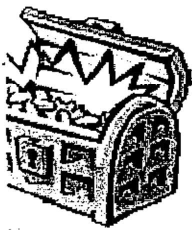

Estate Planning: Where Will My Assets Go When I'm Gone?

Part One: Passing Assets On
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Part One: Passing Assets On

Simply put, "estate planning" is planning ahead to answer the question "Where will my assets go when I'm gone?"

Related questions are:
- "Who will receive my assets when I die?" And "What control do I have over that - while I'm alive?"
- "When I die, what procedures will apply to distributing my assets, and how complicated will they be?"
- "How can I minimize the impact taxes might have on the assets I leave?"

In thinking about estate planning, be sure to separate (1) the passing of assets to heirs and beneficiaries, from (2) the tax aspects of passing those assets. They are two quite distinct subjects with different concepts and rules.

To get started, **make a list your assets and their approximate values.** In this *Part One*, we focus on passing assets, and the four principal routes that assets travel upon the death of the owner. The routes are:
1) The probate route. 2) The probate-avoider route.
3) The assets-to-surviving spouse route. 4) The small-estate route.

#1: The Probate Route
We can't discuss passing assets at the owner's death without discussing "probate." Probate is a court proceeding to pass the "probate estate" of a deceased person to the deceased person's heirs. The court also approves the "executor" or "personal representative" to sort out the probate estate, deal with debts, and distribute assets - under court supervision.

> *The Probate Estate*
> The "probate estate" consists of assets held in the name of the deceased person on his or her date of death - for which the deceased person does not have a "probate avoider" in place. See Route 2: Probate Avoiders

Must I Avoid Probate?
In 1965, Norman F. Dacey first published his book called "How to Avoid Probate." In it he urged

avoiding probate, arguing that probate is "essentially a form of private taxation levied by the legal profession upon the rest of the population." Helping people avoid probate (especially by providing them with living trusts) has become an active industry in several states, including California. In states with relatively streamlined probate procedures, avoiding probate is less of a concern and living trusts are not as common.

In California, the debate about probate goes on. Those who urge avoiding probate argue that probate:

- Can be more costly than other approaches.
- Can take more time than other approaches.
- Can be less private than other approaches.

Others point out benefits from probate, telling us that probate:

- Can be a way to sort out planning document ambiguities and defects, and resolve conflicts.
- Can provide valuable supervision by a court.
- Can provide an expedited way to deal with creditors.

The answer to the question "Must I avoid probate?" is not an automatic yes or no. The answer for you depends on your views about the probate process. One person could reasonably say that he is not concerned about probate. Another, in similar circumstances, could reasonably say that he is concerned about probate and wants to avoid it.

The Cost of Probate

To determine the cost of a California probate, you start by figuring out the gross value of the assets included in the probate estate. Then, assuming you will hire an attorney to handle the probate, you can look to the formula fees for attorneys under the California statutes (see Table 1). The larger the probate estate, the smaller the fee as a percentage of the probate estate.

Table 1

Gross Value of Probate Estate	Attorney Fee	Executor Fee
$150,000	$5,500	$5,500
$300,000	$9,000	$9,000
$500,000	$13,000	$13,000
$1,000,000	$23,000	$23,000

Table 1 also includes formula fees for an executor. Depending on the circumstances, executors accept the fee or waive all or part of it. To come up with the total cost, add to the attorney and executor fees amounts for filing and court costs, probate referee and appraisal costs, and costs for "extraordinary services."

How Long Probate Takes

Based on reports from those involved in probates in Southern California, we would estimate that most California probates take six to eighteen months.

What If You Do Want to Avoid Probate?

If you decide you want to avoid probate, you should examine Route 2, Route 3 and Route 4.

#2: The Probate-Avoider Route

Remember, probate applies only to the probate estate. A "probate-avoider" is an arrangement used by a person during his lifetime that effectively removes an asset from his probate estate. Table 2 shows probate-avoiders available for selected assets. *Note:* In this discussion we involve a fictional family: George and Barbara (husband and wife); Bill and Hillary (adult children of George and Barbara); and Madonna (Barbara's sister).

