

**“A PROFESSIONAL FIDUCIARY CAN GUIDE YOU FROM
CHAOS TO CALM”**



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PRIVATE PROFESSIONAL FIDUCIARY SERVICES

California License # 614

CLPF * NGA

**In the settlement of an estate plan, why should you
hire a professional rather than your favorite nephew?**

- 1. Professionalism***
- 2. Perspective***
- 3. Objectivity***

Because it's not my family and not my family dynamics, my greatest gift to you is that my emotions are not involved in the process!

Estate settlement is a FULL TIME JOB.



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What Is a Fiduciary?

1. **Fiduciary** 1) n. from the Latin fiducia, meaning "trust," a person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty.
2. The most common is a trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators of estates, real estate agents, bankers, stock brokers, title companies, or anyone who undertakes to assist someone who places complete confidence and trust in that person or company.
3. A fiduciary is held to a standard of conduct and trust above that of a stranger or of a casual business person. He/she/it must avoid "self-dealing" or "conflicts of interests" in which the potential benefit to the fiduciary is in conflict with what is best for the person who trusts him/her/it.

Why do I need a fiduciary?

1. *If you have an elderly parent who needs help with monthly bill paying and account management, then you might need a fiduciary!*
2. *If your older parent or grandparent is getting ready to complete their living trust, then you might need a fiduciary!*
3. *If your parents have completed their living trust and don't want to burden their children with that responsibility, then you might need a fiduciary!*
4. *Adult children not getting along? And Mom and Dad just completed their living trust and don't want to the kids squabbling over who is in charge..then you might need a fiduciary.*

WHAT IS PROBATE?

(the legal gift to the procrastinator)

And why is everyone trying to avoid it?

What is Probate?

Probate is a legal process in which your property is identified, inventoried, and distributed to your rightful heirs after your death.

If you have a will, it contains a written record of what you wish to be done with your property. You have named an executor (usually a relative or trusted friend) who will carry out your wishes through the court-supervised process of probate.

The probate begins when the will is submitted to the court along with a petition for probate. A legal notice announcing the beginning of the probate process is published in a newspaper of general circulation, and the will itself becomes a public document. In addition, all the beneficiaries are located and sent a special notice of the probate proceedings by mail.

The executor then begins to locate and identify all the property, which will be inventoried and, if necessary, appraised. Creditors are also notified of the death and advised that the assets will soon be distributed. Your business and personal financial records may be made public during these proceedings. After the required waiting period has passed and all the beneficiaries have been informed, the assets of the estate are distributed to the creditors and beneficiaries. If necessary, an estate tax return is filed and estate taxes are paid.

What if there is no will?

In cases where there is no will (intestacy) an administrator will be appointed by the court, and your property will be distributed to your "heirs at law." This means the court will follow a format prescribed by the state legislature that specifies who (among family members) should inherit the property. The process is similar to a probate proceeding, but the heirs may or may not be the people you would have chosen yourself. Under the intestacy statutes, only your relatives by blood or marriage may inherit from you. Your best

friend, business partner, or domestic partner would all be ignored under these statutes.

How can I avoid probate?

For most people, the best way to avoid probate is by establishing a living trust. A living trust has all the benefits of a will and none of the drawbacks. You can name a guardian for minor children, set up trusts for money left to minor children, and direct how assets are to be distributed. In addition, assets held in a living trust can be disbursed within a few weeks, rather than the 12 to 18 months required for probate, and the tedious probate procedures and fees are avoided.

Probate can be a major complication for your heirs and can cost a great deal in time, money, and inconvenience. Careful legal planning now can provide your loved ones with peace of mind and greater security when they need it most.

Why should probate be avoided?

There are three important reasons you may wish to avoid probate.

1. **It is expensive.** The fee for probate is set by statute in California. For ordinary services, the executor and attorney each are entitled to compensation based on the total appraised value of the estate (before subtracting debts) as follows:

Four percent (4%) on the first \$100,000

Three percent (3%) on the next \$100,000

Two percent (2%) on the next \$800,000

One percent (1%) on the next \$9,000,000

IT IS IMPORTANT TO REALIZE THAT THE FEES FOR PROBATE ARE CALCULATED BASED ON THE GROSS VALUE OF THE ESTATE, REGARDLESS OF MORTGAGES OR OTHER DEBTS OWED..

