

# *ESTATE PLANNING COURSEBOOK*



**BOTTI & MORISON**  
ESTATE PLANNING ATTORNEYS, LTD.

WORKING HARD TO PROTECT WHAT YOU WORKED HARD TO BUILD™

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## ABOUT THE ATTORNEYS

### CHRISTOPHER E. BOTTI

Christopher E. Botti, co-founder of Botti & Morison Estate Planning Attorneys, Ltd., was born in Brooklyn, New York in 1964. He received his B.S. in Business-Economics from the State University of New York, College at Oneonta in 1987. He obtained his J.D. from Whittier College School of Law in 1990 and served as an editor for the Whittier Law Review.

As a State Bar of California Board Certified Specialist in Estate Planning, Trust and Probate Law – this puts him in an elite group of attorneys in which only approximately three percent (3%) of practicing attorneys in California can call themselves a “Certified Specialist.” Mr. Botti is also a well-regarded public speaker and has created several thousand customized estate plans throughout his thirty plus year career.

He is an outdoor enthusiast and competitive cyclist. He also enjoys skiing, wakeboarding, hiking and gardening with his wife, Nicole and their two daughters, Sophia and Julia.

### PAUL A. MORISON

Applying over thirty years of experience to the complex, ever-changing estate planning landscape, Paul A. Morison is adept at working closely with clients to identify and establish the most beneficial blend of tax strategies, trust vehicles and other estate planning tactics to match the individual needs of each client.

As well as advising clients in the creation of sophisticated, integrated estate plans, Mr. Morison is experienced in all facets of trust and probate administration, including issues pertaining to successor trustees, tax filings, and other regulatory compliance matters.

In today’s uncertain economic times, a focus on protecting the homes, businesses and other assets of families is paramount; Mr. Morison has demonstrated an ability to work with clients across a broad spectrum of needs in terms of tax and estate planning to achieve their specific objectives. While we acknowledge that death and taxes are two of the only “sure things,” at least through proper planning, we can do something about one of them.

Mr. Morison received his J.D from Whittier College School of Law in 1989, where he served as an editor of the Whittier Law Review. He earned his B.S degree in Economics at Tulane University

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**ESTATE PLANNING WORKSHOP**  
**COURSEBOOK**

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## FREQUENTLY ASKED QUESTIONS ABOUT OUR ESTATE PLANNING WORKSHOPS

1. *What is **BOTTI & MORISON ESTATE PLANNING ATTORNEYS, Ltd.**?*

**BOTTI & MORISON** is a law firm devoted exclusively to estate planning.

2. *How can **BOTTI & MORISON** provide me with high-quality estate planning documents at substantial savings over most full-service law firms concentrating on this area?*

By talking to groups of people, instead of having each of you come into the office to have your estate planning options explained to you individually, we save time for both of us, which in turn saves you money.

3. *Will I receive the same quality estate planning as though I had come individually to your office?*

Yes. Your documents will be prepared by either Mr. Botti or Mr. Morison, following an individual consultation between you and one of them.

4. *How long will it take before I receive my estate planning package?*

Because we carefully analyze the information you have given us and prepare custom estate planning documents for you, you should allow approximately two weeks after we receive your Workbook for us to dispatch your draft documents to you.

5. *What if something changes after my estate planning documents are prepared that I think affects my estate plan?*

Please call us about changes in your life that you believe might affect your estate plan so we can advise you (**at no additional charge for the consultation**). These changes may include an increase or decrease in the value of your estate, having a child, losing a child, having a grandchild, losing a grandchild, marrying or divorcing. **If we recommend that you amend your estate plan, we will be able to prepare new documents for you at a discounted rate because you are a client.**

6. *What if I have a friend or relative who would like to have their estate planning documents prepared by **BOTTI & MORISON**?*

Contact our office and we will let you know about upcoming workshops they may wish to attend or schedule a consultation with Mr. Botti or Mr. Morison directly.

7. *What if I have questions that are not answered by the Workshop?*

Call us. We will be happy to take as much time as necessary to answer all of your questions at no additional charge because you are a Workshop participant.

8. ***If I have a friend or relative who dies without proper estate planning, what should I do?***

Call us. Despite our best efforts, occasionally people die without having made prudent plans such as those you are making to protect your family. We can handle these probate matters for them.