Table 2

	Available Probate-Avoiders				
Asset Owned	**Beneficiary Naming**	**Joint Tenancy**	**Pay-on-Death**	**Living Trust**	**Registered Assets**
Residence (Real Estate)		X		X	
Other Real Estate		X		X	
Mobile home (registered)		X		X	X
IRA, 401(k)	X				
Life Insurance Policy	X			X	
Annuity (tax-deferred)	X				
Bank Account		X	X	X	
Certificate of Deposit		X	X	X	
Automobile		X		X	X
Brokerage Account		X	Check broker	X	
Mutual Fund Account		X	Check company	X	
Personal belongings				X	

Beneficiary Naming

The owner of the asset, during the owner's lifetime, completes the paperwork and names one or more beneficiaries to receive the asset after the owner's death. Life insurance, IRAs, 401(k)s and annuities are examples of assets where beneficiary naming can be used as an effective probate avoider. It is very important to keep the naming of beneficiaries up to date - a beneficiary who dies before the owner is treated as never having been named. Let's say Madonna names Bill as the beneficiary of Madonna's IRA. When Madonna dies, Bill can obtain the IRA by providing Madonna's death certificate and proof of Bill's identity. Beneficiary naming can normally be accomplished at little or no cost.

Joint Tenancy

The owner of the asset, during the owner's lifetime, completes the paperwork to add one or more other people as joint owners of the asset. Joint tenancy includes a right of survivorship. For example, with a 50%-50% joint tenancy between Madonna (the original owner) and Hillary (the joint owner Madonna added to title on Madonna's bank account) - if Madonna dies first, Hillary becomes the 100% owner of the account.

Joint tenancies have risks, and we warn about the use of joint tenancies between generations. If Madonna adds Hillary to ownership of Madonna's home, Madonna will have given up control of her home (if she wants to sell it, she will need Hillary's signature; if she wants to change who will receive the home when she dies, she will need Hillary's agreement). If a creditor (or a divorcing spouse) obtains a court judgment against Hillary, the creditor could levy against Hillary's joint interest in Madonna's home.

A joint tenancy can normally be created at little or no cost (for real estate, there's a cost for preparing and filing a deed and change of ownership report).

Pay-on-Death Account
The owner of a bank account, during the owner's lifetime, completes the bank's paperwork and names one or more persons to receive the bank account upon the owner's death. This is similar to beneficiary naming. Some brokerage accounts, mutual funds, and stock transfer agents provide a similar arrangement (sometimes called a "transfer on death" account). Unlike a joint tenancy, the intended recipient has no claim on the asset during the owner's life. A pay-on-death account can normally be created at little or no cost.

Revocable Living Trust
The owner of an asset, during the owner's lifetime, completes the paperwork and transfers the asset to a new ownership (the trustee under the living trust). For example, George and Barbara create a living trust and transfer their home to trust ownership. When George and Barbara die, the home (being owned by the trust) is not in the probate estate of either of them. Once both George and Barbara have died, the home is dealt with in the manner they directed in the trust document. This is the most expensive probate avoider to create, with a cost of $500 to $1,000 or more (as part of an overall estate planning package).

Registered Assets
Assuming other assets do not require a probate, vehicles registered with the Department of Motor Vehicles are not required to go through probate. The person entitled to the deceased owner's vehicle (under the owner's will or, if the owner does not have a will, the intestacy laws) completes the DMV affidavit and transfers the car. Similar approaches are available for certain other "registered" assets (manufactured homes and boats, for example).

Cost: Using vehicle registration as a probate avoider costs no more than the basic registration charges.

Lifetime Gifts
We might have included "lifetime gifts" in our list of probate avoiders. Remember that the probate estate only includes assets owned at the date of death. If the owner formally gives an asset to another person during the owner's lifetime, there will be no probate for the asset at the giver's death. And, the giver will be around to witness the recipient's pleasure in receiving the asset.

Warnings: you should not give away assets that you will need to use for your future needs or care; and lifetime gifts can also have significant tax consequences (see *Parts Three, Four and Five*).

