

5 Fundamentals of Estate Planning in California



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WELCOME

Dealing with “The Law” can be a confusing and difficult experience for non-lawyers. In my practice I focus my energy on explaining the law and addressing the needs of individuals and small businesses in the area of estate and succession planning, real estate and business transactions, and consumer bankruptcy (Chapter 7).

Thinking about and then formulating a plan to deal with your estate can be a daunting task. No one wants to think about dying, or about being incapacitated. The idea of sitting down with an attorney and disclosing information about your family and your assets seems intrusive. Thinking about who you want to manage your affairs when you can no longer do so, or who will inherit your assets is a hard decision for some individuals to make. There are also people who have no immediate family to help with their care, manage their affairs or inherit their assets.

Every estate plan is different and I craft each estate planning document with great care to ensure that the client’s wishes will be fulfilled. I draft documents using clear and simple English and strive to avoid “legalese” by using terms that anyone can read and understand.

Good estate planning does not end with the signing of the documents, it also includes the maintenance and management of the client’s plan so it does not become obsolete over time. Supporting the client, answering questions and providing updated documents when needed are a necessary part of the client experience.

When an individual dies, I strive to include all family members in the conversation about the administration of that individual’s estate so that everyone understands what is happening and the path that needs to be taken. I attempt to set realistic expectations about the requirements for documentation, accounting and management of the administration (whether a trust is being administered, a small estate is being administered, or a full probate is required) so that the process can be completed as soon as reasonable possible.

The death of a loved one is a difficult time for clients. I try to provide them with the amount of support that they need. Some clients can take instructions and move forward with only occasional support; others need more frequent contact and directions. My office assesses those needs and meets each client where they are at that moment.

This eBook is designed to give you an overview of the key pieces needed for an estate plan. If you have questions, please give me a call to discuss the process in general and the type of estate plan that might be right for you.

Best regards,

Mary

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Estate planning, whether in California or in any other state, allows you to determine how your life will be managed in the event you become incapacitated, and how your assets will be distributed after your death. It is important to take action while you are still able to manage your own affairs. With the assistance of an attorney who understands the California laws governing estate planning, you can create a plan that will address your concerns and will result in your affairs being managed in the

manner you desire. No one wants to think about their own death, but planning for what will happen after you die or become incapacitated is essential. The existence of such a plan will help your family cope with the transition from life with you to life without you, and will guide them in the event you are no longer able to make your own financial and health care decisions. You are the only person who can make the important and sometime difficult decisions that will create a sensible and legally sound estate plan.

What are the five fundamental aspects of estate planning in California?

1. Writing a Will

This is the document most people think about when the subject of estate planning arises. Your Will becomes effective at your death and directs what will happen to your estate. It ensures that your wishes will be honored even though you will not be there to enforce them. A Will documents your intentions by naming your beneficiaries, describing what property each beneficiary is to receive and names the person who will manage your affairs following your death (the executor). Creating a Will is important, even if you have limited assets. If you don't create a Will, individuals you don't want to receive assets may have the right to a share of your estate, and your loved ones may not receive the assets you wanted them to have.

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If you die without a Will in California, your estate will be distributed in the manner prescribed by state law. A court may need to appoint an administrator to manage the estate under court supervision and the administrator would then distribute your assets. This may leave your family in a vulnerable position and your wishes will not be considered when your assets are distributed. Dying without a Will may also create unexpected tax consequences for loved ones and may trigger family disputes.

At a minimum, your Will should include:

- A list of your intended beneficiaries
- Distribution instructions for your property
- Appointment of an executor of your estate
- Provision for the care of your minor children

Probate of your Estate

Though a Will helps make the process of settling your estate easier for loved ones, it might not eliminate the need for your estate to pass through probate. Probate is a judicial process that verifies the Will, determines tax liability, settles claims against the estate, allows for the sale property in the estate, and distributes what remains to the decedent's heirs. In California, the probate process will usually take from seven to eighteen months. Estates that are smaller than \$150,000 are not required to pass through full probate of the estate but may be subject to other expedited court intervention.