9. ***What if my work schedule makes it difficult for me to meet during regular business hours?***

Call us. Both Mr. Botti & Mr. Morison routinely accommodate clients by scheduling “after hours” appointments.

10. ***I have heard that every time you take something out of your trust, or buy anything, you have to go to your attorney and have your trust changed. Why would I want to do that?***

Some attorneys do set up trusts that require you to go to them each time you buy or sell an asset, or write trusts that require constant updating. **BOTTI & MORISON** does not do that. We give our clients a “Certificate of Trust” that allows you to put things into, and take things out of your trust yourself. We provide extensive written instructions about how to do this as well as a complete Estate Organizer.

11. ***Why do I need an estate plan now?***

The greatest enemy of estate planning is procrastination. You must ask yourself: “If I do not plan, who will it hurt the most?” “How much will it cost if I don’t plan?” And, “How much do I really care about my loved ones and their financial security?” Remember the motto of the Boy Scouts of America: “Be Prepared”—perhaps the wisest guidance you’ll ever receive.

## QUESTIONS AND ANSWERS

### 1. WHAT HAPPENS WHEN YOU DIE WITHOUT A WILL?

- The Probate Court will decide who will administer your estate and who will become guardian of your minor children.
- The State of California makes a Will for you and decides who gets your money and your belongings.

#### *Potential problems with leaving no Will:*

- An inappropriate person is selected by the court to administer your estate.
- An inappropriate guardian is selected by the court.
- Children will receive their share when they become “adults”, at the age of eighteen (18) years!
- Beneficiaries are not those *you* would have selected if you had been prepared.

### 2. WHY IS A “HOMEMADE” (HANDWRITTEN) WILL DANGEROUS?

- Handwritten Wills are easily challenged because of unclear (non-legal) language and often lack witnesses to prove the person writing the Will was legally competent.
- Lawsuits challenging the Will are expensive and usually result in a compromise, with beneficiaries you wanted to disinherit receiving part of your estate.

*Caution: Do not attempt to change a Will prepared by your attorney by writing on the document. Adding words or crossing out language could invalidate the entire Will.*

### 3. WHY JOINT TENANCY IS NEITHER AN ACCEPTABLE SUBSTITUTE FOR A WILL NOR A GOOD WAY TO AVOID PROBATE:

If a couple is married, holding assets in joint tenancy between spouses is acceptable, but far from ideal. Married couples living in a community property state (such as California) can obtain a “double step-up” in basis in the decedent’s half of community property as well as the survivor’s half, but most fail to take advantage of this tremendous tax benefit by keeping assets in joint tenancy.

However, adding anyone else (besides your spouse) as a joint tenant can create other problems, such as:

- The new joint owner could misappropriate the asset. After all, you gave it to him/her.
- Did you file a gift tax return when you added his/her name to your asset? Adding a name to an asset is a gift.
- Do you really want to expose your money to someone else’s problems (for example, adding children or relatives as joint tenants)?
- If the joint tenant gets involved in a divorce, bankruptcy or lawsuit, your assets may be tied up in a long legal battle and your asset(s) could be encumbered, compromised or lost.
- Joint tenancy means “automatic right of survivorship” so the surviving joint tenant will get the entire asset, regardless of what your Will or Trust says.

**4. WHY A WILL CAN HURT YOUR LOVED ONES:**

- A Will does not assist in avoiding probate, should the gross value of your assets exceeds \$188,500 at your death. See Appendix “A” a.k.a. “Page 10” for approximate probate expenses. The cost of probate will take a large bite out of your estate.
- People with large estates may create a tax burden for their beneficiaries by relying on a Will or joint tenancy.

**5. A LIVING TRUST-- A RESPONSIBLE WAY TO PLAN:**

What are the benefits of a Living Trust?

- A Living Trust avoids probate, thereby avoiding delay, expense and the public nature of this formal proceeding of the Superior Court.
- A Living Trust avoids the need for a conservatorship if you should become incompetent or incapacitated.
- A Living Trust offers potential tax savings.
- A Living Trust can continue for the benefit of:
  - Your loved ones;
  - Minor children and elderly dependent parents; and,
  - Adult children with drug or alcohol problems, mental, physical, or educational special needs, or developmentally disadvantaged adult children on SSI.

