

# HERA

HERA is a California statewide, not-for-profit legal service and advocacy organization dedicated to helping Californians — particularly those most vulnerable — build a safe, sound financial future, free of discrimination and economic abuses, in all aspects of household financial concerns.

We provide free legal services, consumer workshops, training for professionals and community organizing support, create and support innovative solutions and engage in policy work locally, statewide and nationally.

# HERA - Services

Debt Collection	<ul style="list-style-type: none"><li>• Student loans</li><li>• Auto loan</li><li>• Medical debt</li><li>• High cost loans (auto-title, payday, check cashing)</li><li>• Home Owners Association (HOA)</li><li>• Other predatory scams (we're seeing a lot directed towards older adults and to heirs of the family home)</li></ul>
Credit Reporting	<ul style="list-style-type: none"><li>• Identity theft</li><li>• Understanding credit</li><li>• Denial of credit or loan because of credit report</li><li>• Errors on credit report</li></ul>
Homeless and Tenants' Rights Pre- Eviction Summons and Complaint +	<ul style="list-style-type: none"><li>• Habitability problems</li><li>• Illegal rent increases</li><li>• Fair Housing (in trying to obtain and while living in housing - disability, et set.)</li><li>• Harassment</li><li>• DV survivors' concerns</li></ul>
Homeownership Preservation	<ul style="list-style-type: none"><li>• Foreclosure prevention and mortgage servicing issues, property taxes, HOA problems</li></ul>
Estate Planning	<ul style="list-style-type: none"><li>• Wills, living trusts, health directives, and power of attorney (free for low-income, then *sliding scale fee for services)</li></ul>
Probate	<ul style="list-style-type: none"><li>• In pro per legal advice and counsel to get through the probate process (no representation). Sliding scale.</li></ul>

# HERA – Contact Info.

New callers/prospective clients, as well as organization staff can email HERA at: [inquiries@heraca.org](mailto:inquiries@heraca.org)

New callers can also call HERA and leave a message at our intake line: 510 271-8443, extension 300. Admin staff will call back, do an intake, then set the caller for a phone call with a HERA staff attorney if the problem seems to be one that we may be able to help with.

We've recently learned that a scam entity has opened with the HERA initials, so warn your clients, please.

We almost always put our website on mailings to the public so that they can look up who we are: [www.heraca.org](http://www.heraca.org)

**HERA**

housing and  
economic  
rights advocates

# ESTATE PLANNING 101

# Today

- ❖ **What**
- ❖ **Who**
- ❖ **When**
- ❖ **Why**
- ❖ **Where**

# TRUE or FALSE?

I do not own anything. I do not need estate planning.

**FALSE**

You have yourself.

Estate Planning is the process of handling my personal & financial affairs **DURING** my lifetime **AND UPON/AFTER** my passing.



# TRUE or FALSE?

I have two (2) children and a life partner. I can leave my house to my life partner only.

**TRUE**

Instruct so in writing in a properly executed document.

# TRUE or FALSE?

I have a written Will and a townhouse.  
My child and partner do not need to go to probate court  
when I die.

**FALSE**

Judge will have your assets go to  
your beneficiaries pursuant to the terms of your Will but your  
estate will proceed through the probate process.



# What is estate planning?

- ❖ A process.
- ❖ It involves your people, your finances, your medical care, and your property.
- ❖ It addresses your future needs.
- ❖ A Will is part of the planning process, but you will need other documents as well to fully address your estate planning needs.

