

Copenbarger & Copenbarger LLP

attorneys at law

CELEBRATING 40 YEARS



Estate Planning & Family Protection Seminar Workbook

Welcome to our 2020 Estate Planning Seminar Series! This year we will focus on various topics including:

- Why the new SECURE Act is really a new “backdoor” death tax
- How the SECURE Act changes your retirement accounts for you and your beneficiaries
- How the state of California may be setting the stage for your spouse or family members to be financially responsible for your medical and nursing home costs, and what you can do to stop them
- What a legacy is and how/when you should plan yours
- When you need to update, change, and review your living trust
- What your trustee(s) and beneficiaries can expect when a death occurs
- How infighting happens and how to avoid it

Check out our new website! If you have a quick second, please visit Copenbarger.com and check out the resources and information we have put together to help people in our community protect their loved ones and take back control of their financial affairs.



Be sure to also "like" our Facebook page to receive notifications about the firm regularly!





Lloyd Copenbarger, JD, LLM, Founding Partner

Mr. Copenbarger is a Certified Specialist in Probate, Estate Planning, and Trust Law by the State Bar of California Board of Legal Specialization. He received his Bachelor of Law Degree in Taxation from the University of San Diego. In addition to being a member of the State Bar Associations of California, Ohio, and Oklahoma, and he is also a member of the Los Angeles County Bar Association, the Orange County Bar Association, and the American Bar Association. Mr. Copenbarger is listed in Who's Who of American Law and his legal practice emphasizes the areas of wills, trusts, estate planning, business law, asset protection, and non-profit corporate law.



James Kosareff, JD, LLM, Partner

James Kosareff is a Certified Specialist in Probate, Estate Planning and Trust Law by the State Bar of California Board of Legal Specialization. He obtained his Master of Law degree in Taxation (LLM) from Chapman University. He received his Juris Doctorate in Law from Western State University, College of Law. Mr. Kosareff is a member of the Orange County Bar Association, the Trust and Estates Section of the State Bar of California, the Taxation Section of the State Bar of California, the Trust and Estate Section of the Orange County Bar Association, and the Tax Law Section of the Orange County Bar Association. He also serves in his community through the Kiwanis Club and is a member of the local Chamber of Commerce.



Larry Copenbarger, JD, Associate Attorney

Larry Copenbarger is an associate attorney at Copenbarger & Copenbarger LLP. Larry has over 20 years of experience assisting individuals, their families, non-profit groups, and business organizations in various areas of Estate Planning and Taxation Law. He also has extensive experience in the fields of Living Trusts, Estate Planning, Medicaid Planning, and Asset Protection. Larry is an active member of the State Bar of California, the Orange County Bar Association (Trusts and Estates Section) and currently serves on the board for KidCare International of Orange County.



Sunny Boren, JD, CPA, LLM* Associate Attorney

Sunny Boren is an Attorney and CPA. She is the lead attorney in the areas of small Business and Taxes, assisting clients in forming business and nonprofit entities, and maintaining the entity's compliance requirements. She prepares gift and estate tax returns and oversees preparation of trust income tax returns. Finally, Ms. Boren assists with irrevocable trust planning as well as pre-nuptial and post-nuptial agreements. Ms. Boren received her Bachelor of Science Degree in Accounting and Business Law, Magna Cum Laude from Colorado State University, and her Juris Doctorate Degree, Order of the Coif, from The University of California, Hastings College of the Law. She is currently enrolled in the Masters of Taxation program of Chapman University.



Dale Anderson, JD, Associate Attorney

Dale has over 31 years of experience as a litigator, in such areas as personal injury, wrongful discharge, products liability and wage and hour disputes. He has practiced at all levels, including complex class actions, representing both individuals and large entities. Mr. Anderson has been involved in all levels of litigation including arbitration/mediation, court trials, jury trials, and the appeals process. Dale brings his extensive experience to the firm, and handles both general litigation, as well as probate and trust administration.



Stephanie Delaney, JD, LLM* Associate Attorney

Stephanie is currently working in the Estate Administration department after joining the firm in 2017. Ms. Delaney received her Bachelor of Arts Degree in Biology from the University of Texas. Ms. Delaney studied law at Thomas Jefferson School of Law. Stephanie is a candidate for both a Master of Law Degree in Taxation (LLM), and a master's degree candidate in Business Administration through Chapman University's Dual Master's Program. She is a member of the Orange County Bar Association, the Trust and Estate Section of the Orange County Bar, the Young Lawyers Division of the Orange County Bar, and of the State Bar of California.



