THE BENEFITS *of an* Estate Plan

Supporting UC Berkeley while ensuring your personal, financial, and philanthropic goals

An effective estate plan
reflects your life and values.

Why you need an estate plan.

Benjamin Franklin remarked, "In this world nothing can be said to be certain, except death and taxes." This realization alone makes a compelling argument that everyone should have an estate plan that specifies how your assets, no matter what their value, will be managed both at death and in the event of incapacity during life. An estate plan is designed to ensure that your assets will be managed or distributed as you wish, as well as to ease the practical and administrative burdens on family members, beneficiaries, and others.

What makes an *effective* estate plan?

An estate plan is effective when it:

- Minimizes estate and other taxes, and probate and other costs
- Reflects your life and values, ensuring that specified items or portions of your estate are passed on to the people you love, and/or are given to support charitable organizations or causes in which you strongly believe

In other words, an effective estate plan ably serves your personal, financial, and philanthropic goals.

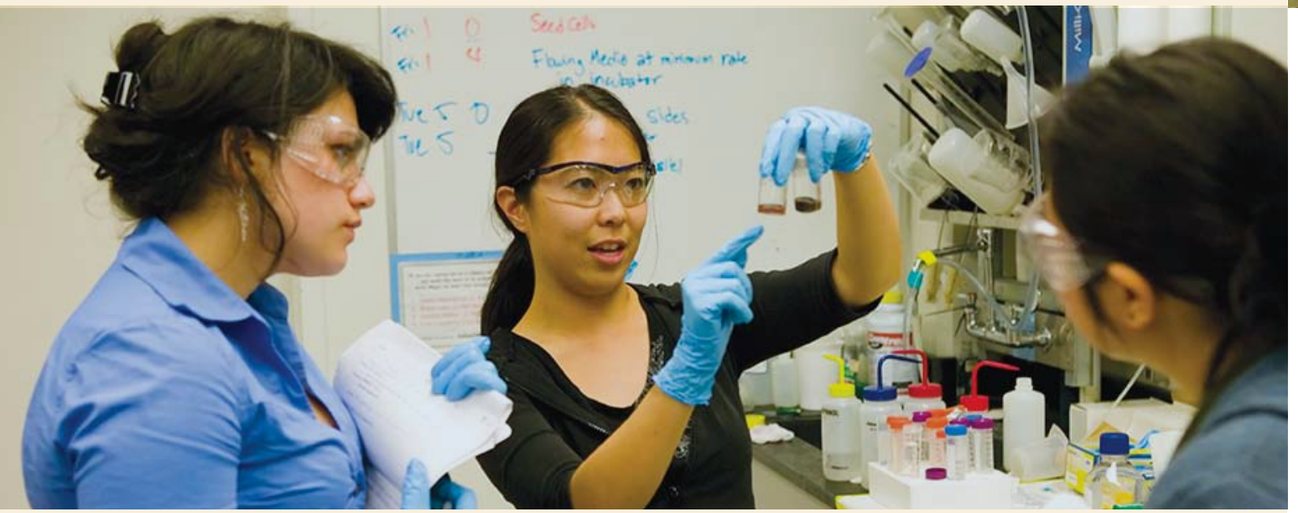
What's in *your* estate?

Have you ever wondered which assets are considered to be part of your estate? Your estate includes all your property, real or personal, tangible or intangible, wherever situated. The assets counted include, but are not limited to:

- Real property
- Tangible personal property
- Insurance policies owned by you
- Retirement plans — IRA, 401(k), 403(b), etc.
- Bank accounts
- Stocks and mutual funds

How do you transfer your assets?

No matter what their value, your assets need to be transferred at your death to the individuals and/or institutions you choose. There are a number of different methods for this transfer. Most commonly, assets are transferred according to the terms of a **will**. At your death, the will is probated in the county in which you lived, and the probate court supervises the administration and distribution of your assets.



Alternatively, if you have transferred assets to a **revocable living trust** during your lifetime, then, at your death, the assets in the trust are distributed by the trustee according to the terms of the trust, usually without court supervision. Additionally, some assets such as **insurance policies** and **qualified retirement plans** — IRA, 401(k), 403(b), etc. — are governed by contractual arrangements and are distributed at your death according to the beneficiary designations that you made during your lifetime. Finally, **how property is held** can determine how the property will pass at your death. For example, if property is held in joint tenancy with a right of survivorship, then, at your death, that property passes to the other joint tenants.

What if you don't have a will?

Each state has enacted laws that determine for you how your assets (other than those that pass by beneficiary designation or property title) will be distributed at your death in the absence of a will or revocable trust. In California, for example, these laws provide that all of your one-half share of community property assets will be distributed to your living spouse. Your separate property will be distributed either all to your spouse, or part to your spouse and part to your children or other relatives, depending on who survives you.

Most states have also enacted some type of "small estates" procedure that allows for transfer of assets at death (other than real property) without a formal probate proceeding. However, the total amount of assets in the estate to be distributed (not including assets in revocable trusts, or those that pass by beneficiary designation or property title) must be below a certain value. In California, the small estates procedure applies to estates of $100,000 or less (pending legislation, this may change to $150,000 or less).

