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Fundamentals of Estate Planning

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&

Jay Robinson-Duff, Wealth Management Advisor

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Jay Robinson-Duff III, CFA

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Jay brings over 30 years of experience in investments serving high-net-worth and institutional clients to his role as Wealth Management Advisor.

Currently, Jay specializes in advising high-net-worth individuals, families and institutions to craft customized plans in the areas of investment management and wealth advisory and trust planning. He is part of a team that collaborates with families and institutions to help preserve, protect and grow their wealth to focus on family, business and philanthropic priorities.

Prior to joining First American Trust in 2015, Jay worked in financial services with Fidelity Capital Markets and Russell Investment Group. He started his career working at San Diego Trust and Savings Bank as an investment officer where he worked with individuals learning their goals, objectives and values and translating that into a financial strategy.

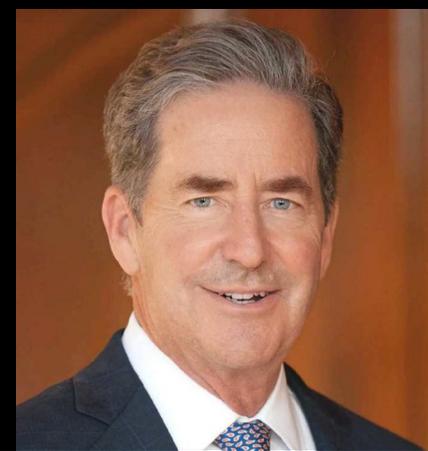
Jay holds a Bachelor of Science from Bryant University where he majored in finance and also has been a Chartered Financial Analyst since 1992.



Tom Gotfredson

Founder Gotfredson Law

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Tom Gotfredson draws on forty-two years of legal experience to help clients achieve their goals in a timely and responsive manner. He provides thoughtful legal insights on matters pertaining to business and real property law and estate planning based on reasonable and clearly stated fees. His primary source of business is referrals from satisfied clients.

Admitted to Practice Law

- California Bar
- Colorado Bar

Education

- University of Denver, School of Law, JD
- Northwestern University, BA

Professional Affiliations

- Past President and Board Member, San Diego Estate Planning Council
- Board Member and past President (2019), La Jolla Bar Association
- Northwestern University Alumni Association
- University of Denver Law School Alumni Association



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Where do ghosts prefer to swim?

Lake Erie.



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Foundational Estate Plan

- Trust
- Will (“pour-over”)
- Advance Health Care Directive
- Power of Attorney for Assets
- Assignment of Personal Property



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Estate Planning Terminology

- Trust
 - Settlor / Trustor / Grantor / Creator
 - Trustee
 - Beneficiary
- Will
 - Testator
 - Executor / Executive
 - Beneficiary



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Estate Planning Terminology (cont'd)

- Health Care Directive and Power of Attorney for Assets
 - Principal
 - Agent



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Five Ways to Dispose of Assets

- Beneficiary Designations
 - Transfer on Death (TOD)
 - Retirement Accounts
- By Will or intestate succession in Probate
- By Trust



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Five Ways to Dispose of Assets (Cont'd)

- By Gift
- By survivorship
- Joint tenancy with real estate or bank or brokerage accounts



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Trust versus Probate Administration

- Trust Administration is usually faster and less expensive. Begins with a Section 16061.7 Notice to all heirs and beneficiaries. 120 day waiting period before distribution can begin.



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Trust versus Probate Administration (cont'd)

- Both require the original Will to be lodged with the Probate Court.
- Both involve marshalling of assets and payment of debts.
- Both end with an accounting, which must be court approved in a probate estate.
- The Probate Court retains jurisdiction over any matters of controversy involving a Trust Administration.



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Trust versus Probate Administration (cont'd)

- Probate Administration involves numerous court filings, hearings and notices. The fee for the attorney and the administrator is fixed by statute. Begins with a Section 8100 Notice of Petition to Administer Estate to all heirs, beneficiaries and creditors.



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Trust Companies and Private Professional Fiduciaries

- Your children are not always the best choice to serve as trustee/executor.
- Trust companies are well suited to act as trustee or executor to administer large or complex estates. They generally require a multi-million dollar estate.



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Trust Companies and Private Professional Fiduciaries (Cont'd)

- California Private Professional Fiduciaries are effective administering trusts and estates that trust companies are not interested in handling...and even some they are interested in handling.



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Two Kinds of Trusts

- **Revocable**

- Most Family Trusts are fully revocable and amendable while both Settlers are living.
- AKA Living Trust.
- On first spouse's death, the question becomes: split the estate in half and make decedent's share irrevocable, or leave entire estate to surviving spouse, to do with as he or she wishes, even if remarried?



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Two Kinds of Trusts (cont'd)

- If there are children from a prior marriage, almost always split and make Decedent's share irrevocable ("B" or Decedent's Trust).
- **Irrevocable**
 - Trust that are irrevocable when formed constitute another level of estate and tax planning and are outside the scope of this introductory presentation.