Wills, Probate and Probate Avoiders

Our list of probate avoiders did not include a will. Why? Because *a will does not result in avoiding probate*. In fact, wills are a central document in many probate proceedings. A will names who should receive assets owned by the person, when that person dies. But a will only controls assets that are part of the probate estate. So, a will has no impact on an asset for which a probate avoider is effect.

For example, Madonna owns an IRA valued at $200,000. The following occur:

1. On her IRA forms Madonna names Bill as the sole beneficiary of her IRA.
2. Madonna writes a will, signs, dates, and has it properly witnessed. It is a valid will. In Madonna's will, she states that her IRA should be given to Hillary at Madonna's death.
3. Madonna dies (survived by both Bill and Hillary).

Who receives the IRA? Bill does. Using the "beneficiary naming" probate avoider, Madonna removed her IRA from her probate estate. The will has no impact on her IRA.

#3: The Assets-to-Surviving Spouse Route

For assets going to the surviving spouse at the death of the first spouse, probate often is not a significant issue. Why? Because many couples use probate avoiders (like beneficiary naming and joint tenancies). And where probate avoiders haven't been used, two other approaches make it relatively easy to pass assets to a surviving spouse:

1. California law provides for relatively straightforward passing of community property to the surviving spouse - normally without court proceedings.
2. In the case of separate property going to a surviving spouse - an expedited, lower-cost court proceeding called a "spousal property petition" is available.

Having the surviving spouse route available doesn't mean couples should avoid estate planning - or say they will wait until just one of them is living. Consider that:

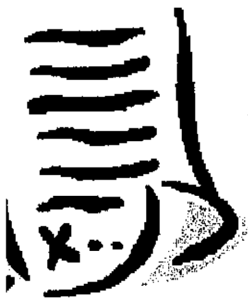
- Without advance planning, the surviving spouse may need to go through extra work and inconvenience at the death of the first spouse (not a good time to deal with legal details).
- The surviving spouse may fail to do planning (forgetting, or even becoming incapacitated).
- Death of spouses in a common accident, while rare, does happen.

#4: The Small-Estate Route

Where the value of the probate estate is $100,000 or less, the "small estate affidavit" procedures allow for a simplified method of transfer. However, the small estate affidavit route is not available if the probate estate includes real estate valued at $10,000 or more.

For example, Hillary has a will naming her brother Bill as her executor. In her will she leaves all assets to Bill, except for several personal belongings left to George and Barbara. Hillary dies, survived by Bill, George and Barbara, and owning the following assets:

- A $75,000 IRA, naming Bill as beneficiary.
- A $75,000 mutual fund account, owned as joint tenants with George and Barbara.
- A $90,000 bank account, in Hillary's sole name.
- $5,000 value of other personal belongings.



The IRA (with beneficiary naming) should be readily available to Bill. The mutual fund account (with joint tenancy) should be readily available to George and Barbara. Neither the IRA nor the fund account is part of Hillary's probate estate.

Hillary's probate estate totals $95,000 (the bank account plus the other personal belongings). The small estate route is available for passing Hillary's probate estate. How should Bill proceed?

- He should deal with Hillary's personal belongings, transferring or disposing of them as Hillary stated in her will.
- To deal with the $90,000 bank account, Bill goes to the bank and completes a "small estate affidavit" attaching a copy of Hillary's death certificate. In the affidavit, Bill confirms that no probate-type proceedings are pending, the value of Hillary's probate estate does not exceed $100,000, no real estate is included in Hillary's probate estate, and Bill is entitled to the account under Hillary's will. Forty days after Hillary's death, the bank should turn the account over to Bill.
- Note that if Hillary has creditors at her death, the bank account funds continue to be subject to the payment of claims of those creditors.

Concluding Thoughts

- List your assets and their approximate values.
- Think about probate - are you concerned about it or not?
- If you are concerned about probate, go down your list of assets and mark down those probate avoiders you could use (see Table 2).
- Decide how you want to proceed. What approaches do you want to use? Would the small estate route be available?
- Find a qualified advisor to help you do your planning.

Part Two: Wills and Trusts

In this *Part Two*, we discuss wills and revocable living trusts (also called "living trusts"), focusing on what they do and don't do, and comparing them. We'll also list factors to consider in deciding whether or not to create a living trust.