**6. IF I HAVE A TRUST, DO I ALSO NEED A WILL?**

Yes, for two very important reasons:

- As a safety net to pour assets into your Trust in case you have forgotten to put an asset into it.
- To provide for the care of your minor children or other dependents.

**7. IF I HAVE A TRUST, DO I ALSO NEED A POWER OF ATTORNEY FOR FINANCES?**

Yes. General Durable Powers of Attorney for Financial Purposes are extremely important. With a Living Trust, a Financial Power of Attorney allows your Agent to transfer assets to the Trust, sign income tax returns, deal with Social Security, pensions, IRAs, insurance, and other legal documents and transactions outside the scope of the Trust where your signature is required.

**8. WHAT IF I CAN'T MAKE A DECISION REGARDING MY HEALTH CARE DUE TO MY INCAPACITY?**

You need an Advance Health Care Directive. This document is invaluable in the event you become incapacitated for whatever reason, since it allows you to designate an agent, who will be authorized to receive personal healthcare information about you and to make health care decisions for you if you are unable to make them for yourself. Without such a document, you may be required to go through an expensive, time-consuming and public conservatorship proceeding before anyone will be allowed to make such decisions for you.

**9. WHAT SHOULD I CONSIDER WHEN SELECTING MY EXECUTORS AND TRUSTEES?**

**CORPORATE EXECUTOR/TRUSTEE**

**Advantages**

- Specialist in handling estates/Trusts.
- No emotional bias.
- Impartial - usually free of conflicts of interest with the beneficiary.
- Never moves or goes on vacation.
- Never dies or gets sick.

**Disadvantages**

- Usually little familiarity with family.
- Administrative fees may be higher.
- May go out of business or merge with a Trust department you find unsatisfactory.
- Often are predisposed to keeping funds under their management, rather than dispensing to beneficiaries who may have genuine needs.

**INDIVIDUAL EXECUTOR/TRUSTEE**

**Advantages**

- More familiar with the family.
- Administrative fees are generally lower.

**Disadvantages**

- Probably not experienced in handling estates or Trusts. May not be impartial.
- Could have schedule conflict or live too far away to do the job properly.
- Could be incapacitated at times or no longer competent when you need their assistance.

**10. SHOULD I TRANSFER THE OWNERSHIP OF MY INDIVIDUAL RETIREMENT ACCOUNT (IRA) OR OTHER RETIREMENT PLAN TO MY TRUST?**

NO! If you do so, the entire amount of your retirement account will be immediately taxable. If you have a Roth IRA, its benefits will not be taxable to your children or your estate. Despite a potential tax disadvantage, some people consider designating the Trust as beneficiary of all or a portion of their “Non-Roth” IRA in order to care for special needs children who would otherwise receive the IRA portion outright.

**11. WILL LEAVING MONEY TO A “SPECIAL-NEEDS” CHILD WHO IS RECEIVING DISABILITY OR MEDI-CAL PAYMENTS AFFECT THOSE BENEFITS OR PAYMENTS?**

Yes. Leaving part of your estate to a special-needs child who is receiving disability or Medi-Cal payments could have the effect of terminating those payments until the child has exhausted the entire amount of the bequest. If you find yourself in this position, discuss it with us privately and, together, we will carefully consider what you should do before you make any decision.

## 12. SHOULD I MAKE MY TRUST THE BENEFICIARY OF MY LIFE INSURANCE POLICIES?

We normally recommend that you name your revocable Living Trust as the primary beneficiary of your life insurance. If you are married, your surviving spouse is typically the Trustee of the Trust and the beneficiary of the Trust, and thus would manage any insurance proceeds paid to the Trust for his or her own benefit. In the event that the surviving spouse is legally incapacitated, the successor Trustee will step in to manage and distribute the insurance proceeds for the benefit of the incapacitated surviving spouse. If you are single, or your spouse predeceases you, the proceeds are paid to the Trust and the successor Trustee then administers and distributes those funds to your contingent beneficiaries (children, grandchildren, etc.) in accordance with the distribution provisions you have outlined in your Trust. This is particularly beneficial for beneficiaries who are still minors.

