

LEGACY 101: ESTATE PLANNING BASICS

April 9, 2025

Questions Not Answered in the Presentation

Question #1: What if I can't think of an appropriate successor trustee or will personal representative?

Answer: This is more common than you might think—and there *are* good solutions. If you don't have a family member or close friend who is both willing and able to serve, you can consider naming a **professional fiduciary**, such as a **bank trust department**, an **attorney**, or a **private trust company**. These professionals are experienced, impartial, and can help ensure your wishes are carried out efficiently and responsibly.

The most important thing is that you choose someone—or some *entity*—you trust to act in your best interest and honor your intentions. And remember, this doesn't have to be a forever decision. You can always update your documents later as your circle of trust evolves.

There are several banks and professional fiduciaries in Hawai'i for you to consider:

- Bank of Hawaii, Personal Trust Department
- First Hawaiian Bank, Personal Trust Department
- Central Pacific Bank, Personal Trust Department
- Legacy Works
- Estate Administrative Services, LLC
- CSI Trust Company
- Maximum Legacy Services Corporation
- HELG Administrative Services
- The Caregiver Foundation
- Hawai'i Fiduciary Services, LLC

Question #2: What are your feelings about the do-it-yourself legal carriers online like Legal Zoom, Rocket Lawyer, etc.?

Answer: DIY legal platforms like LegalZoom, Rocket Lawyer, and others have made estate planning more accessible and affordable, especially for people who may otherwise never start the process. These services can be a good starting point for very simple estates where the person has limited assets, no dependents, and straightforward wishes.

However, estate planning is deeply personal, often complex, and usually involves more than just filling out forms. These DIY platforms can't offer the nuanced advice that an experienced estate planning attorney can provide—especially when it comes to understanding tax implications, navigating complex family dynamics, or structuring charitable gifts.

Think of it this way: if you have a small garden, you might handle the upkeep yourself. But if you're working with a large estate, mixed assets, a blended family, or wish to leave a meaningful legacy, it really pays to work with a professional who can help you avoid costly mistakes and ensure your wishes are carried out the way you intend.

Question #3: Please talk about passing on real estate to heirs during your lifetime vs. Death?

Answer: When it comes to passing on real estate to your heirs, you have two primary options: transferring it during your lifetime or passing it at your death. Gifting real estate during your lifetime allows you to see your heirs benefit from the gift and can help reduce the size of your taxable estate. However, there are trade-offs. The recipient takes on your original cost basis, which can lead to significant capital gains taxes if they sell the property later. You also give up control of the property once the deed is transferred, and depending on the value, it may trigger a gift tax filing.

On the other hand, passing real estate at death—whether through a will or, more commonly, a revocable living trust—offers some distinct advantages. One key benefit is the “step-up in basis,” which means your heirs inherit the property at its fair market value at the time of your death, minimizing capital gains taxes if they decide to sell. You also retain full control of the property during your lifetime. If the transfer is done through a trust, it can help your heirs avoid the probate process, making the transition smoother and more private.

However, if the property passes through a will, it may still be subject to probate, which can be time-consuming and public. Estate taxes could also apply if the total value of your estate exceeds federal or state exemption thresholds. Ultimately, the best approach depends on your goals - whether that's helping your heirs now, minimizing taxes, or simplifying the process later. Thoughtful planning with your estate planning attorney and financial advisor can help you make the choice that aligns with your values and legacy.

Question #4: How would you suggest protecting rental properties from creditors? Title the property in an LLC?

Answer: Titling rental properties in a limited liability company (LLC) is a commonly recommended strategy for protecting assets from potential creditors. Here's why:

Liability Protection: If someone is injured on the rental property or sues due to an issue with the property, the LLC structure helps shield your personal assets (like your home or savings) from being at risk. Only the assets owned by the LLC—typically the rental property itself—are exposed.

Separation of Assets: Holding each rental property in its own LLC can further insulate them from one another. For example, if there's a lawsuit involving one property, only that specific LLC's assets may be vulnerable—not your other properties.

Estate Planning Integration: LLCs can be integrated into your estate plan by transferring LLC membership interests to a trust. This helps avoid probate and provides a clear succession plan.

Tax Considerations: LLCs offer flexibility in how they are taxed, and rental income can still flow through to your personal tax return in many cases, preserving tax benefits while adding legal protection.

Important Note: Always consult with an estate planning attorney, business attorney, and/or CPA to structure ownership in a way that aligns with your broader financial and estate planning goals, and to ensure compliance with state laws and local regulations.

Question #5: Is Kaua'i Estate Law's practice limited to Kaua'i?

Answer: Kaua'i Estate Law's practice is not absolutely limited to Kauai, but they prefer to work with Kauai clients (residents and those who live outside of Hawaii but have real property here). It is generally beneficial to build a relationship with an estate planner who is nearby, understands local practices, and has familiarity with local real estate markets, other advisors (CPAs, FPs, realtors, etc.), courts, etc. Also most people prefer to be able to meet with their advisors in person, at least sometimes, and it is much easier to arrange for documents to be signed/notarized, etc.

Kaua'i Estate Law will consider clients who reside on other islands on a case-by-case basis, but there are many other good estate planners on Maui, Oahu and the Big Island to whom they can make a referral to.

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