Robert Galliano, JD, MSTax, Associate Attorney

Robert is a Certified Specialist in Estate Planning, Trust and Probate Law by the California Board of Legal Specialization and holds a master's degree in Taxation from Golden Gate University. Robert has over 30 years of experience helping families with their Estate Planning. As an Elder Law Attorney, Robert helps families in planning for long-term care options, qualifying for Medi-Cal and Asset Protection. Robert was also an Adjunct Professor at National University where he taught Graduate Tax Courses and is a co-author of the book, "More Than Money." Robert has given hundreds of educational seminars and is a member of the National Academy of Elder Law Attorneys (NAELA). Robert holds a bachelor's degree in Electrical Engineering and is a Professional Engineer in Control Systems.



Victoria Horvatic, JD, Associate Attorney

Victoria Horvatic is the newest attorney on staff at Copenbarger & Copenbarger LLP. She is currently working in the Estate Planning and Administration departments. Victoria received her Bachelor of Arts from University of the Pacific. She received her Juris Doctorate from Santa Clara University School of Law in December 2017 and passed the California Bar Exam in November 2018. She began her career litigating against PG&E in the Camp Fire case, until joining us in April 2019. She serves in her community by volunteering with the youth group at her church.



James Humphreys, Jr., JD, Of Counsel Attorney

James Humphreys is a sole practitioner in estate and business planning and is of counsel to Copenbarger & Copenbarger LLP. He specializes in estate planning, post-death trust administration and probate. He is also skilled in the formation and maintenance of family limited partnerships, corporations (including non-profit corporations), limited liability companies, and qualification of corporations as non-profit under IRC Sec. 501(c)(3).

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**NOTE: All mail must be sent to our Santa Ana office address.
For your security, please confirm with us before you drop off any documents.
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As an Access Member, you have many valuable benefits at your disposal such as free phone consultations, free attorney time, and \$300 towards document preparation. But another benefit of your membership is the option to give unlimited new client referrals. Each new client that you refer receives a \$300.00 credit (or \$500 credit with promotional gift card) and 2 free hours of attorney time at their first estate planning appointment! The best part about making a referral is that no matter how many referrals you make, you will always have your own benefits to use annually!

Access Member benefits include:

- **Each new client that you refer receives a \$300.00 credit (or \$500 credit with promotional gift card) and 2 free hours of attorney time at their first estate planning appointment!**
- **A \$300.00 annual credit on estate planning document preparation fees for you or anyone* you choose**
- **Free estate planning telephone consultations**
- **24-hour internet access to your Powers of Attorney for Healthcare**
- **No extra charge** for house or hospital calls for members in California who are unable to travel**
- **Free parking at our offices and client seminars**
- **Access card with your special account numbers**
- **Special Access Member privileges, perks, and appreciation events**

Remember:

The best part about making a referral is that no matter how many referrals you make, you will always have your own benefits to use annually! Stop by the Access Membership table and pick up a few referral gift cards to give away!


*Your benefits cannot be shared with existing clients.

**No fee for clients within California, who are incapacitated and thus unable to travel; subject to attorney discretion.

***Note page available after Final Review slide in workbook**

Foundations of Estate Planning

Why Estate Planning is So Important...in 10 minutes or Less!




- What is an Estate Plan?
- What is a Power of Attorney?
- What is a Will?
- What is a Living Trust?
- Who is involved in a Living Trust?
- Advantages of a Living Trust

1

The SECURE Act

How the SECURE Act changes your retirement accounts for you and your beneficiaries



- How Are Retirement Plans Transferred at Death?
- What is the SECURE Act?
- What is the Purpose of the SECURE Act?
- Provisions of the SECURE Act
- Possible Actions to Minimize the Tax
- Common Questions about the SECURE Act
- What You Need to Do

2

Special Provisions for Your Estate Plan



How to Stay Protected

- Medi-Cal vs. Medicaid: The Problem
- Potential Changes in the Law
- What is an A/B Trust?
- What is a Generation Skipping Trust?
- What is a Special Needs Trust?
- What is a Pet Trust?

3

Leaving a Legacy



How to Establish and Leave a Lasting Legacy for Generations to Come

- What is a Legacy?
- How to Live with Dignity Through Your Golden Years
- Protecting your Digital Legacy
- Why is Legacy Important?