# Why Do I Need Estate Planning?

- ❖ **For your incapacity during your lifetime**

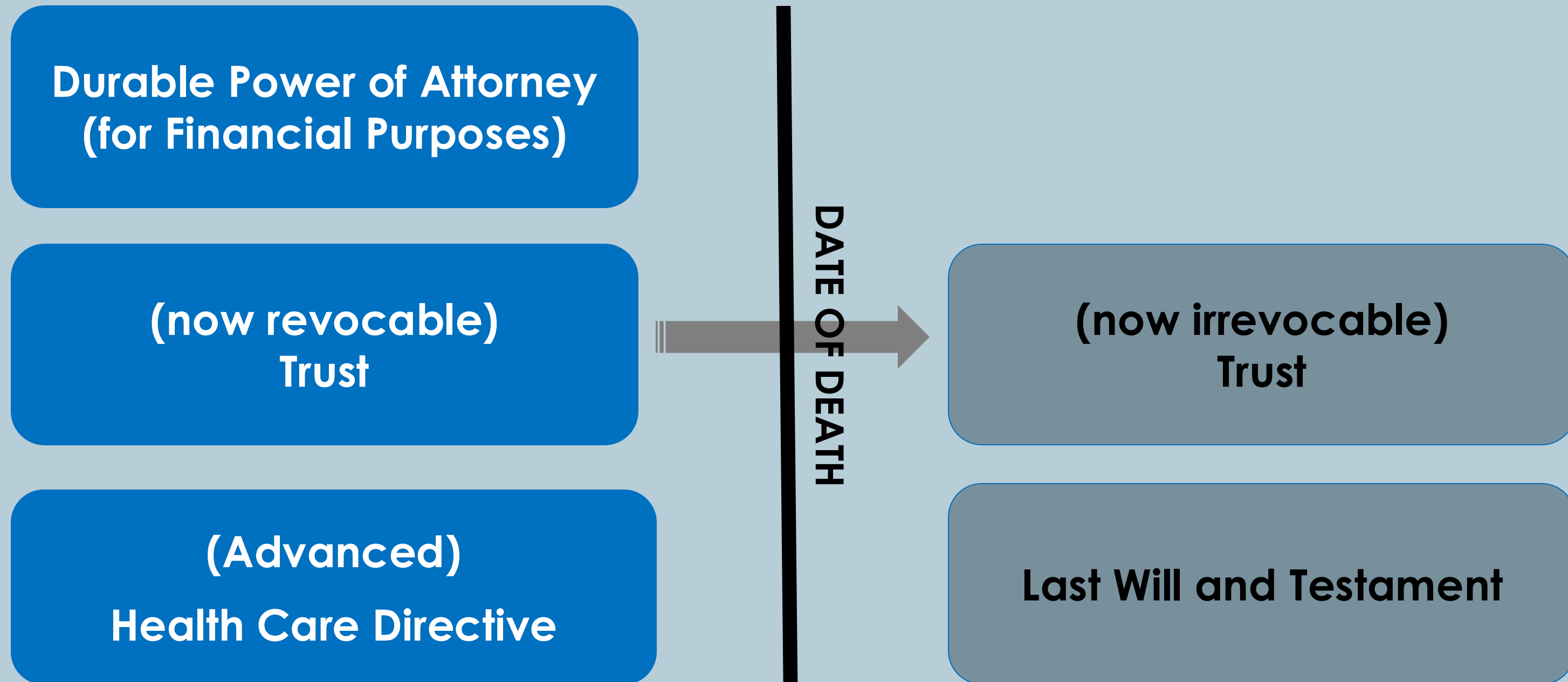
Designate someone to (1) manage your assets and (2) make health care and personal care decisions if you ever become unable to do so for yourself.

- ❖ **For post death planning**

You can stay in charge of your future affairs even after your death.

Who receives your assets? Who should manage your estate?

