

## SPECIAL REPORT

### “The Importance of Integrating Title with Estate Planning Documents” by Francis Burton Doyle, Esq., *WealthPLAN*



**Francis Burton Doyle, Esq., *WealthPLAN***  
Certified Legal Specialist Taxation Law & Certified Legal Specialist  
Probate, Estate Planning & Trust Law

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Up until the 1960, the preferred testamentary instrument was the will. The will controlled the disposition of the “estate” of the decedent, but the title to a decedent’s property determined what was part of the “estate”. Thus, where the will was the primary means of testamentary disposition it was necessary to coordinate the titling of a decedent’s property so that the terms of his or her will control the disposition of the property. In instances where this wasn’t done there was the potential for unanticipated results. For example, when the decedent held a particular property in joint tenancy with right of survivorship the property went to the surviving joint tenant rather than the distributes under the decedent’s will.

Since the 1960’s the focus of most estate plans has shifted away from a client’s will and towards the revocable trust. Revocable trusts have been popularly promoted as a means to avoid the delay and expense of traditional probate administration. Consequently, revocable trusts have become the centerpiece of most modern estate plans.

As with the will situation, it remains important to integrate the title to a client’s property with the trust. In addition, it is critical to integrate the client’s will with the revocable trust to ensure that the provisions of the trust control the disposition of the client’s property. Hence in the instance of the revocable trust, the title to the property should be transferred to the trust and the provisions of the will should be structured so that the assets of a client’s estate “poured over” into the trust.

Many clients naively believe that if they have a revocable trust they do not need to have a will. Nothing could be further from the truth since many clients fail to title all of their important assets in the trust or have changed the title to their assets from the trust to themselves in order to facilitate a refinancing of their property. The “pour over” will ensures that the provisions of the revocable trust will control how the property is distributed. This is particularly important where the client’s estate tax planning is embodied in the terms of the revocable trust.

Perhaps the most important development in the post mortem administration of revocable trusts in California has been the use of Section 15,200 (a) of the Probate Code in confirming a client's assets to their revocable trust. Under this Probate Code Section if a client declares that he is holding certain assets as the trustee of his revocable trust then those assets will be considered part of the trust and not part of his probate estate. Consequently, it is essential to advise clients to carefully maintain a schedule listing the assets they consider part of the trust so the client's declaration that they are part of the trust will prevail over the formal titling of the property. This result is supported by the Court decision, Estate of Heggstad (1993) 16 CA 4th 943.

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Estate Planning, Probate and Trusts involve complex areas of law. Individual circumstances must be considered before any advice can be given. The general information above is not to be construed as legal advice, which can only be given after consideration of the unique facts of each matter. Please seek the advice or counsel of your attorney, financial advisor or CPA, as it may be appropriate.

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### About the Author...

#### Francis Burton Doyle, Esq., WealthPLAN

- Member, *State Bar of California*
- *California State Bar Certified Legal Specialist, Taxation Law and Probate, Estate Planning and Trust Law*
- Founder, *WealthPLAN*, 30 years of experience in Tax, Estate-Planning Probate, Trust Administration and Litigation
- Instructor, *California Continuing Education of the Bar (CEB), Lorman Education and National Business Institute (NBI)*
- Professor; *Lincoln Law School of San Jose, Wills & Trusts and Real Property*
- President, *Santa Clara County Estate Planning Council*
- Chair, Planning Committee, *Annual Jerry A. Kasner Estate Planning Symposium, Santa Clara University, School of Law*
- JD, *University of San Francisco Law School*, MS, *Taxation, Golden Gate University*, BA *Santa Clara University*

### A Note from Frank Doyle:

I have been working in this area of law for over thirty years.... I am a member of the *State Bar of California* and certified by the *Cal Bar* as a legal specialist in Taxation Law and Probate, Estate Planning and Trust Administration. I am also an educator and I enjoy teaching and sharing the stories of the challenging legal conundrums that I have solved in my practice over the years. I remember it well; I walked in the door and told my wife, "I quit my job today". She looked at me (holding our 6-week old son) and said, "What are we going to do?" It was at that point that I decided to break out on my own and start my estate planning practice. I hit the road and began to set up the alliances, a network of associates and the expertise to build a thriving international estate planning practice.

Over the years, I have continued to teach law school and present *MCLE* courses nationwide. I was frustrated with the fact that I have never found the information that would allow an attorney to capture the basics of developing and expanding a thriving estate planning practice, so I have created them for you now. I am the founder of *WealthPLAN* and bring over 30 years of experience in tax, estate planning, litigation, probate and trust administration. I have taken all of my experiences and legal expertise to create the *Advanced Legal Training Institute*, foundation course entitled, *Integrated Estate Planning Seminar Series (I-IV)*. This set of 17-AudioCDs include over 30 hours of legal information that will give you a jump start to get yourself into this lucrative and growing legal niche. I have taken the best ideas from all of my presentations, case studies and professional experience to provide you with a step-by-step program to support our aging population. I am now working with some of the children and grandchildren of my original clients. The *Advanced Legal Training Institute* tapes and workbooks offer checklists, templates, forms and articles to provide an in-depth educational experience for attorneys and other estate planning professionals. *P.S.* My 6-week old son, John, is now grown and a practicing attorney himself.

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