4

Business & Tax Services

Entities and Contracts



- Types of legal entities
- Entity Formation
- Small business contracts
- Irrevocable trusts
- Prenuptial Agreements
- Tax returns
- Charitable Trusts

5

Estate Administration & Probate

What to Expect After a Death Occurs



- What is Estate Administration?
- Common Beneficiary Concerns, and Beneficiary Rights
- Trustee Actions & Duties
- Possible Remedies
- What is Probate?
- How to Stay Protected

6

Your Estate Plan

When to Update, Change, or Review Your Living Trust



- Common Planning Problems
- When to Update Your Trust
- When to Change Your Trust
- When to Review Your Trust
- Life & Legacy Checklist

7



Final Review

- Foundations of Estate Planning
- The SECURE Act
- Special Provisions for Your EP
- Leaving a Legacy
- Business & Tax
- Estate Administration
- Review & Updating Planning

8

OVERVIEW OF COMMON ACTIONS: ESTATE ADMINISTRATION

I. Law:

1. Update land records – Affidavit Death of Trustee/Joint Tenant/ and recorded with County Recorder
2. Notify county assessor – Notice to County Assessor
3. Notify Beneficiaries / Heirs at Law
 - a. When a revocable trust or a portion of a revocable trust becomes irrevocable
 - b. Irrevocable Trust upon change of Trustee
 - c. Probate
4. Notify CA Dept. of Health Care Services – Sacramento – re: Medi-Cal
5. Lodge Last Will & Testament with Probate Court
6. Obtain Taxpayer Identification Number (TIN) for the Trust -
7. Notify federal and state taxing authorities of fiduciary relationship
8. Review Trustee Duties -
 - a. CA Probate Codes

II. Taxes:

1. Personal Income Tax Returns (1040 & 540);
 - a. From 01/01/**** - **/**/****
 - a. Prepare & file final personal income tax returns due April 15, ****
2. Fiduciary Income Tax Returns (1041 & 541)
 - a. Administrative Trust
 - i. From **/**/** - termination of Trust
 - ii. Tax reporting year end:
 1. Calendar
 2. Fiscal
 - b. Decedent's Trust
 - c. Marital Trust
 - d. Estate (Probate)
 - e. Annually
1. Estate Tax Return –
 - a. \$11,580,000.00 (2020) Applicable Credit Equivalent (“ACE”)
 - b. Estimated value of estate is less than ACE
2. Estate Tax Portability Election -
 - a. Surviving spouse can elect to transfer deceased spouse's unused ACE to the Surviving spouse.
 - b. Election must be made within 2 years of date of death
3. Income Tax Basis – new Basis (“value”) of assets as of **/**/****
 - a. i.e., real estate, stocks, mutual funds, gold, silver, works of art, antiques, etc.
 - b. Inventory of Assets
4. Property Tax – CA real property
 - a. No reassessment for transfers of real property between spouses
 - b. No reassessment for transfers of real property between parents and children for primary residence and \$1,000,000.00 of increased assess value
 - c. Reassessment for all other transfers of real property

OVERVIEW OF COMMON ACTIONS: ESTATE ADMINISTRATION

III. Transfer of decedent's (interest in) property:

1. Solely owned property – probate procedure –
2. Jointly owned property –
 - a. right of survivorship – owned by surviving joint owner
 - b. tenants-in-common – decedent's interest is solely owned (see III. 1.)
3. Beneficiary designated property –
 - a. owned by the designated beneficiaries
 - b. designated beneficiaries must make a claim with the company(ies)
4. Via Last Will & Testament – probate procedure
 - a. Default State's Will
 - b. Prepared Will w/o Trust
 - c. Pour-Over-Will
 - i. probate to trusts
5. Via Trust –

**** Denotes items to be completed by Copenbarger & Copenbarger, LLP if engaged to perform legal services for the estate of *** and the *** Trust.***

Obtain from Administrator/Trustee:

- 1.

MEMORANDUM REGARDING TRUSTEE'S DUTIES TO BENEFICIARIES

A “trust” is often described as any arrangement in which property (the “trust estate”) is transferred by someone (the “settlor”) to another person (the “trustee”) for the benefit of a third person (the “beneficiary”). Trusts have existed for hundreds of years in England and the United States, originally being used to place an adult in charge of property which had been inherited by a child who was too young to manage his/her own affairs. Over the centuries, rules have developed which impose duties on persons acting as trustees. In 1986, the California legislature enacted statutes that list many of those duties. Trustees should be particularly aware of the following:

Probate Code § 16000: Duty to administer trust.

This statute requires the trustee to administer a trust according to law and in accordance with the trust instrument. No matter how good the trustee's intentions, the trustee is not free to administer the trust in some other manner.