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2. Creating a Revocable Living Trust



A trust is commonly used in California to simplify the transfer of property (particular real property and large investment or bank accounts) following the grantor's death. In this scenario you are the grantor, the trustee and the beneficiary of the trust. The grantor transfers property to the trustee of the trust and the trustee manages the property for the beneficiary. You remain in control of your trust assets until you want to stop managing your own affairs, are incapacitated or die. At that time, a successor (whom you have named in the trust) can step in to manage the trust

assets for your benefit and you continue to be the beneficiary of the trust until your death. Following your death, the successor trustee will pay your debts and expenses and then distribute your assets as you've instructed in the trust document to the beneficiaries you have chosen to receive the assets. The court does not get involved in the management of the trust or in the disposition of assets that have been transferred to the trust, unless there is some dispute that requires the intervention by or instructions from the court. Married couples will often create a joint trust.

Powers of Attorney

Powers of attorney can be created for financial or for healthcare decision-making while you are alive, but become ineffective at your death. Powers of attorney are generally created to be effective even when you are incapacitated so that someone will be able to make decisions for the period of time that you are unable to manage on your own.

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3. Power of Attorney for Financial Management: A financial power of attorney allows you to appoint an agent of your choice to manage your financial and business affairs in the event you are no longer able to do so. It gives that agent the fiduciary responsibility of acting in your best interests to address your financial and asset management needs. The Agent is charged with keeping accurate and complete records of all actions taken on your behalf.

4. Advanced Health Care Directive: A healthcare power of attorney is similar, except that the decision-making by the person or persons of your choice addresses your ability to make healthcare decisions. These are not just “end-of-life” decisions, but decisions regarding your care when you are unable to make such decisions on your own. Most healthcare powers of attorney also grant “Post Death” decision making authority to your agent that allows them to make decisions regarding the treatment and disposition of your remains and the donation of organs.

5. Tying Up Loose Ends

Although creation of a Will alone may not eliminate the need for probate of your estate, there are other estate planning strategies that can be put in place prior to your death to avoid the need for probate. These tools include:

- Creation of a Revocable Living Trust as discussed in #2 above
- Establishment of joint ownership of property (joint tenancy or tenancy in common)
- Designation of a pay-on-death beneficiary for certain types of property like bank and investment accounts.
- Distribution of assets prior to your death
- Creation of a Business Succession Plan
- Purchase of life insurance

In addition to the creation of the documents listed above, you will also want to talk with a qualified professional about life insurance and retirement funds, and the avoidance of estate taxes if your estate is of significant size.

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If you are a business owner, it is important to make plans for your business in the event of your demise or incapacity. Business succession plans create a plan that will provide for your business to continue operations or that will ensure that the assets of your business are liquidated and distributed properly.

Working with an experienced estate planning attorney is one of the most important things you can do to make the process easier and to ensure your loved ones are protected. Both California and Federal laws that affect estate planning change frequently, so it is important to have someone looking out for your best interests who is aware of the ongoing changes. Mary Heare Amodio can help.

Mary Heare Amodio practices law in Lake County California in the areas of estate planning, probate, conservatorship, guardianship, real estate and business transactions, and bankruptcy law. She is also the primary public defender for conservatees in Lake County.

Mary is president of the Lake County Bar Association and of Lake County Mediations, a community mediation organization, and serves as a trustee for the Lake County Law Library. She is active in a number of community groups and business associations in the area. She received her law degree from Golden Gate University School of Law in 2002, and holds a Masters and Bachelor degree in the Biological Sciences from West Texas State University in Canyon, Texas.

Mary served in the Peace Corps in Paraguay from 1977 to 1980 as a community development and health education specialist. She then worked for Bank of America for 27 years in a number of capacities until her retirement from the Bank.

If you would like to learn more about estate planning or you are ready to schedule a consultation to discuss your estate plan, contact Mary at 707.263.5759 or by email at amodiolaw@sbcglobal.net.

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