About Wills
Three important things to remember about wills:

1. A will is a "naming document." A will can name who will receive assets when the owner dies. A will can name an executor (or personal representative) - the person who will handle assets subject to the will, and debts. And, a will can name a guardian (for minor children).
2. A will impacts assets included in the "probate estate." It has no impact on an asset for which a "probate-avoider" is in effect. [For more on "probate-avoiders" see *Part One*]
3. A will does not result in avoiding probate. In fact, wills are a central document in many probate proceedings.

Creating a Valid Will
Even a clearly written will, created by an obviously clear-headed person, won't be "valid" (stand

up in court) unless certain signing formalities are followed. In general, the recommended formalities are:

- The will must be signed and should be dated by the person creating it (the "testator").
- The testator should sign in the presence of two witnesses (both should be present at the same time). Each witness should understand that the document is the testator's will, and each should sign as a witness in the presence of the other. Witnesses should *not* be the testator's spouse, child, grandchild, a person receiving assets under the will, or a close relative of any of them.

California also recognizes a "holographic" or "seaman's" will - where all material provisions are in the testator's handwriting - without the need for witnesses. The will still should be signed and dated by the testator.

What If I Die Without a Will?
A person who dies without a valid will is "intestate." The intestate person has failed to name who will receive assets in his or her probate estate.

Who will receive the probate estate of the intestate person? The California Legislature has written rules that answer this question. Under those rules:

- *If the intestate person is survived by a spouse:* all "community property" goes to the spouse; all "separate property" is shared by the spouse with surviving children, or grandchildren (or parents, siblings, cousins or other relatives of the intestate person). In general, "community property" includes assets accumulated by a married person during the person's marriage while living in California. "Separate property" is often assets inherited by a married person, or owned by the married person before the marriage - so long as the assets have been kept separate (not commingled with community assets).
- *If the intestate person is not survived by a spouse:* the intestate person's surviving children (and grandchildren, in the case of the intestate person's children who have died before the intestate person) share. For example, unmarried Pearl dies without a will, leaving one surviving child and one deceased child. Pearl's deceased child had four children, each of whom survives Pearl. Without a will, 50% will go to Pearl's surviving child, and 12.5% will go to each of her four surviving grandchildren (they share her deceased child's 50%). If no children or grandchildren survive, the closest surviving relatives of the intestate person (parents, siblings, cousins or other relatives) are designated.

Will vs. Probate Avoider
Remember: A will only applies to the probate estate. An asset handled with a probate-avoider (beneficiary naming, joint tenancy, etc.) is not part of the probate estate - so the will has no impact on that asset.

Avoiding the Legislature's Rules

If you wish distribution of your probate estate in a way that doesn't follow the Legislature's rules, you need a will. A few examples:

- John is married to Mary, and they have one child. John will have both separate property (an inheritance from his mother) and community property in his probate estate. John wants all of his property to go to Mary when he dies. If John dies without a will, Mary will receive the community property, but Mary will need to share the separate property with their child. To create the result he wants, John should have a will stating that Mary is to receive all of his property (community or separate).
- Joyce is married to Jerry, and they have one child. Joyce will have both separate property (an inheritance from her father) and community property in her probate estate. Joyce wants her community property to go to Jerry when she dies, but wants her separate property to go to their child. If Joyce dies without a will, Jerry will receive the community property, and will share the separate property with their child. To create the result she wants, Joyce should have a will stating the Jerry is to receive the community property and their child is to receive the separate property.
- Gretchen is a surviving spouse, with three adult children. Gretchen wants 50% of her probate estate to go to one of the children, with the others sharing 25% and 25%. If Gretchen dies without a will, her probate estate will be shared equally (one-third each) by her three children. To create the result she wants, Gretchen should have a will spelling out the 50% - 25% - 25% sharing.

About Living Trusts

A living trust is also a "naming document." It names who will receive assets owned by the trust. It also names a trustee (the person in charge of the assets) and successor trustees.

People often hear that they should create a living trust, because it is *the way* to save on estate taxes. This is not correct. The estate tax savings that can be produced by a properly-written living trust can also be produced by a properly-written will.