In the event that the net value of your insurance policy(ies), when added to your remaining estate, will cause your estate to exceed the estate tax exemption limit, we recommend an advanced estate planning device known as an Irrevocable Life Insurance Trust, which effectively removes the proceed value from your taxable estate.

### SUMMARY OF THE ADVANTAGES OF A LIVING TRUST

#### **PROBATE AVOIDANCE**

Whether you are single, married, divorced, or widowed, if the gross value of your assets exceeds \$184,500, your heirs will be forced to experience probate unless you have established a Living Trust.

- Avoid the delays of up to two years or more for settling the estate.
- No 120-day waiting period for notice of creditors.
- No need to file petitions and reports to the probate court as with a Will.
- The Trust can enable your heirs' income to continue without interruption after your death.
- All property or income is immediately distributable in accordance with the provisions of your Trust, and at the times you specify.
- No court costs or publication expenses and no Executor's fees. Also, attorney fees are substantially reduced compared to attorney fees in probate which are set by statute and are based on a percentage of the **gross** asset value, not the net.
- Privacy. Since a Trust eliminates probate, no information concerning the decedent's estate can become public knowledge.
- Not as readily subject to challenge as a Will. Generally, Living Trusts contain very strong "no contest" clauses.
- Out of state probate is avoided. Regardless of where you live or move to, your moves do not affect your Trust.
- As Trustee of your Trust, you retain complete decision-making control over your assets and may buy, sell, withdraw, or add to your Trust at any time.

## **BUILT IN AVOIDANCE OF CONSERVATORSHIP**

If you become physically or mentally incompetent and cannot serve as Trustee, you can name your Successor Trustee such as a family member, a bank or a Trust company without the necessity of a court supervised conservatorship.

- You then have the opportunity during your lifetime to determine whether the Trustee is doing a good job and/or whether the Trustee should continue or be discharged.
- The Trustee can be given discretionary powers to provide for your comfort and support should you become incapacitated due to illness or accident.
- You eliminate court action that could declare you incompetent for either physical or mental reasons.
- Your Trust eliminates the cost of a court-appointed guardian for minors or conservators for incompetents. Since you eliminate the need for regular accounting to the court, you also eliminate the resulting fees.
- Heirs do not have to make decisions about the management of assets which have been placed in the Trust.

## **TAX-SAVINGS POTENTIAL**

- Income taxes are payable on Trust income by the individual creating the Living Trust, just as though there were no Trust.
- Use of an “A/B” (or “Unified Credit”) Trust will preserve the estate tax exemption of the first spouse to die, which otherwise typically would be forfeited due to a failure to plan properly.

## FEDERAL ESTATE TAX & GIFT TAX CHART

### Estate Tax Provisions

Year	Top estate tax rate	Lifetime Exemption amount
2023 and beyond	40%	\$12,920,000.00*

**\*This amount is subject to a cost of living adjustment each year.**

### Gift Tax Provisions

- Beginning 2023, the annual exclusion for gift tax purposes increased to \$17,000.00\*; and
- Beginning 2023, the lifetime exemption for gift tax purposes shall be \$12,920,000.00\*.

**\*These amounts are subject to cost of living adjustments each year.**

## APPENDIX “A”/PAGE 10

### THE COST OF PROBATE

Probate is necessary when an individual dies owning assets subject to probate exceeding \$184,500.00 in his/her name. California’s probate fees, (listed below) do not include additional fees for the sale of assets, tax preparation, and litigation.

The chart below shows the cost of probate as set by the California Probate Code relative to the estate’s gross asset value.

Gross Asset Value of Entire Estate	Minimum Cost of Probate WITHOUT Proper Estate Planning	Cost of Probate WITH Proper Estate Planning
\$200,000	\$14,000*	\$0
\$300,000	\$18,000*	\$0
\$400,000	\$22,000*	\$0
\$500,000	\$26,000*	\$0
\$750,000	\$36,000*	\$0
\$1,000,000	\$46,000*	\$0
\$2,000,000	\$66,000*	\$0
\$3,000,000	\$86,000*	\$0
\$4,000,000	\$106,000*	\$0

\*This is not a tax. One half will be paid to a probate lawyer and one half may go to Administrator(s) unless you take action.