How do you create an estate plan?

Estate plans are most often prepared under the guidance of an attorney who specializes in the estates and trusts field. Your estate planner will meet with you to discuss your assets, your family, other intended beneficiaries, and your financial and philanthropic desires. If you have other financial and tax advisors, it is likely that they will also be consulted during the formation and implementation of your plan. Ultimately, you and your estate planner will put in place a comprehensive plan that reflects your life and values while meeting your long-term goals.

As you review your estate plan with your estate planning professional, keep the following fundamental questions in mind:

1. How much of my assets do I want to give to family and friends?
2. When do I want to give these assets to my family and friends?
3. How can I continue to support Cal after I am gone?

What should your estate plan include?

Your estate plan provides the overall framework for the management and transfer of your assets in the event of incapacity and at your death.

A well-structured plan often includes:

- A revocable living trust (assets properly transferred avoid expensive and time-consuming Probate Court)
- A "pourover" will that sends any assets outside the trust at your death (other than those that pass by beneficiary designation) to the trust. Any assets that pour over into your trust will have to go though probate
- A general durable power of attorney, which allows an agent to manage any assets not already in your revocable trust in the event of incapacity
- A health care directive that outlines your wishes regarding treatment in the event you cannot make your own health care decisions

Some people prefer to have their estate plan governed by a will, along with the durable power of attorney and health care directive, rather than establish a revocable trust during their lifetime. In some states, such as California, revocable trusts coupled with pourover wills are more common than in other states.

Once you have a will or living trust, you're done . . . right?

No. As part of the estate planning process, you and your advisors should review the beneficiary designations for your retirement plans, IRAs, and insurance policies to make sure they are consistent with your overall plan. Keep in mind that these assets will pass according to the beneficiary designations, not according to the terms of your will or living trust. Your advisors can assist you in making sure that your beneficiary designations are written as they should be.

More and more donors planning to make a bequest to Cal are considering the benefits of designating Cal as the beneficiary of some or all of a retirement plan or Traditional IRA. Because individual recipients of these assets have to pay income tax, and because Cal, as a tax-exempt organization, doesn't, the effective "cost" of your charitable bequest can be less than if you give other assets.

What about life insurance and your estate?

The value of your estate will include the face value at your death of any life insurance policies you own on your life. If your insurance policies are large, or you plan to purchase a new policy, you may want to talk to your estate planner about establishing a life insurance trust to hold the policy or policies. A properly designed and implemented life insurance trust can remove the life insurance proceeds from your estate.

A life insurance policy in trust can also be a method to replace the assets you give to charity during your lifetime. Many alumni and friends of Cal have established life-income gifts, such as a charitable remainder trust, with Cal. They transfer an asset such as real estate or appreciated securities to the trust and receive payments from the trust during each year for a term of years or for the rest of their lives. (They also receive an income tax charitable deduction and capital gains tax savings.) On their death, the remainder in the trust passes to Cal. At the time they establish the trust, they can purchase a life insurance policy through a life insurance trust that replaces the contributed asset's after-tax value in their estates.

How often should you review your estate plan?

It is recommended that you review your estate plan at least every five years to make sure that it takes into account any changes in your life circumstances and any changes in the law. Many people who created estate plans prior to the year 2001, when the amount that could pass at death estate-tax free was significantly increased, may find that their plan transfers more assets to individuals now than they intended when they created the plan. These changes may allow you to donate the "excess" to Cal.

Our booklet *The Benefits of Gift Planning* offers suggestions for gifts to Cal that may help you reach your philanthropic, financial, and estate planning goals.

The Office of Gift Planning is here to help!

If you decide to include a charitable gift to Cal in your estate plan — either in your will or revocable living trust, or as a designated beneficiary of a retirement plan or insurance policy — the Office of Gift Planning can provide you and/or your attorney with language that accurately expresses your charitable intentions for the campus. We can also give you information on the **Benjamin Ide Wheeler Society**, which recognizes all who support the University through any form of planned gift. As a member of the Society, you will receive exclusive invitations to the summer Wheeler Society Tea hosted by the Chancellor, and the *Cal Futures* newsletter, which contains timely philanthropic and estate planning information.

If you wish to learn more about supporting Cal through a bequest, life income gift, or other planned gift, UC Berkeley's Office of Gift Planning will be happy to speak with you and/or your advisors, or mail to you personalized materials for your review. Call 510.642.6300 or 800.200.0575, or e-mail ogp@berkeley.edu.

Disclaimer: Neither the University of California, Berkeley Foundation nor The Regents of the University of California can engage in rendering legal, accounting, or other professional service. Please contact your own legal and/or tax advisors for advice applicable to you.

U7908

Legal Name

All charitable gifts should be directed to the University of California, Berkeley Foundation.

The University of California, Berkeley Foundation's TAX ID number is 94-6090626.

Suggested bequest language

I give _____ to the UNIVERSITY OF CALIFORNIA, BERKELEY FOUNDATION endowment to support _____ (e.g., campus priorities, undergraduate scholarships, graduate fellowships, faculty support) on the Berkeley campus of the University of California.*

**For example, you might designate "$400,000," or "50 percent of the residue of my estate," or "all of the residue of my estate."*

Please contact us directly for information on named endowment funds or for assistance on a confidential basis.

