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BREAST  
**CANCER**  
**ACTION**

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Planned  
Giving  
Guide  
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## **TABLE OF CONTENTS**

Introduction .....	1
Estate Planning Overview .....	2
Basic Documents .....	3
Planned Giving- A Means of Reducing Taxes .....	5
More on Charitable Remainder Trusts .....	6
More on Charitable Lead Trusts .....	7
Seeking Advice .....	8
Resources .....	9

# **BREAST CANCER ACTION PLANNED GIVING GUIDE**

## **INTRODUCTION**

As a service to our members, Breast Cancer Action (BCA) created this brochure to provide information regarding estate planning and planned giving. Regardless of the value of one's estate, it is important that steps be taken to protect assets while providing for heirs and favorite causes like BCA. This brochure will outline the basic elements of estate planning and the fundamentals of planned giving.

Properly created, an estate plan serves as the foundation for an overall approach to asset management, ensuring that your needs will be met today and in the future. A properly drafted estate plan will provide substantial protection from both probate expenses and estate taxation, as well as ensure that your individual wishes will be carried out. In the absence of legally binding documentation, the state directs the disposition of assets at death. With prudent planning you can control your assets and their ultimate disposition. Estate planning is of great concern to your loved ones and your community.

Planned giving is driven by two key concerns—charitable intent and avoiding estate and gift taxes. The tax rate for estates valued in excess of \$675,000 is 37%, and it reaches 55% for estates in excess of three million. By utilizing one or more of the planned giving tools described in this brochure, you can significantly reduce or eliminate the tax burden on your estate and fund substantial contributions to non-profit organizations like BCA. No matter the size of your estate, we hope you will consider making a planned gift to BCA and, if applicable, consider charitable giving to reduce estate taxation and to direct assets to preferred recipients instead of the government.

This brochure is meant as a guide and is not legal advice. Each person should consult with qualified professionals regarding individual estate planning needs. States have provisions

that supplement Federal law and estate tax regulations, and it is crucial to work with an advisor familiar with your local situation. Ultimately, the various documents that constitute a complete estate plan should be drafted by a qualified estate planning attorney.

### **ESTATE PLANNING OVERVIEW**

There are four major areas of estate planning, which have some degree of overlap:

1. **Development of a Basic Plan:** The plan directs the transfer of your property at death. By selecting the appropriate legal and financial vehicles, you can minimize the problems and costs while maximizing the size of your estate.
2. **Disability Planning:** It is projected that, at age 35, there is a 50% chance of becoming disabled for three months or longer before age 65. Estate planning helps you and your loved ones deal with the issues that arise during incapacity.
3. **Providing Liquidity:** Planning should account for the expenses of bequests, debt payments, settlement costs and estate taxes. Because estate taxes are due within nine months of death, it is important for your estate to have some liquidity.
4. **Reducing Gift and Estate Taxes:** There are numerous techniques available to reduce gift and estate taxes, which can benefit the individual during her or his lifetime and provide for heirs and/or charitable organizations.

## **BASIC DOCUMENTS**

Please note that all individuals, regardless of relationship status, should have the following documents completed and executed. There are five basic estate planning documents:

1. **Will:** The will is the underlying and basic document for estate planning. It governs and directs the disposition of assets in the estate, including personal effects. Upon death, the will is filed with the court and the assets are subject to probate, which is the court administration of an estate which includes appraisals and distribution. Small estates, e.g. under \$100,000 in California, do not have to go through probate. Once it is filed with the court, the will and its contents are public documents. Assets held in a living trust are not subject to probate and public disclosure (see #5). If you have already executed your will and want to make a change, such as naming BCA as a beneficiary, you can easily add an amendment called a codicil. In a codicil, you may specify any modifications you wish to make to the existing provisions of the will, including leaving a bequest specifically for BCA's Elenore Pred Legacy Circle.

**For a bequest to BCA, the following language should be used:**

**Specific Bequest:** You indicate a specific dollar amount, a particular piece of property, or a percentage of your estate to go to BCA, e.g.:

I give \$ \_\_\_\_\_ (or \_\_\_\_\_% of my gross estate) to Breast Cancer Action.

**Residuary Bequest:** You designate Breast Cancer Action to receive all or some percentage of the remainder of your estate, after all specific bequests have been satisfied:

I give all (or \_\_\_\_\_%) of the residue of my estate to Breast Cancer Action.

