
ABCs of Estate Planning



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Introduction

My interest in estate planning began when I realized that I needed an estate plan of my own. It was in 2009 when I was putting together a crib with my pregnant wife for our first child. Putting together that crib for some reason gave me pause to realize the gravity of the situation – I was responsible for taking care of our new baby girl, from changing diapers to teaching her how to ride a bike to providing her support while she grew up. And if something happened to my wife and me, I had the responsibility to have a game plan in case we weren't able to take care of our daughter, either by incapacity or early death. Without a plan, we gave up control over who would be our daughter's guardian, what kind of support she would receive, or letting our daughter know our wishes and guidance through an estate plan. We treated our estate plan like an earthquake emergency kit. We needed to have a set of instructions to care for our daughter if we were not able to do so through an estate plan, just as we needed to prepare for an earthquake by having extra canned food, water, and first aid kit in the garage.

It is with the perspective that I work with my clients in creating their estate plan. I work with my clients to protect their families, their children, and their businesses. My mission is to help my clients plan for and successfully navigate the inevitable and unexpected events in life to make sure that:

- 1) Personal, family and business goals are realized
- 2) Risks and expenses are minimized, and
- 3) Peace of mind is achieved

It's about protecting your legacy, and protection what happens to your legacy when you are no longer able to make the decisions. I assist my clients in taking the necessary steps to control what happens with their kids, their business, and their assets in case of disability or death. This ensures that the clients will be able to give what they want to whom they want, when they want.

What is Estate Planning?

An estate plan is a set of instructions for three different phases of your life: (1) when you are alive and healthy; (2) if you become disabled; and (3) at death. During your lifetime, these instructions give you complete control over your property and finances. If you become disabled, these instructions allow for yourself and your loved ones to be provided for. At death, these instructions ensure that you give your assets to whom you want, the way you want, and when you want.

We strongly believe that having an estate plan is a gift in and of itself to your loved ones. It gives your family and friends a way to deal with your disability or death by letting them know your wishes and guidelines on what to do.

Also keep in mind that the way you give assets to your loved ones could potentially harm them. An estate plan allows you to give your loved ones creditor protection, predator protection, self-protection, and estate planning protection.

An estate plan also provides a way to minimize professional fees, court costs, and taxes.

Why Do I Need an Estate Plan?

Incapacitation

One of the biggest advantages to an estate plan is providing a plan if you become incapacitated or disabled. We live in a time where we can take advantage of an advanced medical field, which is expanding our life expectancies. One result of this is that it increases the likelihood of being disabled at some point. An estate plan provides instructions on how to take care of your health decisions for you, and manage your financial affairs for you and your loved ones.

Without an estate plan in place, a court will have to appoint a conservator to manage your affairs. This means that your affairs will be under court supervision with additional investigation and reporting requirements.

Plan for Family On Your Death

At the time of death, your estate plan gives instructions on who gets your assets to whom you want, the way you want, and when you want. By way of example, you may have three grandchildren under the age of 18 at the time of your death. You may want to set up a trust so that a person (trustee) can manage your assets for family members who are too young or inexperienced to handle these financial matters. By putting the assets in a trust, it also provides creditor protection for your family so that the creditors cannot reach your assets to pay for your beneficiaries' debts.

Minimize Death Taxes

Estate planning is a way to help minimize your estate tax. However, keep in mind that you don't want the tax tail to wag the dog. What we mean by this is that your estate plan shouldn't get in the way of your enjoyment of your assets. If you decide to make gifts, you should balance this decision against the need to preserve your assets so that you can live comfortably and financially independent during your lifetime.

Avoiding Probate

Probate is the court proceeding required to settle your estate.

There are many reasons why you want to avoid probate. First, the amount of time wasted settling your estate could take between 18 to 24 months. The length of probate can be for a variety of reasons, such as complexity of the estate, the probate court's backlogged case load, and compliance with creditor notice requirements. Second, your plan becomes public information in probate court. You may not want your nosy neighbors or other busy bodies to know what is in your estate. Your loved ones may also be targeted by financial predators because their receipt of assets becomes public knowledge. Third, there are numerous costs associated with going through probate, including costs from attorneys, executors, appraisers, accountants, courts, and state law.

Here is the good news: you can avoid probate through a properly drafted estate plan.

Maintaining Privacy

Most people don't realize that their probated estate is a matter of public record. Since wills are filed with the court, anyone can gain access to your private, financial information.

And it's not just your meddlesome neighbor that you have to worry about. Like most states, California requires wills to be filed with the probate court, even if no probate proceedings are expected to occur. While your nose-y neighbor may be a mere annoyance and have no other reason to view the information other than curiosity, others can get access to your public records and make your beneficiaries' lives miserable, such as:

- Financial predators. Financial predators find ways to access information online, and can easily gain access to public records, just like your will filed in probate court. Months can elapse before the court or your beneficiaries realize that they were swindled.
- Charities. Even the most well-meaning charities can become an annoyance when money is considered "up for grabs." This is especially true in an estate situation when those inheriting assets want to do the right thing and honor their loved one.
- Will challengers. Public documents, such as your will filed in probate, provide those with an interest (whether valid or invalid) to challenge the will and your last wishes. This can equate to added costs for your beneficiaries and time defending their rightful stake in the will.

Protect your privacy with a trust since a trust is the best way to keep your legal affairs private. Trusts are never filed with a court, either before or after your death. Probate courts are not involved in supervising your trust administration. So, you can avoid busy bodies, meddlesome neighbors, and financial predators by creating a trust.