# Estate Planning Documents

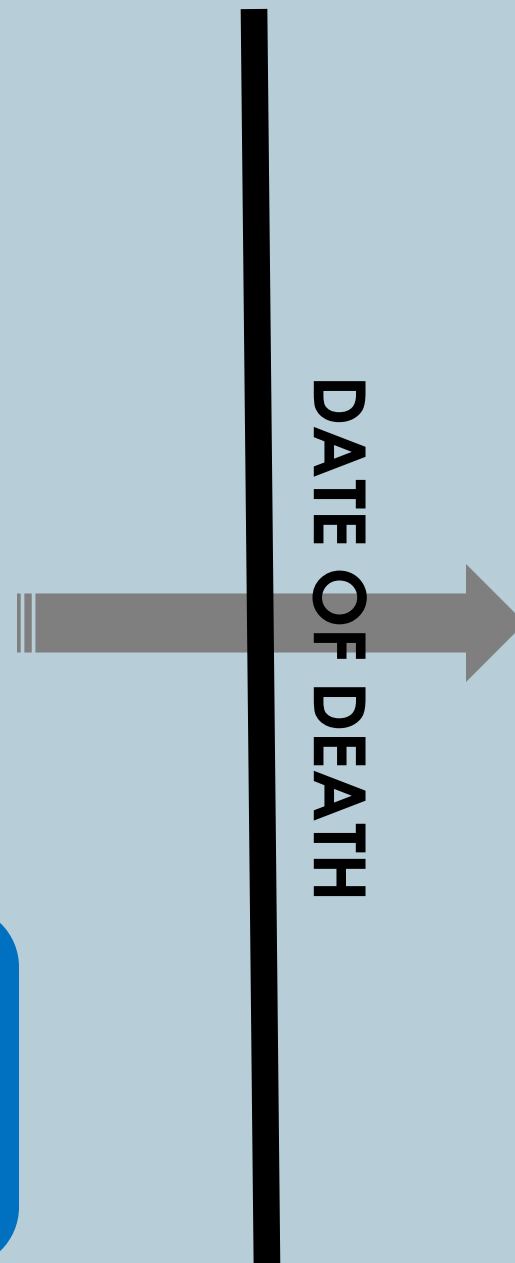


# Estate Planning Documents

**Durable Power of Attorney  
(for Financial Purposes)**

**(now revocable)  
Trust**

**(Advanced)  
Health Care Directive**



**While you are alive**

# POWER OF ATTORNEY / HEALTH CARE DIRECTIVE

- ❖ Important part of your estate planning
- ❖ Allows you to plan for incapacity by naming person you truly trust to make necessary financial, personal, and health care decisions
- ❖ Allows you to describe your desires about future care
  - (ex) preference for use of artificial nutrition while in a coma
  - (ex) power to make annual gift for estate tax reasons
  - (ex) preference for in-home care over facility
- ❖ Avoid the expenses and potential conflict of a conservatorship proceeding in the event of incapacity and the unavailability of suitable alternatives.

# DURABLE POWER OF ATTORNEY / HEALTH CARE DIRECTIVE

- ❖ Name a primary and a secondary
- ❖ Choose one who is assertive
- ❖ Co-agents to jointly act - Not recommended
- ❖ Proximity
- ❖ An adult
- ❖ Periodic review
- ❖ Update upon life changing event
- ❖ Ongoing discussion with your loved ones

# POLST and DNR and End-of-Life option

## Physician Orders for Life-Sustaining Treatment [POLST]:

- ❖ Talk to your doctor
- ❖ POLST does not replace the AHCD. Ensure consistency!



## Prehospital Do Not Resuscitate [DNR]:

- ❖ Instructing Emergency Medical Services personnel regarding a patient's decisions to forego resuscitative measures in the event of cardiopulmonary arrest.
- ❖ Not affect the provision of life sustaining measures
- ❖ Talk to your local EMS agency

## The End of Life Option Act:

- ❖ Talk to your doctor



# ACCIDENT WHILE ON VACATION

- ❖ You and your partner travel out-of-state.
- ❖ You are injured which affects your capacity and you would want your partner to help you.
- ❖ What happens if you don't have an Advanced Health Care Directive?

# ACCIDENT WHILE ON VACATION

- ❖ Since you have not indicated your partner's name on a healthcare directive, medical professionals may want to contact your blood family.
- ❖ Medical professionals might not communicate with your partner because they are not formally a family member.
- ❖ If you want your partner as your medical agent, it is important to create an AHCD.