2. **Durable Power of Attorney for Health Care:** This document

names an individual to make medical decisions on your behalf in the event of incapacity. The document should include your wishes regarding the withdrawing or withholding of treatment to prolong life if a recovery is deemed unlikely.

3. **Durable Power of Attorney for Asset Management:** This is a separate legal document in which you name an individual or corporate agent to manage financial and business affairs in the event of incapacity. It is vital to provide that your assets can be used for your spouse's or partner's care also, if that is your intention. Once again, it is important to note that in the absence of such a document, the court may appoint an individual to manage your affairs.
  
4. **Revocable Living Trust:** A living trust is simply a legal fiction by which you, as trustee, hold title to your assets during your lifetime. The written trust agreement governing the trust provides for the efficient transfer of assets upon your death. It also includes provisions for the management of your assets if you become incapacitated. It is an excellent way to avoid a court-administered conservatorship in the event of incapacity. The trust serves as a companion to a will and provides for asset disposition. Living trusts may significantly reduce estate expenses in the future by avoiding probate (the court administration of an estate.)

When establishing a living trust, all major assets—including investments, real property, and business interests, but generally excluding retirement accounts—will be placed in the trust. During your lifetime, the trust does not impede your ability to manage those assets. Upon death, assets that are included in your trust pass to your designated beneficiaries while avoiding probate. Your beneficiaries receive title to, and control of, your assets in a faster, more private and less expensive manner than they would if you have only a will. Because a trust is not filed with the court like a will, the assets involved in the trust and their intended disposition may be kept confidential. Some states, such as California, now require notice, and possibly, disclosure of the trust terms, upon your death, to the biological family

members who would receive your estate if you died without a trust or a will.

5. **Cohabitation or Joint-Living Agreement:** In order to minimize future problems, unmarried couples should consider a cohabitation or joint-living agreement to contractually outline their respective property rights and obligations. This is particularly important for the co-ownership of real property, such as a home. A cohabitation agreement may cover the issues addressed by a traditional marital agreement including:
- Ownership of property acquired during the relationship;
  - Income tax issues if property is owned as tenants-in-common;
  - Property rights of each party upon termination of the relationship by reason other than death;
  - Property rights of the surviving partner upon the death of the first partner.

For an unmarried couple, such an agreement is the foundation for the other basic estate planning components.

### **PLANNED GIVING - A MEANS OF REDUCING TAXES**

An essential part of estate planning involves reducing and minimizing gift and estate taxes. Through the use of charitable trusts, life insurance and other vehicles, individuals can successfully provide for themselves and their loved ones—and also benefit their favorite charitable causes.

Planned giving provides innovative or highly individualized solutions to the financial challenges faced by both individuals and charitable organizations. A well-drafted planned giving strategy can ensure maximum tax and financial benefits to the individual while facilitating the transfer of significant gifts to charitable organizations.

The **six** basic vehicles for planned giving include:

1. **Bequests:** These include outright cash or a percentage of the total estate.
2. **Life Insurance:** This is an attractive option because of a large cash value that can result from a relatively small premium.
3. **Retirement Plans:** Many retirement plans allow for a charitable gift of the assets remaining if death occurs prior to the withdrawal of all the funds. You may also designate a charitable remainder trust as your beneficiary.
4. **Joint Ownership and Simple Trusts:** By placing an income-producing asset in a trust to yield the amount you would like to donate each year, you can maintain ownership and redirect the income to your personal use at a later date.
5. **Charitable Remainder Trusts (CRT's):** Allows donors to generate income during their lifetimes (or for other beneficiaries' lifetime) while providing for a large gift to charity at the end of the life of the trust or upon death of the donor (or the beneficiaries.)
6. **Charitable Lead Trusts:** Allows donors to benefit charities for a period of years, then, to provide for distributions to designated non-charitable beneficiaries (e.g., grandchildren or other persons in generations two or more below the donor), all while minimizing taxes.

#### **MORE ON CHARITABLE REMAINDER TRUSTS:**

Due to the many benefits and advantages provided by Charitable Remainder Trusts (CRT's), this section provides a more detailed discussion. Charitable Remainder Trusts provide a donor with lifetime income and then, following death, often result in a substantial gift to charity.