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UNIVERSITY OF CALIFORNIA, BERKELEY

that case, only a gift-tax annual exclusion, currently limited to $148,000, is available.

Generation Skipping Transfer Tax

The Generation Skipping Transfer Tax (GSTT) applies to gifts during life or transfers at death to people two or more generations below the person making the gift or transfer. This tax is meant to prevent people from avoiding estate or gift tax in, for example, their children's generation by passing assets down to grandchildren rather than children. ATRA permanently raised the GSTT exemption to an inflation-adjusted $5 million. The GSTT exemption for 2016 is $5.45 million. A knowledgeable estate planning attorney can be helpful in navigating this set of rules to maximize available exemptions.

Gift Tax Charitable Deduction

Gifts to qualified charities (including UC Berkeley Foundation) are eligible for gift and estate tax charitable deductions. This prevents dollars directed to charity from being subject to gift or estate tax.

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2016 Estate and Gift Tax

Overview of estate and gift taxes

Under federal law, significant transfers of wealth at death or during life are taxable through a unified system of estate and gift taxes. Because the estate and gift tax system provides large credits and exclusions, most Americans do not have to pay gift or estate tax. Even so, estate planning is often required to ensure the best use of available gift and estate tax credits, deductions, and exclusions. In 2001 a major tax bill was enacted that gradually increased the amount each person could transfer free of estate tax at death to $3.5 million ($7 million per couple). That legislation repealed the estate tax altogether for the year 2010 only. In December of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 was enacted. The 2010 legislation provided a temporary, estate, gift, and generation-skipping tax protocol for tax years 2011 and 2012. The American Taxpayer Relief Act of 2012 ("ATRA"), enacted on January 2, 2013, made permanent many of the temporary changes introduced in the 2010 legislation with some modifications.

Assets excluded from estate tax

Under ATRA, $5 million per person (adjusted annually for inflation) can be transferred estate-tax free. For 2016 the inflation-adjusted exclusion amount is $5.45 million. A couple can transfer a combined total of $10.9 million without paying estate tax. ATRA set the top estate tax rate to 40 percent and maintained the provisions allowing for 'portability' of a decedent's unused exemption.

First introduced into law in 2010, the portability provisions provide for an election to be made on a decedent's estate tax return to allow a surviving spouse in a federally recognized marriage to use any of the decedent's unused gift and estate tax exclusion amount. Portability will be helpful to some, however, in many cases, people will likely still want to accomplish their estate planning goals through the use of trusts to preserve the deceased spouse's exemptions.

Special estate tax treatment for spouses

Spouses can use the unlimited estate-tax marital deduction to leave each other assets in excess of the $5.45-million exclusion without paying estate tax on the first spouse's death. Due to a 2013 U.S. Supreme Court ruling that found Section 3 of the Defense of Marriage Act (DOMA) unconstitutional, the unlimited marital deduction is now currently available to same-sex couples who are in a legally recognized marriage. The estate-tax marital deduction is available to non-U.S. citizen spouses who inherit assets from their spouse only if the assets are transferred to a special type of trust called a Qualified Domestic Trust. Thus, special provisions for non-citizen spouses should be drafted into estate planning documents

Cost basis adjusted to fair market value at death

For income tax purposes, the assets of a decedent receive an adjustment in cost basis to fair market value as of the date of death. This often results in a "step up" in basis, although if an asset has declined in value it could mean a "step down." The cost basis of both halves of community property is adjusted, not just the decedent's half.

Assets excluded from gift tax

ATRA permanently reunifies the gift and estate tax exclusion amounts and rate schedules. Thus, each person can exclude a total cumulative inflation-adjusted amount of $5 million in gifts whether made during life or at death. For tax year 2016, the inflation-adjusted exclusion amount is $5.45 million per person, $10.9 million per couple. In addition, the law continues to contain a "gift tax annual exclusion" allowing each person to give away currently up to $14,000 annually to anyone without having to report the gift to the IRS or pay gift tax. (Spouses can together give a total of $28,000 to any one person in any year.) Gifts of up to $14,000 can be made to as many people as desired without using any gift tax exclusion. If more than $14,000 is given to any one person in a year, the excess uses up a portion of the $5.45 million per person cumulative exclusion amount from gift and estate tax. And, the filing of a gift tax return is required.

Medical and tuition expenses excluded from gift tax

Payments on behalf of others for medical expenses and tuition that are made directly to the medical provider or educational institution continue to be excluded from federal gift tax. For example, grandparents or others can pay tuition to a qualifying institution or doctors' bills directly on behalf of children or grandchildren to whom they have already given the $14,000 annual gift that year, without using any of their $5.45 million exclusion amount.

Special gift tax treatment for spouses

Usually, lifetime gifts to spouses qualify for an unlimited gift-tax marital deduction and do not require the filing of a gift-tax return. The unlimited marital deduction is not available, however, if the spouse who receives the gift is not a U.S. citizen. In