# DURABLE POWER OF ATTORNEY FOR FINANCIAL PURPOSES

- ❖ Principal vs. Agent [Attorney-in-Fact]
- ❖ Springing vs. immediate
- ❖ General authority granted:  
General unless it is specifically limited by the instrument otherwise.
- ❖ Limited authority granted:  
Authority granted with respect to permissible actions or purposes

# CONSERVATORSHIP

Relevant if you become unable to make sound decisions, feed or dress yourself, and/or handle your own finances or resist undue influence.

- ❖ Court appoints a conservator to manage your personal and financial affairs
- ❖ Court supervises each action and decision of the conservator
- ❖ Could place conservatee with dementia in a locked facility (PrC 2356.5)
- ❖ No longer in your control

**When you are gone**

# What is Probate?

- ❖ **Court-supervised process** for transferring a deceased person's estate to the beneficiary named in his/her Will or
- ❖ **Validate** decedent's Will
- ❖ Court appoints a Personal Representative ("executor" or "administrator" or "administrator with will annexed")
- ❖ *If no Will*, distribution to be made pursuant to Probate Code

# Assets subject to Probate

**Assets worth over  
\$184,500 whether  
you have  
a will or no will**

**Prob. Code §13100. Estate not exceeding \$184,500; ...**“if the gross value of the decedent’s real and personal property in this state...”

*Without deduction of liens or encumbrances*

**Prob. Code §13052. Date of valuation**  
In making an appraisal for the purposes of this part, the probate referee shall use the date of the decedent’s death as the date of valuation of the property.

