

# LaCroix IN BRIEF

By Attorney Bob LaCroix

## Planning for Peace of Mind

Greetings, and welcome to the premier edition of **LaCROIX IN BRIEF**. I'm very excited to have the privilege of becoming a part of your life each month in addressing whatever legal concerns you may have. As a general practitioner, I've enjoyed experience in almost every area of the law, and I am honored to have the opportunity to share that experience for the benefit of the community.

Please be aware that topics discussed in this column are for informational purposes only. My objective is to provide you with a cost-free, no-obligation forum to gain some basic knowledge about issues that are important to you. This column does not take the place of a legal consultation or any legal advice given to you by your attorney.

For starters, I thought we would chat about a topic that is of great importance to people in the prime of their lives: Estate planning. Let's begin with some definitions of the most commonly used legal documents for estate planning.

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**WILL:** A will determines the way that your property will be dispersed after your death. Through a will, you may also indicate who will be the guardians for your children. While a will is the most simple estate planning document to set up, it also entails a very complicated drawback. The necessity of probate court.

**LIVING WILL:** A living will provides that, in the event of a terminal illness, you will not

be kept alive by artificial life support systems. On the surface, this may not seem like a form of estate planning. However, by limiting treatment, you are also limiting your hospital bills, thus ensuring that your estate will not be drained of all assets.

**LIVING TRUST:** A living trust allows you to allot property for your heirs during your lifetime so that, upon your death, the property will automatically go to your heirs without a lengthy detour through probate court. You may alter or revoke your living trust at any time during your life.

More and more these days, people are choosing options such as living trusts, which help their heirs to avoid the delays and high expense of probate court. Other probate alternatives include joint tenancy of property and pre-planned contractual arrangements, such as life insurance, qualified retirement plans, tuition trusts, in bank accounts, life estates, and interests in trust.

There also exists a loophole of sorts for estates that are worth less than \$60,000 in their entirety.

For such estates, the probate code allows your heir to obtain title and make a claim to the property you leave behind by simply signing a declaration. This procedure works well when the person signing the declaration would logically have been the one to inherit the estate. It is important to remember, however, that logic does not always prevail. Therefore, as in most cases, it is best to leave something in writing.

This brings us right back around the loop to a will. For estates under \$60,000, however, our little loophole may let your will slip right by probate. You may opt for a "holographic" will. This simply means that everything in the document is in your own handwriting.

Nothing in a holographic will can be typed or in any way mechanically inscribed. You must specify what is to go to whom, and it must be signed and dated. With your holographic will, and the above-mentioned declarations in hand, your heirs stand a good chance of making a claim and taking title to your property without the headaches of probate.

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While this procedure may work a good portion of the time, and provides a simple do-it-yourself method for avoiding pesky attorneys and court proceedings, it is important to keep in mind one of the most annoying trails of a holographic will: It can close right up on you.

What type of tension am I talking about? Well, it's entirely possible that more than one person may try to claim the same property. Also, if there is any real property in the estate (a loved one's land), the declaration must be accompanied by a complete inventory and appraisal of the real property. Further, if the real property is out of state, an "ancillary proceeding" (one which takes place in the other state) will be necessary. Importantly, it is the law of the state in which the property is located that will apply.

Yes, this alternative is available, and ultimately, you can do it yourself. However, doing some form of professional assistance through the quagmire of a legal system may seem like a plot crafted by lawyers to keep ourselves

employed. It really is not so very sadly, as a result of human nature. Upon the death of a parent, amidst stress and mourning, too often siblings have been known to transform from loving brothers and sisters to modern-day Cain and Abel. Kids who for so long enjoyed holidays together in the family home are suddenly relegated to battle over that very home. The wishes of parents for whom loving children would have done anything in this world, somehow lose their meaning once the parents leave the world.

The moral of the story is **PLAN AHEAD**. While most families do not undergo the radical Jekyll and Hyde transformation described above, it does happen often in situations where it was least expected. Why? Because that very lack of expectation tends to lure parents into a false sense of security and, as a result, they do not plan ahead.

Remember: An ounce of prevention is worth a pound of cure. As we mature, we begin to take this saying to heart for our medical well-being. However, so often, we leave our legal affairs unattended to the point at which even a ton of cure might not solve the problem. Out of respect for you and concern for your loved ones, you need your doctor on a regular basis. Perhaps it's time to see an attorney.

Bob LaCroix is an attorney who has resided in San Diego County since 1970. He is a frequent contributor to **PRIME TIME NEWS**, **Our Town**, and **Oceanside**. If you would like to participate in one of Bob's low-cost legal workshops or if you need to discuss a legal matter in private, look free to call Bob's office at 223-2527.