent survey of new clients, one out of two thousand clients had registered their assets properly. One out of two thousand!

Frequently we discover that the terms of the documents are inconsistent with the client's intentions. For example, several times we've seen unnecessary restrictions placed on the surviving spouse, preventing him or her from having complete access to the trust assets. In addition, sometimes we discover that the children have been accidentally disinherited! These issues are not discovered during the 14-point analysis because a discussion with the client is necessary in order to reveal whether these provisions were intended by the client.

**VERY LITTLE IF ANY "PRE-DEATH" OR "POST-DEATH" PROVISIONS ARE FOUND IN MOST ESTATE PLANS**

**1. "PRE-DEATH PLANNING™": DOES YOUR TRUST PROTECT YOU?**

It is our "Life Plan™" philosophy that truly sets us apart from all other estate planning law firms. There are 3 parts to a "Life Plan™:" the Pre-Death™, the Post-Death™, and the Post-Post-Death™. We don't believe that probate and estate taxes were the only things on your mind when you had your trust created. Candidly, solving these problems doesn't benefit you—you're *dead*! This is what we refer to as a "Death Plan." In a "Death Plan" the primary focus of the trust documents is the children; you, the Trustor, are secondary. In a "Pre-Death™" plan, the primary focus is you, the Trustor; the children are secondary. For example, if your trust does not provide for an efficient method to remove and replace a disabled Trustee, avoiding probate is not your problem. If a surviving spouse re-marries causing loss of the trust assets, avoiding the estate tax is the last thing on your mind. What we often discover when reviewing trust documents for "Pre-Death Planning™" is:



- No Disability Panel;
- No Silent Partner Co-Trustee;
- No Disability Trustee;
- No check and balance system in the Financial Power of Attorney;
- No "Springing" provisions in the Health Care Power of Attorney;
- No authorization forms for releasing medical information;
- No method to access health care authorization documents, 24 hours a day, 7 days a week;
- No protection from "accidental" remarriage (common among senior citizens).

## 2. “POST-DEATH PLANNING™”: DOES YOUR TRUST PROTECT YOUR CHILDREN?



Once the estate has been allocated, is it distributed outright or protected during the “Life” of your beneficiaries? We refer to this type of asset protection as “Post-Death Planning™.” Nearly all trusts lack these protective provisions. This type of protection may be the single most powerful benefit you can give to your children. In fact, these provisions are so powerful that the State of California prohibits you from giving this same type of protection to yourself. Here are some of the items we look for when reviewing trusts for “Post-Death Planning™”:

- Protecting your children’s inheritance from divorce claims;
- Protecting your children’s inheritance from legal claims;
- Protecting your children’s inheritance from bankruptcy.

Most of the time, these protective provisions are missing!

## 3. “POST-POST DEATH PLANNING™”: DO YOU PROVIDE FOR YOUR GRANDCHILDREN?

Almost all estate plans provide for distribution to the grandchildren if a child predeceases the parent, which is not typical. However, trusts do not provide for distribution to the grandchildren if the child survives the parent. As a result, it is not unusual for the grandchildren to receive nothing. This can be corrected, but the document must have the necessary language to protect the grandchildren. Many are surprised to discover that careful planning can keep the estate in the family for several generations and prevent it from going to unintended beneficiaries.



## KEEPING YOUR TRUST DOCUMENTS CURRENT BE AWARE OF 3 PROBLEMS

Once the trust documents have been corrected to address the “Death Plan” issues (probate and taxes), the Pre-Death™ issues (protecting you), and the Post-Death™ issues (protecting your children and grandchildren), they must be kept current. There are 3 events that will cause your documents to become outdated: changes in the law, changes in your personal circumstances, and changes in our advice due to either legal or personal changes. **These changes can undermine even the best estate plans.** A proactive maintenance plan is crucial to your estate plan. At Preston Estate Planning, A Professional Law Corporation we have a full-scale, proactive maintenance plan for trust documents. We are in contact with our clients a minimum of 4 times per year; more often if there are major changes in the law. Through our years of service we have not found another law firm that offers this same service. This vital component to your trust documents is a crucial part of ensuring that your estate plan is always consistent with your desires and the law.

### PROPER REGISTRATION OF ASSETS

Both initially and through the years it is critical to ensure that your assets are registered properly. Making sure assets that are supposed to be registered in the trust are, assets that shouldn't be in the trust aren't, and verifying that beneficiary designations are current and consistent with your plan is a major challenge! We prepare an “Asset Detail Report™” to ensure that the assets continue to be registered properly. This is prepared for each of our clients and updated every single year.

### 3 LEGS MAKE A STOOL STURDY!

There are 3 advisors necessary to complement your financial goals: a person to help you grow your estate—the Financial Advisor, a person to report and advise you on the income tax issues—the CPA or tax preparer, and a person to protect your assets—the Estate Planning Attorney. These 3 advisors provide the necessary assistance to ensure your financial success. However, their planning and efforts should be coordinated in order to avoid competing agendas and to ensure that the effectiveness of your estate planning documents are not compromised. If you need assistance in finding good people to fill any of these positions, call us. We would be happy to give you a referral.

### WE FIX TRUSTS

Whether you need your trust documents reviewed, corrected, amended, or maintained, our qualified staff is happy to assist you with any of your estate planning needs. Please call our office to arrange a time when we can get together.