# Assets NOT subject to Probate

Property held  
in the  
decedent's  
**revocable  
trust**

Real Property  
held in  
Transfer on  
Death deed

Multiple party  
account/  
P.O.D  
account

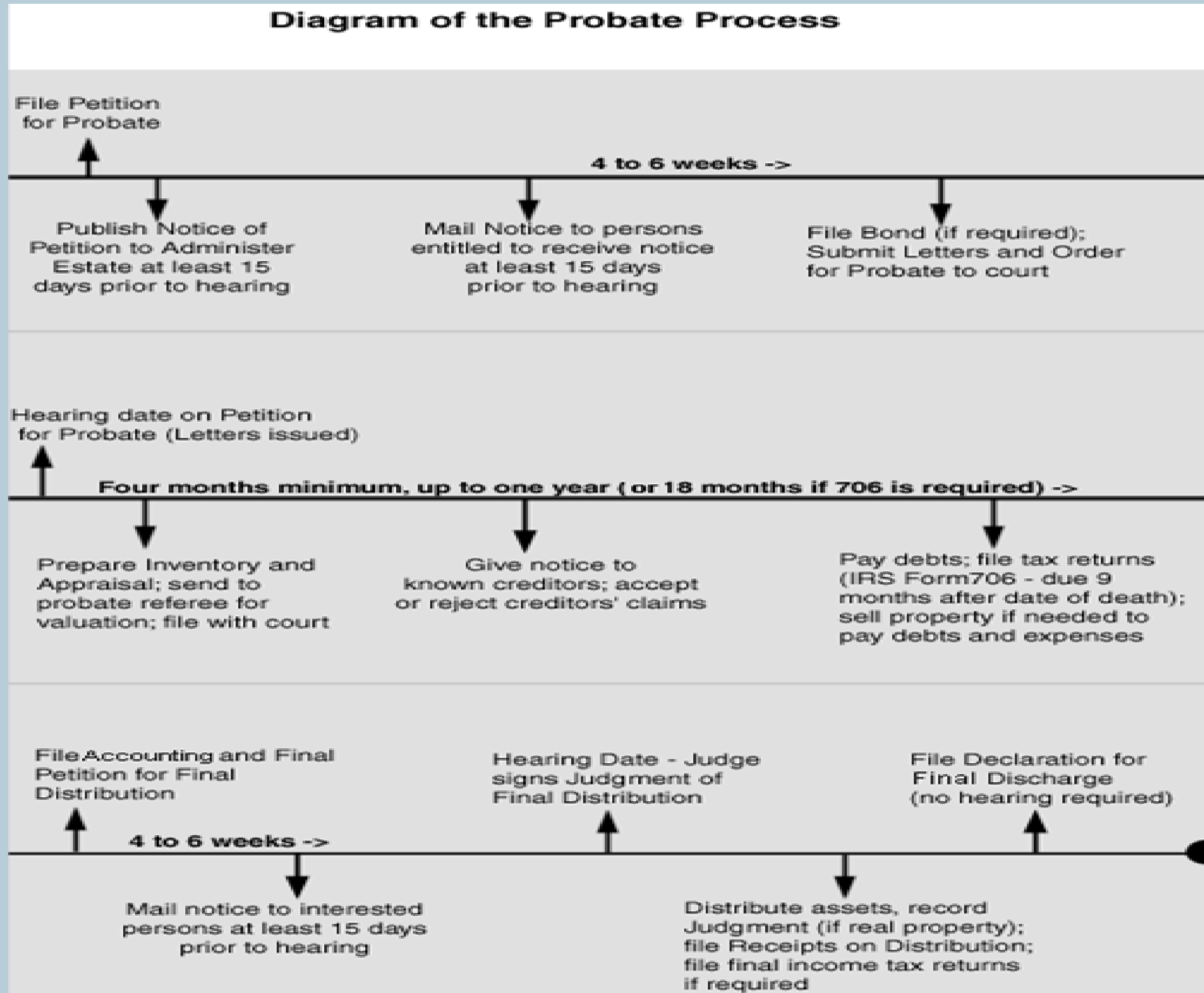
Less than  
**\$184,500**  
altogether

Property held  
by the  
decedent in  
joint tenant

Property  
passing to  
surviving  
spouse or  
registered  
domestic  
partner under  
§6401

Retirement/  
Death  
Benefits  
Property  
(beneficiary  
designated)





# STATUTORY FEES

ASSET VALUE (gross)	FEES
\$200,000	\$7,000
\$300,000	\$9,000
\$400,000	\$11,000
\$500,000	\$13,000
\$800,000	\$19,000
\$1,000,000	\$23,000
\$2,000,000	\$33,000
\$3,000,000	\$43,000
\$4,000,000	\$53,000
\$5,000,000	\$63,000

***Excludes - court fees, fees to sell assets, probate referee fees, paralegal, tax preparation or extraordinary litigation found at probate code section 10811***

# What is a Will?

- ❖ Will contains your wishes & desires
  - Who will receive your assets after your death?
  - Who will manage your estate?

- ❖ Probate is still needed

Court authorizes distribution of your assets as you directed in writing.



# Probate Code §8461

Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

(a) Surviving spouse or domestic partner as defined in Section 37.

(b) Children.

(c) Grandchildren.

(d) Other issue.

(e) Parents.

(f) Brothers and sisters.

(g) Issue of brothers and sisters.

(h) Grandparents.

(i) Issue of grandparents.

(j) Children of a predeceased spouse or domestic partner.

(k) Other issue of a predeceased spouse or domestic partner.

(l) Other next of kin.

(m) Parents of a predeceased spouse or domestic partner.

(n) Issue of parents of a predeceased spouse or domestic partner.

(o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person.

(p) Public administrator.

(q) Creditors.

(r) Any other person.



Property held  
in the  
decedent's  
**revocable**  
**trust**

# Revocable Trust

## Basic Terms:

- ❖ Settlor / grantor / trustor
- ❖ Trustee
- ❖ Beneficiary
- ❖ Revocable inter-vivos trust / Living trust
- ❖ Pour-over Will
- ❖ Trust Agreement
- ❖ Declaration of Trust

## Common Provisions:

- ❖ Identifying family
- ❖ Trustee and Successor Trustee
- ❖ Distribution – TPP / specific gifts/ residue
- ❖ Trustee compensation
- ❖ Accounting
- ❖ Spendthrift clause
- ❖ No contest clause against beneficiary

# Advantages from Trust

Living Trust	Will/ No Will/ Probate
No probate needed	Probate needed
Private record	Public record
No statutorily guaranteed fees to successor trustee and his/her/their attorney	Statutory compensation (Prob. Code §10800) to Personal Representative and his/her/their attorney
Successor trustee can do all these tasks without court supervision or approval	Executor has to do all these tasks only under court approval
Assets in a living trust is <b>not subject to estate recovery</b> (effective 2017)	Assets in a will is <b>subject to estate recovery</b>
More money shorter time to your beneficiaries	Less money longer time. Sometimes to stranger-like relatives.