Probate Code § 16002: Duty of loyalty.

This statute states that the trustee has a duty to administer the trust solely in the interest of the beneficiaries. The trustee cannot use the trust for his or her own benefit.

Probate Code § 16003: Duty to deal impartially with beneficiaries.

This statute states: “If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.” A trustee cannot favor one beneficiary over another. This is particularly critical when the trustee is also one of the beneficiaries. In such cases, it is a clear violation of the law for the trustee to favor himself or herself over another beneficiary.

Probate Code § 16004: Duty to avoid conflict of interest.

This statute requires that trustees avoid conflicts of interest. This prohibits a trustee from entering into transactions with trust property which will result in a profit to the trustee, or in which the trustee's interest is adverse to the interests of the trust or its beneficiaries. For example, a trustee usually must avoid loaning personal funds to a trust, because it would result in the trustee having a conflict between his duties to the trust and his duties to himself.

Probate Code § 16006: Duty to take control of and preserve trust property.

This statute requires trustees to take affirmative action to take and keep control of trust property and to preserve that property.

Probate Code § 16007: Duty to make trust property productive.

This statute requires a trustee to make property productive. This generally requires that the trustee make sure that property is wisely invested.

Probate Code § 16009: Duty to keep trust property separate and identified.

This statute requires a trustee to keep trust property separate from property not subject to the trust. For example, a trustee should not keep personal funds and trust funds in the same bank account.

Probate Code § 16010: Duty to Enforce Claims.

The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

Probate Code § 16011: Duty to Defend Actions.

The trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

Probate Code § 16012: Duty Not to Delegate to Others.

This prohibits a trustee from delegating to others the performance of acts that the trustee can reasonably be required to personally perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

This statute further requires the trustee to exercise general supervision over a person when the trustee has properly delegated a matter to an agent, cotrustee, or other person.

Probate Code § 16013: Co-Trustees.

Each trustee has a Duty to:

- 1) Participate in the Administration, and
- 2) Take reasonable steps to prevent a cotrustee from the committing a breach of trust or to compel a cotrustee to redress a breach of trust.

Probate Code § 16046: Duty to Comply with the Prudent Investor Rule.

This statute requires the trustee to comply with the prudent investor rule when investing or managing trust assets, unless the rules have been expanded or restricted by the trust instrument.

Probate Code § 16048: Duty to Diversify.

This statute requires the trustee to diversify the investments of the trust when making and implementing investment decisions, unless under the circumstances, it is prudent not to do so.

Probate Code §§ 16060-16061: Trustee's general duty to report information to beneficiaries.

This statute requires trustees to keep beneficiaries informed with respect to matters involving the trust.

Probate Code § 16062: Duty to account to beneficiaries.

This statute requires trustees to provide beneficiaries with “accounts.” Accounts are detailed statements regarding the financial transactions of the trust. They are similar to bank account statements in which a bank reports a “beginning balance,” an “ending balance,” and all the transactions that occurred during the reporting period that “account” for the difference between the beginning balance and ending balance. A trustee must keep careful records in order to be able to comply with this requirement.

Probate Code § 16080: Discretionary powers to be exercised reasonably.

This statute states that, when a trustee is given “discretion” with respect to a matter, the “discretion” must be exercised in a reasonable manner. The trustee is not free to act in whatever way the trustee wants. This is true even if the trust documents state that the trustee's discretion is “absolute” or “uncontrolled.”

Probate Code §n 16200: General powers of trustee.

A trustee's power (legal authority) to take actions pertaining to the trust is not unlimited, and in some cases may be very restricted. For example, a trust instrument may limit the kinds of investments which the trustee can make with trust property. This statute provides the trustee powers of those conferred by the statute and the trust instrument. Trustees must be careful to avoid taking unauthorized actions.

Final Reminders!

- Stay safe and healthy!
- Don't forget to leave your information in the contact box to schedule your free consultation or review after you view the seminar online.
- We love referrals! If you know someone who could benefit from our services let them know about how we can help!
- Let us know how you liked our online client seminar by leaving a review online!



Thank you for viewing our seminar!

The purpose of our events is to present as much useful information to our attendees as possible. This means that our speakers may alter the presentation to accommodate attendee questions and/ or time constraints, and thus, be unable to cover all topics mentioned in this workbook. Please note that we present general information that is for educational purposes only; be sure to consult with a qualified attorney when making changes to your estate plan. The information presented at our event and in this workbook is up to date as of January 2020 and subject to change.