**IMPORTANT EXPLANATIONS**
**AND INFORMATION FOR WILL AND TRUST CLIENTS**

PART ONE: The Law Offices of Robert E. Knudsen Will and Trust Drafting Policies

Every Will and/or trust drafting assignment, from our point of view, includes the following:

1. The Will itself (or the Will and trust, if you are having a trust done)
2. A Durable Power of Attorney for Property Management
3. A Healthcare Directive
4. Two appointments: one for discussion of content and one for signing

After your first interview with an attorney, a draft of your Will (or Will and trust) is done based on the information contained in your information sheets and information obtained during the personal interview. The draft will be sent to you for your review. You are requested to review the draft very carefully. If there are no mistakes, you should call for an appointment to sign the Will. If there are a few simple mistakes such as a misspelled name, please call us and report them to us. We will make the corrections and then call you for an appointment to sign the documents. If there are significant mistakes, which sometimes occur, you should call for an intermediate appointment with the attorney before we put the Will (or Will and trust) into final form and we will call you back to sign it later.

PART TWO: Will Terminology and Practice

There are certain questions which virtually all Will-drafting clients ask us. We have provided explanations of these below in a question and answer format. Any additional questions you may have will be answered at your first consultation.

A. Can I expect to see flowery language about being of sound and disposing mind, paying just debts, etc. in my Will?

This flowery language which you may expect to see in a Will is not necessary. The law assumes that you are competent to make a Will. If you are not competent, you cannot make a Will and all the flowery language in the world is not going to help. The law requires that your creditors be notified and your debts paid and therefore such statements are unnecessary.

B. What is a "Testator"?

A Testator is a person who writes a Will (a last Will and testament).

C. Why do you require a beneficiary to outlive the testator by 30 days or 180 days?

In your Will or trust, you will find references to survival by 30 days (for tangible personal property) and 180 days (for intangible personal property, such as bank accounts or stock, and all real property). Those provisions mean simply that if someone does not survive you for the required period, they have not survived you at all for purposes of receiving property from you at your death.

The purpose of these provisions is to reduce the possibility of a double or triple probate and, perhaps, additional taxes in the event of two or more deaths within a short time of one another. Since it is virtually impossible to complete a probate in less than six months, these provisions have the potential for great benefit with little risk of harm. The time is shorter for tangible personal property because there is often an immediate problem as to what to do with it.

D. What does "issue" mean?

Your issues are your lineal descendants of all degrees, or, in other words, your children, grandchildren, great-grandchildren, etc.

E. What do you mean when you say "issue by right of representation"?

Traditional "by right of representation", or *per stirpes* in Latin, means that your property is divided into equal shares, one share for each of your children. The share of any deceased child is divided equally among his children. Even if you outlive all of your children and are survived only by grandchildren, the division of your estate takes place at your children.

This is illustrated as follows: You have two children, A and B. A has one child, C. B has two children, D and E. Your estate is divided into two shares, one share for A and one share for B. If A dies before you, his share (1/2 of your estate) goes to C. If B dies before you, his share (1/2) of your estate) goes in equal shares to his children D and E (1/4 each). Thus, if you were to outlive both of your children, your grandchild (C) would get 1/2 of your estate and your grandchildren D and E would each get 1/4 of your estate.

Several years ago the legislature in California provided a different scheme for the division of property. This new scheme provides that rather than dividing the property into equal shares at the children's generation, the property is divided into equal shares at the nearest generation of living issue. This new scheme for distribution only makes a difference if you outlive all of your children and are survived only by grandchildren.

Using our same example with children A and B and grandchildren C, D, and E, this is illustrated as follows: If A and B are both alive, they each receive 1/2. If A dies before you (but B is still alive) A's 1/2 goes to his child C. If B dies before you (but A is still alive) his 1/2 share goes in equal shares to his children D and E who get 1/4 each. However, if both A and B die before you, division into equal shares does not take place at the children's level; it takes place at the grandchildren's level and each grandchild would receive a 1/3 share.

You may elect to have your property divided in one of these two methods or you may choose some other method. If this explanation was not clear to you or only made matters worse, do not be alarmed. These examples can be better clarified vocally than in writing. The differences will be explained to you during your initial interview with an attorney.

F. What is a "Healthcare Directive?"

California law enables us to give many instructions to our physicians in advance, in writing, in case we should be unable to instruct them.

G. Should I put funeral and burial instructions in my Will?

These do not belong in the Will. You may make these instructions in several other ways. Funeral homes provide appropriate forms for this and will assist you in making advance arrangements, if that is your wish.

H. What is a "Durable Power of Attorney for Property Management?"

California laws allow each of us to give others the power to act on our behalf in business and financial affairs starting at a future time (on incapacity, for example) and continuing during incapacity. This can be a great advantage, enabling us to reduce death taxes in certain circumstances and postpone or avoid conservatorships as well as say who may act as conservator if that time should ever arrive.

I. What is a "Living Trust" and how can it help me?

A "Living Trust" sometimes referred to as an "Inter vivos Trust" is an increasingly popular means of controlling the disposition of your assets. A Living Trust has some things in common with a Will. Both a Will and a Trust use many of the same terms. Both are used to dispose of property after death. However, a properly prepared Living Trust can provide significant advantages that a Will cannot provide. A properly prepared trust will avoid probate, which may save your children or other heirs a significant amount of money after your death and will speed up distribution of your property. With a living trust your property can be distributed within weeks or even days of your death. Distribution of property under a Will takes a minimum of six months and usually takes from nine months up to a year.

A living trust can also help keep your business and financial affairs private in the event you become disabled and after your death. Because no court proceeding is necessary to distribute your property, your financial affairs are not disclosed. Distribution of property under a Will makes your financial affairs public because, as a general rule, all court proceedings are public. A living trust can also reduce or eliminate the federal estate tax in certain instances and is an effective way to establish a college fund for your children or grandchildren.

J. Who needs a "Living Trust"?

Each personal and family situation is unique. As a general rule, if you have:

1. Property or other assets with a value in excess of $150,000; or
2. Children younger than college age that you wish to attend college; or
3. You are over age 60 or have health problems; or
4. You own your residence or any other real property (commercial or residential);

you and your family may benefit significantly by a Living Trust.

If you have assets in excess of $1,000,000.00, a trust may provide you with significant tax benefits and is generally strongly recommended.

Even if you have property and assets worth $150,000 or less a trust may still be of some benefit depending upon your age, health and family situation.

K. How can I find out more about Living Trusts and how can I find out if I need a Living Trust?

We would be happy to set an initial appointment for you to answer any questions that you may have about Wills and living trusts and make specific recommendations about an estate plan tailored to your needs. This initial interview is included in our fee quotations for Wills and trusts. If you want only an interview and explanation, the cost is $160.00. We will apply this $160.00 to your bill if you elect to proceed with a Will or a trust. You are welcome to call if you have further questions or desire further information.