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Estate Planning

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Fair Warning

The following is general information about issues in estate planning and probate law. It is not the final resource, should not be considered legal advice and is not intended to be all-inclusive.

The statements made or had as part of the presentation are for educational purposes only and are not intended to create an attorney-client relationship between you and The Green Law Group LLP. If you have specific questions about applying the law to your activities, you should seek the advice of your legal counsel.



Why Estate Planning?

- Ensures that your property will go to the people you want, in the way you want, and when you want
- Provides a roadmap your personal and financial affairs when you no longer can because of death or incapacity
- Saves \$\$ on taxes, court (probate) and attorney fees
- Helps avoid disputes
- Provides comfort so your loved ones can mourn your loss without dealing with unnecessary red tape and confusion



What is an “Estate”?

- Defines what assets can be distributed upon your death
- Includes all your assets if you are single
- Includes half the community property if you are married
- Includes your separate property if you are married
- Includes all real property and personal property

Common Estate Plans Documents





A Will

- The primary estate planning document
- Directs how your 'probate' assets are distributed
- Designates an Executor
- Designates guardianship for your minor children
- Does not avoid probate!**

Advanced Healthcare Directive

- Allows you to formally choose what actions to take for your health in case you are no longer able to decide
- May designate an agent to make healthcare decisions for you if you can't make those decisions yourself
- Can address organ donation
- Avoids guardianships
- Often specifies "do not resuscitate" (DNR)

Power of Attorney (POA)

- ❑ Allows you to appoint someone you trust to making financial and legal decisions for you
- ❑ A general POA grants broad authority
- ❑ A limited POA grants authority for specific functions only
- ❑ A durable POA continues beyond incapacity
- ❑ A current POA takes effect *immediately upon signing*
- ❑ A springing POA takes effect upon a certain event
- ❑ Any POA ceases at death and does not avoid probate

Revocable or Living Trust

- ❑ As the name suggests, you can amend it
- ❑ Allows control over how and when assets are distributed
- ❑ Can protect assets from debts of a *beneficiary* (spendthrift)
- ❑ Assets only subject to *your* debts
- ❑ It's a private process – assets do not go through probate
- ❑ Allows for estate tax planning and savings especially for married couples (Marital and Family Trusts)
- ❑ May be established during your lifetime and used with a “pour over Will” as your primary estate planning document

Typical Types of Living Trusts



- Standard Trusts
- A/B and A/B/C Trusts
- Disclaimer Trusts
- Special Needs Trusts
- Spendthrift Trusts



Probate Process: What Happens?

- Purpose of probate: State wants to ensure that your assets are distributed to the appropriate individuals
- A petition to probate asks for your will be admitted to probate and that an executor be appointed
- Probate courts have control over assets in your sole name and that does not pass by beneficiary designation
- Probate has nothing to do with estate taxes

Probate Property

- Assets in your sole name
 - Bank accounts
 - Real estate
 - Cash
 - Securities

- Tangible personal property (jewelry, furniture, etc.)

- Retirement Accounts (401k, 403b, IRA, etc.)

- Life Insurance (whole, universal, term, etc.)