What Happens When There is No Estate Plan in Place

If you don't have an estate plan, California law will determine how your assets pass, to whom they pass, and when they pass. This occurs in probate court, where your estate could be tied up for years, the transfer of your estate is public, and is perhaps the costliest and emotionally draining way to pass assets to your loved ones. It could also lead to unnecessary estate and income taxes.

The Revocable Living Trust Centered Plan

What is a Revocable Living Trust?

A revocable living trust is an estate planning technique to manage your assets while you are alive, take care of yourself during possible incapacity, and pass along your assets to your loved ones when you die. The trust is revocable, which means that you can change your how your living trust works during your lifetime.

What are the Advantages to a Revocable Living Trust?

- Avoiding court intervention in your affairs
- Seamless control of assets during incapacity
- Conservatorship proceedings are unnecessary
- Allows for marital estate tax planning
- Flexible and easy to amend
- Reduces administrative costs at death
- Allows for creditor and predator protection for your heirs

How Does a Revocable Living Trust Work?

[DIAGRAM]

Using Estate Planning to Transfer Your Values and Leave a Lasting Legacy

Our law firm specializes in creating estate plans that allow you to instill your values to your loved ones and leave a lasting legacy. Here are examples of ways that we are able to accomplish this for our clients:

Appointing Guardians for Underage Children

With clients who have minor children, a “back-up” parent needs to be selected if you pass away before the children reach 18 years old. This “back-up” parent is called a guardian, and is responsible for caring, nurturing, educating, and disciplining your children. Your estate plan will nominate your preferred guardian and provide clear instructions to the guardian on how you want him or her to raise your kids.

Spendthrift Trusts to Protect Young and/or Financially Immature Beneficiaries

A spendthrift trust is a technique we use to leave property to your children or loved ones who are young or financially irresponsible. It protects your loved ones from wasteful spending of her or her share of the trust. The trust is created for the benefit of a loved one who is unable to control his or her spending, and therefore gives the trustee the authority to make decisions as to how the trust funds may be spent for the benefit of the beneficiary. The result is that the trust is protected from the beneficiaries’ creditors, and ensures that the trust funds will be used as your instructions provide. At certain ages or milestones (for example, a milestone that demonstrates your children’s financial maturity), the trust can be lifted and the children can be given full access and control.

Incentive Trusts

This is a type of trust where you can instill yours to your children and provide them with incentives to reach certain milestones or accomplishments. This is accomplished by placing conditions on the distributions of inheritance. Common incentives are educational goals, career goals. You can also use disincentives in the trust to eliminate problems such as substance abuse.

Inheritance Protection Trust

This is a trust that continues to exist for the beneficiaries. The reason why the trust continues is not to give incentives to the beneficiaries but to keep the trust assets free from creditors and predators. As a result, the trust is a safeguard against divorces, creditors, judgments, among other things.

What is the Estate Planning Process?

Our law firm's estate planning process is structured into three meetings. We can also assist you in funding the trust once it is created.

Free Initial Consultation

Our first meeting is the initial client meeting where we discover your goals and objectives. We also learn about your financial estate and family dynamic. We want to get to know your situation and see how we can address any potential problem areas. Everyone is different and every estate plan is tailored to meet the client's goals and objectives. This meeting is about one hour.

Design Meeting

Our attorneys will have a second meeting with you to design the estate plan. We spend our time educating you on the estate planning options available to you, reviewing what you want included in the plan, and making recommendations that are tailored to your situation. This meeting takes about two to three hours. After the design meeting, our attorneys will draft the documents that will make up your estate plan.

Signing Meeting

The third meeting is the signing meeting. The purpose of this meeting is to review your estate plan documents to ensure that they meet your goals and objections. After review, your documents are signed and notarized.

Funding

Once the estate plan documents are signed and notarized, we assist you with beneficiary designation changes and other funding issues to ensure the planning is effective and works as designed.

Estate Planning Check-Up

Circle One

Do you have a will or trust in place?	Yes	No	Don't Know
Has your will or trust been professional reviewed in the last two years?	Yes	No	Don't Know
Does your current health care directive permit the person of your choosing (spouse, child, family) to make emergency health care decisions for you in the event you are unable to do so?	Yes	No	Don't Know
Does your estate plan contain a customized plan to determine if you are mentally disabled?	Yes	No	Don't Know
Does your current estate plan give instructions for your care and the care of your loved ones in the event of disability?	Yes	No	Don't Know
Are you certain that your current estate plan will minimize possible federal and state estate taxes at your death, including taxes on your house, life insurance and IRAs?	Yes	No	Don't Know
If you have a revocable living trust in place as part of your estate plan, is your trust fully funded so that your family can avoid the delays and expenses of probate?	Yes	No	Don't Know
Have you taken steps to avoid possible will contests and disputes during the administration of your estate?	Yes	No	Don't Know
Does your estate plan protect your children's inheritance in the event your surviving spouse chooses to remarry?	Yes	No	Don't Know
Have you recently checked the beneficiary designations of your retirement plans and life insurance policies, and are you confident that you have not listed your estate or any minor children as either primary or secondary beneficiaries?	Yes	No	Don't Know
Does your current estate plan provide creditor and lawsuit protection for assets passed to your surviving spouse?	Yes	No	Don't Know
Are you confident that your current estate plan is income tax efficient?	Yes	No	Don't Know
Does your current plan protect your children's inheritance from a divorcing spouse?	Yes	No	Don't Know

Are you satisfied with the persons you named as guardians of your minor children in your current plan? Yes No Don't Know

Are you satisfied with the persons selected as executor and trustee in your current estate plan? Yes No Don't Know

Are you confident that your executor, power of attorney, and successor trustee are prepared to act on your behalf when asked to? Yes No Don't Know