People also hear that living trusts provide more privacy than wills. We don't think that is necessarily true. While a living trust normally won't be involved in a public probate, there are other circumstances where disclosure of the trust occurs (litigation, notice to beneficiaries, title companies, banks, etc.).

So, why create a living trust?

- *The primary reason to create a living trust is to avoid probate.* Assets transferred before death to a living trust are removed from the probate estate.
- Living trusts can also provide for lifetime asset management.

Do I Need a Living Trust?

A living trust can be a valuable tool for one person, and a waste of money for another. No one (not even your neighbor who seems to have all the answers) can tell you what to do - what you should do depends on your own situation and feelings on several subjects.

The probate-avoiding benefits of a living

trust only apply to assets transferred to the living trust during the creator's lifetime.

Your Situation

- What are your assets? In *Part One*, we suggested that you make a list of your assets. The identity and types of assets that you own have an important impact on your decision.
- Which probate avoiders are available for your assets? A living trust is a probate avoider. But there are free and low-cost probate avoiders for many assets (bank accounts, insurance, IRAs, etc.). Real estate is one area where a living trust may well have an advantage over the other probate avoiders.
- Where are your assets located? If you own real estate in several states, without a living trust multiple probate proceedings may be needed.
- How will your assets be managed if you become incapacitated? Assets owned by a living trust have the benefit of the trust's asset management provisions (your successor trustee steps in to manage trust assets on your behalf). But, if the asset isn't owned by your trust, a financial power of attorney can provide similar asset management protection (by the agent under the power of attorney).

Your Feelings

- What are your feelings about avoiding probate? The primary reason to create a living trust is to avoid probate. If you are not concerned about probate, the living trust approach loses much of its appeal for you.
- What are your feelings about dealing with formalities? A living trust only helps avoid probate if you transfer assets to it during your lifetime. Transferring assets (your home, bank accounts, etc.) requires formalities (paperwork). Accounts held by the trust will then follow different signing formalities. For some, this is not a significant issue; for others, it's an annoyance they'd rather not deal with.
- How do you feel about cost to set up a trust? As indicated in Table 3, a trust generally has a greater up-front cost than a will. It involves spending more dollars today.

Table 3: Comparing Wills to Living Trusts		
Subject	**Will**	**Trust**
Active during life?	No	Yes
Helper's title?	Executor / Personal Representative	Trustee or Successor Trustee
Way to name heirs?	Yes	Yes
Amend during life?	Yes	Yes
Use for estate tax savings?	Yes	Yes
Lifetime asset transfers required?	No	Yes
Assets covered?	Probate Estate	Trust Assets
Manage assets if I'm incapacitated?	No	Yes, Trust Assets
Avoids probate?	No	Yes, Trust Assets
Settle at death?	Yes, Probate Estate	Yes, Trust Assets
Manage assets after I die?	Yes, Probate Estate	Yes, Trust Assets
Cost to create (up-front)	$	$$

Concluding Thoughts

- A will and/or living trust are part of an overall planning package. In general, such a package should also include a power of attorney for health care and a financial power of attorney.
- Find a qualified attorney to help you with your planning and preparation of your documents. Be sure to obtain and check the references of any advisor you retain.

Part Three: Estate and Gift Taxes

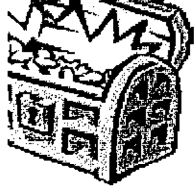
Estate planning deals with answering the question "Where will my assets go when I'm gone?" We now turn to tax issues - and whether part of your assets might go to Uncle Sam or the State of California.

Exemption Amount - 2011 & 2012
$5M & $10M for married

Estate and Gift Taxes -- General
Yes, indeed, there can be a tax on giving assets away. Called Federal estate and gift taxes, a tax can arise not only for gifts made at death (estate tax), but also to gifts made during a person's lifetime (gift tax). The tax rates are steep, currently ranging from 41% to 50%.

Under the general provisions of these taxes, even a $50 birthday gift would be subject to the gift tax. The reason we don't end up paying tax related to such gifts is that Congress included in the law a "small gift" provision that we call the "$13,000 Rule" (see "What's This $13,000 Rule Anyway?" below).