Non-Probate Property

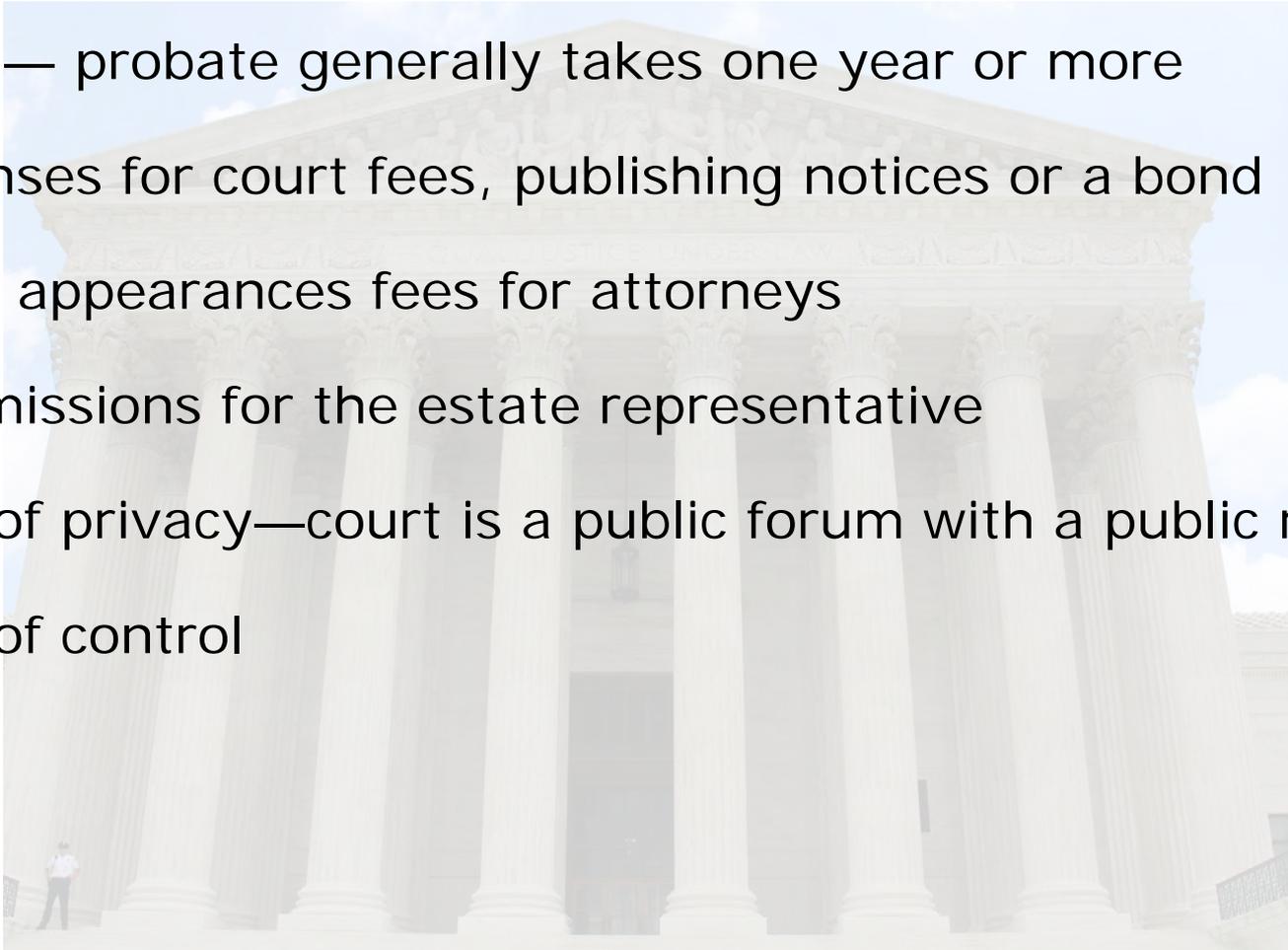
- Jointly-owned assets
 - Bank accounts
 - Real estate
 - Securities

- Assets passing by beneficiary designation
 - Life insurance
 - Retirement accounts
 - POD (Pay on Death) / TOD (Transfer on Death) accounts