2. The second reason to avoid probate is that **it often ties up your assets for a long time**. While the estate is going through the probate process, a lack of liquidity (cash flow) can create problems for your heirs. They may have to pay your mortgage or other debts, or they may be trying to keep your business running. They will need ready cash, but it can be very difficult to sell assets before the probate is complete. An average probate can take 12 to 18 months, if you are lucky to get a court date, resulting in severe financial problems for your family or business.
3. Third, the **probate process can involve many visits, letters, and phone calls between the attorney and the executor, and can place a physical and emotional burden on the survivors**. The grieving process is difficult enough without the bother and disturbance that is often involved in probating an estate. Most people would prefer for their loved ones to remember them while on a serene walk in the woods rather than in an attorney's office

Executor's Duties

Some of an executor's many duties are:

- Probate the will and receive "letters testamentary" from the court (if court appointed).
 - Take possession of personal property and arrange for the support of the decedent's family.
 - Change locks on residence.
 - Take such immediate steps as are necessary for temporary protection; (for example make sure homeowners insurance is current)
 - Advertise to bar creditors' claims after a specified date.
 - Investigate all claims against the estate to determine their validity.
 - Pay all valid claims and collect any indebtedness due the estate.
 - Obtain appraisals of all real and personal property for tax purposes.
 - Collect any life insurance due the estate.
 - Notify all companies in which stocks are held to send dividend checks to the executor.
 - Close brokerage accounts and pay off collateral loans.
 - Obtain access to any property held in storage.
 - Decide which securities, if any, should be sold to raise cash needed to pay claims, taxes and expenses.
 - Study all contracts and leases to see if any action is needed.
 - Check all real estate for delinquencies in rents and taxes.
 - Manage or liquidate any controlled business.
 - Compute accrued interest on bonds, notes and mortgages as of the date of death.
 - Gather and compile complete information for estate and inheritance taxes, including any taxes due in other states in which the decedent owned property.
 - Prepare and file federal estate tax return, and state reports or returns as required.
 - Pay estate and inheritance taxes within time prescribed by law to avoid penalties.
 - Prepare and file federal and state income tax returns for current year; one set of returns covering the period prior to death and another set covering the period after death.
 - Obtain final audit and releases of income tax returns filed during decedent's lifetime over which various authorities still have power of review.
 - Obtain final audit of federal estate tax returns.
 - Prepare final accounting.
 - Distribute estate according to the terms of the will.
 - All of the above must be attended to either by the executor in person.
- Selection of competent, skilled and dependable estate attorney, estate accountant and appraisers are one of the prime responsibilities of an executor.

What Is Conservatorship?

And how do I know if it is right for family member/friend/colleague?

What is a Conservator?

A conservatorship is a court case where a judge appoints a responsible person (called the “**conservator**”) to care for another adult (called the “conservatee”) who cannot care for himself or herself or manage his or her own finances.

What is a Conservatorship?

A conservatorship is a form of guardianship over a person who is unable to handle his or her own financial or personal affairs. The conservator (person who is authorized to make decisions on behalf of the incapacitated person) can be a parent, spouse, child, other relative, friend, or professional conservator. The conservator must act in the best interest of the incapacitated person (conservatee).

Conservatorship of the Estate and Conservatorship of the Person

Conservatorship of the Estate: When someone needs help managing finances, the court appoints a conservator of the estate. The conservator of the estate will take on tasks such as locating and taking control of assets, managing the assets, paying bills, making investments, collecting income, protecting the assets, and accounting regularly to the court. Some conservatees are unable to manage their finances, but still like to be out in the world; with court approval, the conservator can give the conservatee pocket money to spend, so for example the conservatee can still go out for coffee with friends or go shopping for small items.

Conservatorship of the Person: When someone needs help managing daily needs, the court appoints a conservator of the person. The conservator of the person will typically arrange for the Conservatee’s care and protection, decide where the conservatee will live, and make decisions about personal matters such as food, clothing, recreation, transportation, and medical care. For some conservatees, the question of where they live can be critical. Sometimes the conservatee can live at home with the help of an aide; other

times the conservatee will benefit from the increased social stimulation and safety features of a care facility.