# Example:

ASSET VALUE (gross)	FEES
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## TRUST ADMINISTRATION

Gross FMV estate:	\$1,000,000
Encumbrances:	\$(300,000)
Net value	\$ 700,000
<u>Cost of admin.</u>	<u>\$ (20,000)</u>
<b>Balance</b>	<b>\$</b>
<b>680,000</b>	
- Fee to Attorney	\$(_____)
- Fee to Trustee	\$(_____)
<b>Distributable Balance starts at</b>	<b>\$680,000</b>

## PROBATE ADMINISTRATION

Gross FMV estate:	\$1,000,000
Encumbrances:	\$(300,000)
Net value	\$ 700,000
<u>Cost of admin.</u>	<u>\$ (20,000)</u>
<b>Balance</b>	<b>\$ 680,000</b>
Statutory fee to PR	\$ (23,000)
Statutory fee to Attorney	\$ (23,000)
XO fees to PR	\$(_____)
XO fees to Attorney	\$(_____)
<b>Distributable Balance</b>	<b>starts at \$634,000</b>





Real Property held  
in  
**Transfer on Death  
deed**

# Transfer On Death Deed

Prob. Code 5600 et seq.

## Eligible?

- ❖ Real property improved with not less than one nor more than four residential dwelling units
- ❖ A condominium unit
- ❖ Single tract of agricultural real estate consisting of 40 acres or less that is improved with a single-family residence

## Formalities:

- ❖ Beneficiary must be identified by name.
- ❖ Signed, dated and RECORDED within 60 days after the date of notarization.
- ❖ Same formality for revocation.

PROGRESSION OF DOCUMENTS

**Durable Power of Attorney  
(for Financial Purposes)**

**(now revocable)  
Trust**

**(Advanced)  
Health Care Directive**

**DATE OF DEATH**

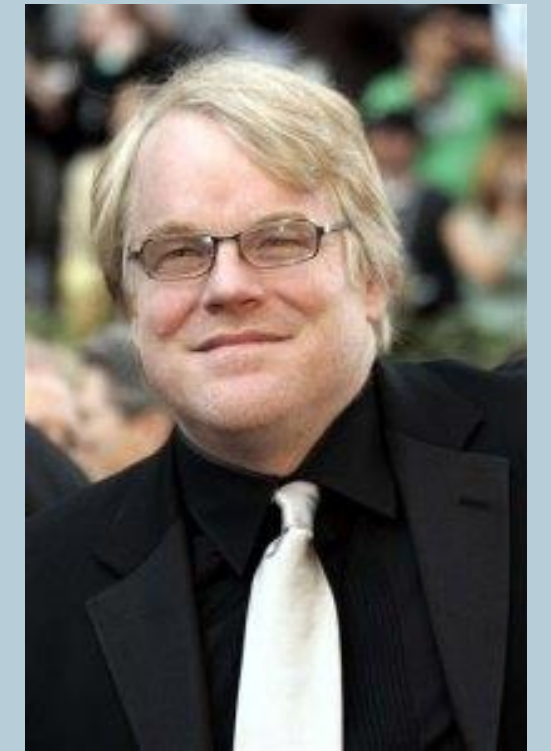
**(now irrevocable)  
Trust**

**Last Will and Testament**

# What To Expect

- Meet an estate planning attorney.
- Provide your personal and financial information to the attorney.
- Continue to review the draft until you are satisfied.
- Formally execute your estate planning documents in front of a notary public.
- Then, your estate planning documents are in effect.
- Fund your trust.
- Review your estate planning periodically.

# UPDATE accordingly!



# QUESTIONS?

Let us know if you need legal services in other subject area as well.

**HERA**

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