- Assets held in a living trust

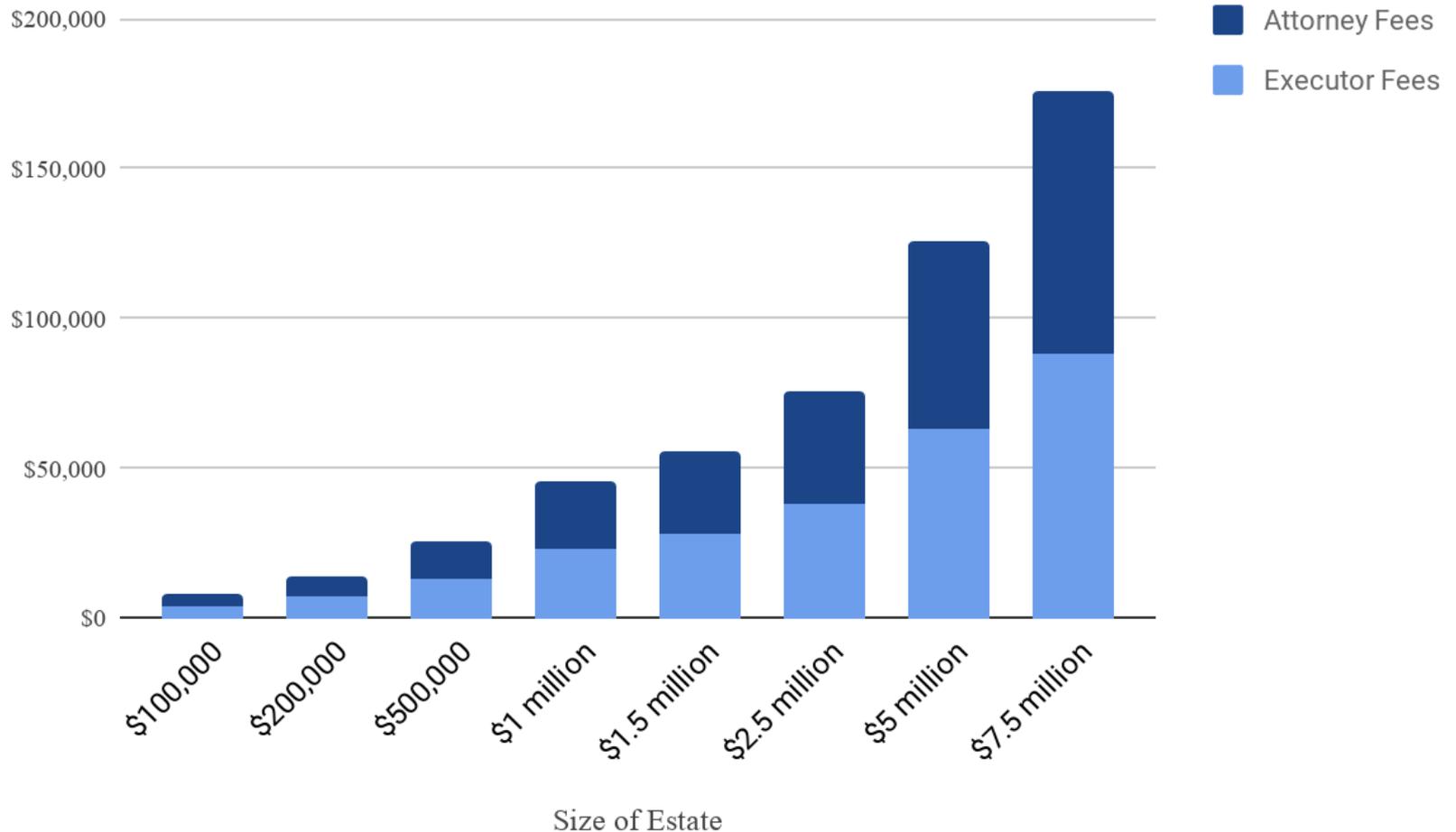
Why to Avoid Probate

- ❑ Time — probate generally takes one year or more
- ❑ Expenses for court fees, publishing notices or a bond
- ❑ Court appearances fees for attorneys
- ❑ Commissions for the estate representative
- ❑ Lack of privacy—court is a public forum with a public record
- ❑ Lack of control





Typical Probate Fees





Alternatives to Probate

- Joint Tenancy (with right of survivorship)
- Beneficiary Designations
- Revocable Living Trusts

**** REMEMBER ****

A LAST WILL WILL NOT AVOID PROBATE!



Tax Law Considerations in Estate Planning

- California has no *gift tax* or *inheritance tax* (i.e., “estate tax”)
- A federal tax is levied on gifts over \$15,000 per year (as of 2020)
- There is also a federal lifetime exemption on gifts which is about \$11.18M (as of 2020) per individual
- Federal Estate Tax is a tax on the transfer of the estate of a deceased person, commonly referred to as the “death tax.”
- Lifetime gift tax exclusion amount and the estate tax exclusion amount are “unified”

Questions?

We are here to help if you have any questions or comments, or want help drafting any of the documents mentioned in this presentation please do not hesitate to contact our office.

We offer flat fee estate planning packages.

CALL OR EMAIL FOR MORE INFO!

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