If the conservatee has dementia or Alzheimer's disease, the conservator may need to move him to a special care facility to keep him safe. There are care facilities that specialize in the care of people with dementia; they have a secured perimeter so patients can be free to walk around but will not be in danger of wandering off.

A conservatee can have two different people serving as conservator of the estate and conservator of the person, or one conservator can fill both roles.

What Does Mean to 'Fund" My Trust?

Funding (or to fund) is the process of legally retitling and transferring assets into the name of a Trust so that they are controlled by the Trusts instructions.

It is similar to someone who buys a house. They will spend thousands of dollars on new paint and landscaping, but there is no plumbing, wiring, furniture, carpets or drapes in the house. The house is just a shell without content. This is similar to a Trust. Who is going to protect it if there is nothing in it?

A Trust serves no purpose until something tangible is placed in it, like real estate or bank accounts. If this isn't done, then you have a beautiful, well-drafted set of instructions, which apply to nothing.

You have an empty house.

HORROR STORIES:

**(relatives fight not just over money but over memories,
possessions and slights.....real or perceived)**

My dear old Dad passed in 2005. Mom had passed 30+ years ago. Dad had remarried and he and 'A' were married 25 years. He was a banker and had a will and living trust that he had funded successfully....except for the \$300K of stocks from his employer of 40 years that he forgot about as he aged.

His wife, 'A', did her best to absorb his properties and savings but she was not listed in his trust. When he passed, 'A' forgot to give me all his files and account numbers for his holdings and properties. So without any account numbers I figured out how to reconstruct a 4 million dollar estate...without her help. Had he not had a current living trust, she would have absorbed everything.

The stocks had to be probated but the end result was that all of us are still close and benefitted from his long term planning.

*Mom passed away first. Then his father passed away. While he was making funeral arrangements, his sisters were at their folks home and took all the personal belongings. He went to County Court and tried to settle the Estate. He figured that the Court would make them bring all the personal property back, but the Court did not admonish them or anything. As for the home, it had been remortgaged and his father was in debt. His father's house was taken back by the bank. His **horror** was that his sisters were allowed to steal all the personal property and he didn't inherit anything.*

Sally bought a house valued at \$200,000 and paid a \$25,000 down payment. She then died without a trust. Although she owned only \$25,000 of the house, probate fees were calculated based on the full value of the property. Sally's estate owed the executor \$7,000 and the probate attorney \$7,000, for a total of \$14,000 in probate fees.

Eileen who was looking to protect her home in the event she ever had to go into a nursing home. She originally paid about \$40,000.00 for her home and it is now worth in excess of \$600,000.00. She went to a real estate attorney with no experience in elder law and asked him to transfer her property to her children. The real estate attorney prepared and filed a deed without considering that the family would eventually be looking

at about \$540,000.00 in capital gains and would have to pay the applicable capital gains tax on this transfer. The moral of this story is to make sure you hire a competent, seasoned professional to avoid a stepped-up tax basis and capital gains tax issues.

The two adult children fought over a silver cup after their father died. The ensuing bitterness split the family....over a tea cup!

A woman came to the attorney's office with a crystal figurine she had given to her mother. Because her mother mistakenly bequeathed it to someone else, the daughter smashed it in attorney's presence. If she couldn't have it, no one would.

Two adult brothers were arguing over a provision in their father's will. One took a heavy book off the desk and threw it, missing his brother. The only casualty was a vase on the desk. Brothers are still arguing.

If a father has a coin collection or baseball-card collection that was appraised in 2008 for \$5,000, he might leave that to his son and leave \$5,000 in cash to his daughter. A decade later, the card collection might be worth \$20,000. Yet unless dad updates his will, the daughter will still receive only \$5,000. **Update your will and living trust!**

Wearing two hats!

If more than one child wants to be executor, they can agree to act as co-executors, but that's often a situation that can lead to family friction. It's often better if siblings agree that one of them will serve as personal representative, and will keep the others well informed about the probate court proceeding.

Sibling rivalry does not diminish with age.....it progresses!