Although there are several types of CRT's, the basic structure is as follows:

The donor transfers assets (e.g., cash, securities, real estate) to an irrevocable trust. The trust provides that the donor, spouse or partner receive income for life or a period up to twenty years. After the donor's death, successive income payments also are possible, such as payments to a spouse, partner or other person for her or his life. When all of the designated individual beneficiaries have died, the property passes tax-free to the charity(ies) named in the trust. The donor may retain the right to change or add charities.

*Charitable Remainder Trusts offer numerous benefits, including:*

- Appreciated property (e.g. real estate, stocks) may be placed in the trust and sold without paying capital gains taxes.
- The donor's spendable income may increase because the return on the CRT may exceed the yield currently generated by the asset (e.g., a low basis stock with a small yield).
- The donor receives an immediate charitable income tax deduction based on the present value of the gift.
- Estate taxes are reduced because the asset has been removed from the estate.
- Probate costs are reduced.
- The donor can name a second, unrelated person to receive income from the trust after the donor's death.
- Assets in the trust grow tax-free.

### **MORE ON CHARITABLE LEAD TRUSTS:**

A Charitable Lead Trust is similar to a Charitable Remainder Trust but provides for the stream of current income to benefit charity while the principal is passed on to designated beneficiaries on a taxfree basis when the trust terminates. As with a Charitable Remainder Trust, the donor receives the gift tax charitable deduction benefit, but the donor here can effect a greater transfer of wealth. For instance, you can create a Charitable Lead Trust benefiting BCA which can create a

large charitable deduction, up to 100% of the value of the property transferred to the trust (the amount of the deduction largely depends on the age of the individual beneficiary). The ultimate beneficiary of the principal in the trust can be a spouse, partner or another unrelated individual.

**Other Vehicles:** There are several additional wealth-transfer techniques that individuals and couples should consider as part of a comprehensive estate plan. Due to their complexity and relatively narrow applicability, we describe them only briefly; they can be explored in greater detail with your professional advisor.

**Grantor Retained Income Trust:** This permits property to be transferred to others at little gift tax cost. Interestingly, Congress modified the tax code so that this technique is more widely available to transfer property to a non-married partner than to a married partner.

**Limited Partnerships:** This allows for gifts of partial interests in property to third parties at a substantially discounted value without giving up full control of the property. This is particularly valuable where real estate and privately held corporations are concerned. Please note that the IRS increasingly is challenging these vehicles and, therefore, it is vital that these be drafted carefully.

### **SEEKING ADVICE**

This brochure outlines some of the key issues that individuals and couples face in estate planning. As you consider your next step, it is very important that you consult with qualified and competent professionals. Many attorneys, accountants, and financial planners specialize in estate planning and can provide you with a broad range of advice. Ultimately, legal documents need to be drafted by an attorney, ideally one who is an estate planning specialist. A local or state lawyers' group may be able to provide you with a referral. Prior to selecting an attorney, we recommend meeting with two or three candidates to determine the one with whom you are

most comfortable.

## RESOURCES

**Each of the following estate planning attorneys is a Certified Specialist in Probate, Estate Planning and Trust Law. For a consultation to find out more about their services, please contact them directly.**

Diane R. Cash, J.D., has been practicing law since 1982. She serves on the Board of Directors of the AIDS Legal Referral Panel, where she has been a volunteer for over thirteen years. She also serves on the Executive Committee of the Board of Directors of the Lawyers' Committee for Civil Rights. Ms. Cash's professional and community service also includes speaking engagements before attorneys and non-attorneys about estate planning, probate and non-probate administrations, and preparing for the incapacity and death of a loved one.

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Marita K. Marshall, J.D., is a founding member of California Trust & Estate Counselors, LLP. She is a Fellow of the American College of Trust & Estate Counsel, a member of the Executive Committee of the State Bar of California Estate Planning, Trust and Probate Section, a former chair of the Bar Association of San Francisco Probate and Trust Law Section and a member of the San Francisco Estate Planning Council.

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Julia P. Wald, J.D., has been practicing law for twenty-three years. She is a contributing writer to the San Francisco County Probate Court's Probate Manual and serves as an expert witness in issues of malpractice in probate, estate planning and trust law.

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