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Estate Tax Considerations

- California has no estate or inheritance tax
- 2025 federal estate and gift tax exemption amount is \$13.99 MM (indexed for inflation)
- Exemption increases to \$15MM in 2026 (\$30MM per couple)



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Portability

- The unused exemption amount is transferred to the surviving spouse
- Allows surviving spouse to use the unused exemption amount.
- Must file a 706 estate tax return and check the portability box.



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Capital gains and the step up in basis rules

- If property is held as community property, then upon the death of the first spouse, the property “marks to market.” Generally, this means a step UP in basis, but it is possible to have a step DOWN in basis as well.



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Capital gains and the step up in basis rules (cont'd)

- Step up in basis applies to all assets, including stocks, not just real estate. But retirement accounts do not step up.
- On death of second spouse, assets step up a second time, unless deceased spouse's ownership is held in an irrevocable B Trust, where there is no second step up.



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Capital gains and the step up in basis rules (cont'd)

- Affects owners of highly appreciated residential real estate in Southern California.
- For a married couple, capital gains tax applies after the first \$500,000 in gain over basis. \$250,000 for a single person taxpayer. Popular strategy: own until you die.
- Note: For California tax, capital gains are treated as ordinary income.



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Reassessment upon death under Prop. 19

- No reassessment upon death of first spouse if property held by married couple or registered domestic couple.
- Upon surviving spouse's death, property will be reassessed for real property purposes by the County Assessor at fair market value. Prop. 19 has virtually eliminated the parent to child exclusion.



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Reassessment upon death under Prop. 19 (Cont'd)

- One exception: if a child of the deceased parents takes up residency within a year of death, then a \$1MM exclusion can be applied for.



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What do you call a raffle in a graveyard?

A dead giveaway!



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Litigation in the trust and estate field

- Both Probate and Trust disputes are litigated in the Probate Court.
- Cases include allegations of Trustee or Executor misconduct, interpretation of Trust or Will documents, and contests between squabbling beneficiaries concerning inheritances.



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Litigation in the trust and estate field (Cont'd)

- Steps to take to minimize or avoid litigation
 - Notice of Proposed Action and/or Petition for Instruction from Probate Court.



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Last Will and Testament

- Directs disposition of assets which are subject to probate. Preference is to avoid probate, but just in case an asset is held individually at the time of death, probate is necessary (unless small estate exemption applies).



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Last Will and Testament (Cont'd)

- The Will often “pours” the estate over to the trust, so that the trust has the final word on asset distributions-but only after having gone through the full probate process.
- Names the Executor/Executrix who is charged with administering the probate estate.



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Last Will and Testament (Cont'd)

- Important to include a provision that the probate estate will be administered pursuant to the Independent Administration of Estate Act and avoid a heightened level of probate court involvement, such as the cumbersome over-bid process for the sale of real property.
- If the testator/testatrix has minor children, this is where a guardianship appointment is made.



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Assignment of Personal Property to the Trust

- Covers household items such as cars, boats, furnishings, jewelry and the like. No need to advise the DMV.
- Can also cover intangible personal property such as corporate stocks and LLC membership interests.



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Assignment of Personal Property to the Trust (Cont'd)

- Otherwise, if such interests are held in the name of an individual and not their trust, probate asset.



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Advance Health Care Directive (AHCD)

- Grants Agent control over medical care and decisions in the event of the Principal's incapacity.
- Communicates Principal's desires in the event of a dire medical diagnosis, including DNR (do not resuscitate) authority.



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Advance Health Care Directive (AHCD) (Cont'd)

- Can include directives regarding anatomical gifts and cremation or burial instructions.
- The Agent is usually a family member or friend. Professional fiduciaries do not like this role.



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Power of Attorney for Financial Affairs (POA)

- Grants Agent control over the Principal's financial assets.
- Can be effective immediately or upon Principal's subsequent incapacity (Springing Power). Ceases upon the death of the Principal.



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Power of Attorney for Financial Affairs (POA) (Cont'd)

- Crucial for IRA and 401(k) plans which must be held in an individual name (not in trust).
- Also helpful if any bank or brokerage accounts are held in an individual's name without a co-owner.



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Rules applicable to retirement accounts such as 401(k) and IRAs

- If spouse is the beneficiary upon death, a Spousal Rollover IRA results.
- For 401(k), same result.
- If owner becomes incapacitated during his or her lifetime, essential that owner have a valid Power of Attorney to transact on account. Being a spouse is not sufficient.



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Rules applicable to retirement accounts such as 401(k) and IRAs (Cont'd)

- Retirement accounts must be held in the individual's name, not in trust. It is possible to name a trust as a beneficiary of an IRA, but not my preference unless minor beneficiary.
- Non-spousal adult beneficiaries must take the required minimum distributions over a 10-year period.



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Concepts Covered During Today's Presentation

- Foundational Estate Planning documents
- Trust and Probate Administration
- Selection of the Trustee and Executor
- Capital gains and the step up in basis



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Concepts Covered During Today's Presentation

- Reassessment on death
- Estate and Gift tax exemption of \$15MM
- Health Care Directive
- Power of Attorney
- Estate litigation



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What did you learn in school today, son?

Not enough Dad. I have to go back tomorrow.



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