

ESTATE PLANNING 101

IMPORTANT FACTS TO KNOW

Most of us don't really like to think about the idea of our own death despite the fact that it is an inevitable part of life. But waiting too long to plan for what happens when we are no longer here, or when we no longer have the legal capacity to make certain decisions, can have serious consequences for our loved ones, as well as create unnecessary disputes, confusion and financial burdens.

This is why planning ahead is so important. Estate planning gives you control over how your property, everything you have worked for, passes upon your death. Estate planning gives YOU the ability to decide exactly who will inherit your property, how much they will get, and when they will get it.

But planning your estate is not only about planning for what happens at death. It also involves planning for what happens if you become incapacitated. I often tell my clients that having control over what can be done for you while you are still alive (but incapacitated) is often more important than what happens when you are no longer here.

With that in mind, let's explore the various aspects of planning your estate.

I. WILLS

A Will is a legally enforceable document where you indicate who will receive your property at your death. You are able to name beneficiaries (those who will inherit from you), exclude heirs you do not want to receive anything, and name a person to be in charge who will carry out your wishes ("the executor").

If you do not have a Will, the state of California has an estate plan for you, known as the "laws of intestacy (dying without a will)." This is basically a division of your property among your living heirs, depending on who survives you. Unfortunately, such distribution may not agree with your own wishes.

2. PROBATE

Probate, in a nutshell, is the court-supervised process of transferring property out of the name of someone who has died into the name of the living beneficiary who was intended to receive that property. Probate is often a lengthy and expensive process.

If you own real property (homes, land, buildings, etc.) worth \$50,000 or more, AND/OR you have liquid assets (bank accounts, stocks, bonds, mutual funds, etc.) that have a combined value of \$150,000 or more at your death, your estate will be subject to probate.

If you do not have a Will, your estate will go through probate. If you do have a Will, your estate will still go through probate only your wishes for how property should pass will be known to the court.

Certain types of property are not subject to probate, even if the value of that property exceeds the figures above. For example, property that is held in joint tenancy, property that is held in trust, life insurance proceeds, IRAs, 401(k)s and annuities all pass outside of probate.

3. POWERS OF ATTORNEY

A power of attorney is a legal document that allows you to appoint someone to act on your behalf (the "agent" or "attorney-in-fact") in the event that you are alive, but incapacitated. Powers of attorney expire at death. They are only valid while you are living and unable to act or make decisions for yourself.

There are two types of powers of attorney: financial and medical.

A financial power of attorney, often called a Durable Power of Attorney, allows someone to step in and manage your financial affairs when you are unable to. This includes such things as paying your

your bills, dealing with your property, collecting debts owed to you, filing tax returns, etc.

A medical power of attorney, now called an Advance Directive for Health Care, allows someone to make decisions concerning your health care when you are unable to do so. This also includes a life support provision (also known as a "living will"), which states your wishes about whether or not you want to be on life support.

4. LIVING TRUSTS

Living Trusts are also known as "revocable trusts" or "grantor trusts." With a living trust, you, as the creator or "grantor" of the trust, maintain complete control over the trust and your property while you are alive. You may amend (change) or revoke (terminate) your trust at any time. You may sell or give away that property as well since you are not restricted in any way. You are also able to name beneficiaries, appoint a person to be in charge ("the trustee") and decide how your property will pass at your death, as with a will.

The most important reason to have a living trust is to avoid probate. Unlike with a will, if your property is held in the name of you living trust, at your death, your property will pass to the beneficiaries named in the trust, outside of probate. Distribution from a living trust is often simple and straightforward, enabling your heirs to avoid the costs and delays associated with probate.

Another important reason to have a living trust is to provide for the ongoing management of your trust assets in the event of your incapacity. Your trustee is authorized to act on your behalf, with respect to your trust property, if you become ill or incapacitated.

5. SPECIAL NEEDS TRUSTS

A Special Needs Trust allows you to provide for the ongoing care and support of a disabled loved one or beneficiary. These individuals usually receive some type of public benefits or assistance, such as Medi-Cal or Supplemental Security Income (SSI). Receiving an outright distribution from your estate may cause them to lose such benefits. A Special Needs Trust, however, can provide them with assets that supplement but do not replace the assistance they currently receive and will not cause them to become ineligible for or lose such benefits. A Special Needs Trust can be created while you are alive or at your death, through your will or living trust.

IN CLOSING...

This brief outline is not intended to be a complete description of everything that estate planning entails. It is meant to give you a basic understanding of important estate planning concepts and an idea of the importance of planning ahead. Obviously, different circumstances call for different plans. The important thing is that if you plan ahead, you can ensure that your precise wishes and instructions will be carried out. A comprehensive estate plan should include a living trust, will, financial power of attorney, advance directive for health care and the deeds and other transfer documents necessary to transfer your property to your living trust.

Please feel free to contact us if you have any questions or wish to discuss your situation.

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