California does not have a separate estate, inheritance or gift tax filing requirement - it does receive a portion of estate and gift taxes payable to the Federal government.



- For single persons and couples (combined) whose estates will be $1,000,000 or less, don't expect to pay any estate or gift tax for the foreseeable future.
- For single persons and couples (combined) whose estates will be greater than $1,000,000, there are options for minimizing estate and gift taxes.
- For couples, have the language in your pre-Boomerang Tax Act estate planning documents reviewed, to make sure that the BTA's impact on any distribution formulas hasn't created unexpected results.

Part Four: Capital Gains Taxes

Basis and Basis Step-Up (Today)

Capital gains taxes apply when an owner sells a "capital asset" for more than the owner's cost of the asset. "Capital assets" include personal residences, investment real estate, stocks, mutual funds and similar assets. The owner's cost (which, in the case of real estate, can include not only the purchase price but also the cost of improvements) is referred to as the owner's "basis" for the asset.

Let's say that Madonna (a single woman) owns a condo worth $500,000. She's owned it and lived there for 30 years. She originally paid $50,000 and has spent $30,000 on improvements. So her basis for the condo is $80,000.

Madonna is thinking about selling her home today (while she is living). If she does, the capital gains tax calculation would look something like Table 10 (below). From her sale of her condo, Madonna would pay capital gains taxes of $42,500 and net $457,500.

On the other hand, Madonna is considering holding onto her condo and, when she dies, giving it to her niece (Hillary). Hillary doesn't intend to live in the condo, and would sell it upon receiving title after Madonna's death. Under this approach, the capital gains calculation would look something like Table 11. Compare this result to Table 10. In Table 11, The capital gains taxes vanish!

Table 10: Madonna's Lifetime Sale of Condo

Item	Amount	Comments
Sale proceeds (net)	$500,000	Received at sale
Subtract Basis	(80,000)	
Capital Gain	$420,000	Proceeds minus basis
Subtract: Residence Exclusion	(250,000)	Up to $250,000 for single person, $500,000 for couple; if residence two of last five years
Taxable Capital Gain	$170,000	
Estimated Tax	$42,500	Assumed 25% combined Federal and California tax

Table 11: Hillary's Sale of Madonna's Condo

Item	Amount	Comments
Sale proceeds (net)	$500,000	Received at sale
Subtract Basis	(500,000)	"Stepped-Up Basis"
Capital Gain	$0	Proceeds minus basis
Estimated Tax	$0	

Why did the capital gains taxes vanish? Because Madonna owned the condo at her death, it was included in her estate for estate tax purposes. Assets included in a person's estate have their basis adjusted, to be the ***greater*** of the actual basis or the current market value at the date of the owner's (Madonna's) death. The basis adjustment rules work not only for homes, but for other capital assets as well. They are very useful for assets that have gone up in value, where the new basis is also called "stepped-up" basis.

For assets that have gone down in value, the basis adjustment rules work in reverse.

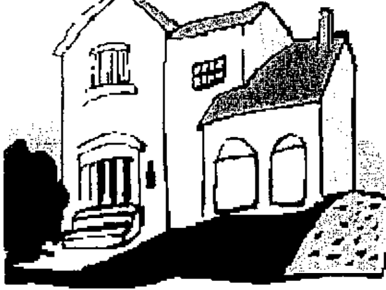
BTA Change: 2010 Loss of Basis Step-Up

Automatic basis step-up continues under the Boomerang Tax Act, through 2009.

Now the bad news. When the estate tax disappears in 2010, the automatic basis step-up will also disappear for assets of people dying in that year. For a person dying in 2010, the basis in the hands of an heir will equal the ***lesser*** of the basis in the hands of the deceased person or the fair market value of the property at the owner's death. This is called "carryover basis" and was pretty much a nightmare when it was law from 1976 to 1980 (it was repealed, retroactively, in 1980).

The BTA does include a softening provision, however, that lets a person's executor add to basis of assets (selected by the executor):

- $3,000,000 for assets going to a spouse; plus
- $1,300,000 for assets going to any person.



To add to the confusion, but provide some relief, the boomerang strikes again. Under the BTA, in 2011 we go back to today's step-up rules.

Important Reminders

- If you want to give away a capital asset (residence, other real estate, stocks, mutual funds, etc.) that has gone up in value, waiting to give it until your death can produce meaningful capital gains tax savings.
- Under the Boomerang Tax Act, 2010 will be a "special" year, with very different basis adjustment rules.
- It's always been important to keep records of costs of capital assets (original purchase price, cost of improvements, etc.). The BTA makes it even more important to do so.

Part Five: Real Property Taxes

In this Part, we focus on transferring real estate at the owner's death.

California Real Property Taxation - General
Remember Proposition 13? Adopted by the California voters in 1978, Proposition 13:

- Rolled back the assessed value of real estate to that shown on the county assessor's 1975-76 tax bill.
- Limited annual increases in a parcel's assessed value to the lesser of the inflation rate for the year or 2%.

Over the last three decades, California real estate values have in general shown significant growth. As a result of Proposition 13, people who have owned their homes for a long time have lower assessments than those who purchased equivalent homes more recently. And, of course, a lower assessment means lower property taxes.

Reassessment Triggered by Transfer
The assessment protections of Proposition 13 do not last forever. Most important in the context of estate planning is the concept that there will be a new assessed value, equal to fair market value (appraised value), when there is:

- a purchase by a new owner, or
- other "change in ownership."

The New Owner Rule
As an illustration of the "new owner" rule, let's say that George and Barbara (a married couple) bought their home in 1970 for $18,000, and have made a few improvements over time. Let's also say that they could sell their home today for $250,000. But, thanks to Proposition 13, their home now has an assessed value of $50,000. If George and Barbara sell their home today for $250,000, the new owner will have a new assessed value based on the $250,000 purchase price. The new owner will pay property taxes at a rate five times that of George and Barbara.

The Change in Ownership Rule
When an owner dies, and the owner's home is transferred to an heir, this is a "change in

ownership" for the home. In general, the heir will end up with a new assessed value (current fair market value) for the home. *But, there are important exceptions.*

Surviving Spouse Exception
Under Proposition 13, a transfer at death to a surviving spouse is not considered a "change in ownership." For example, let's say that George dies (survived by his wife Barbara). If Barbara receives George's interest in their home, there will be no new assessment. Barbara can keep the low assessed value. This is true whether the home was owned in joint tenancy, community property, in trust, or even in George's sole name.

Transfers to Children Exception (Prop. 58)
Proposition 58 was adopted by the voters in 1986, as an amendment to Proposition 13. Proposition 58 allows parents to transfer real estate to their children without triggering a reassessment, if the proper procedures are followed within the time limits.

Transfers by *sale, gift, or inheritance* can avoid reassessment under Proposition 58.

The definition of children includes: any child born of the parents; certain adopted children; certain step-children; and certain sons-in-law and daughters-in-law. *Note:* In some cases, transfers from grandparents to grandchildren can avoid reassessment under "Proposition 193."

A parent's principal residence can totally avoid reassessment (without value limit) as long as a Homeowner's Exemption or Disabled Veteran's Exemption has been granted to the parent (check the parent's property tax bill). A child acquiring the property is not required to maintain it as his or her residence.

A parent's real property other than the principal residence, up to a cumulative total *assessed value* of $1,000,000, can also be excluded from reassessment. The $1,000,000 exclusion is available to each parent separately.

If a parent transfers a parcel of property to more than one child (so the children share ownership), each child should apply for the exemption for that child's share. If a parent transfers property to a child and an unrelated person (so they share ownership), only the child's share of the property will have protection under Proposition 58.

Proposition 58 Procedures
Generally, the person acquiring the property must file a claim form with the County Assessor's Office before either of the following occurs:

- 3 years pass after the date of transfer (if gift or sale) or parent's death (if inheritance), or
- The property is transferred to a third party.

A claim form may be considered timely if filed within 6 months after the date of mailing of a notice of supplemental assessment from the Assessor's Office, even if the three years have passed or the property has been transferred to a third party. A claim form may be filed even after the above time limits, provided that the property has not been transferred to a third party. But the exception will apply to future tax years only.