GETTING STARTED WITH ESTATE PLANNING

THE ESTATE PLANNING & LEGACY LAW CENTER

“Estate planning.” Some people hear those words and think they only apply to the ultra-wealthy, or to seniors already living in retirement. However, every adult has an estate, no matter how big or small. And, any of us could suffer a disabling illness or accident, or die prematurely – at any time.

The term “estate planning” encompasses not only planning for what happens to your assets when you die, but also planning to make sure your wishes are honored during periods of lifetime incapacity. In this guide, we’ll explore some of the unique terminology used in estate planning, as well as the types of documents and tools you may want to consider using, and what you can expect when you begin the process of documenting your wishes in an estate plan.

SPEAKING THE LANGUAGE: COMMON ESTATE PLANNING TERMS

Estate planning, like may legal specialty areas, has its own lexicon. This can be overwhelming, making the process seem more difficult than it actually is. Here are some common words and phrases you may encounter, and what they mean – in layman's terms:

- **Advance directives.** The term "advance directives" refers to documents that authorize someone to handle your affairs during periods of lifetime incapacity. These may include a durable power of attorney for financial transactions and an advance health care directive for medical decision-making.

- **Attorney-in-fact.** Your "attorney-in-fact" (sometimes referred to as your agent) is the person named in a power of attorney. This person (who does not need to be an attorney) has authority to act on your behalf as granted under the document. In estate planning, it is common to give a trusted family member or friend broad authority to handle a wide range of financial transactions for you in the event you become incapacitated during your lifetime. If you do become incapacitated, your attorney-in-fact can then manage your finances without having to obtain a court order to do so.

- **Decedent.** The term "decedent" simply refers to someone who has died.

- **Grantor**. A "grantor" is a person who creates and transfers assets into a trust. This term is used interchangeably with "trustor" and "settlor." In a revocable living trust, this person has the power to update, change, and revoke the trust.

- **Inter vivos trust.** An "inter vivos" trust is a trust created and funded during your lifetime. This term is used synonymously with "revocable living trust" or simply "revocable trust."

- **Intestate.** When someone dies "intestate," it means they died without creating a will or trust. In practical terms, dying intestate means that the state writes that person's estate plan for them, using state intestacy laws to determine rightful heirs and the shares each can take.

- **Per stirpes.** If you leave assets to your children "per stirpes," it means that if one of your children dies before you, or at the same time as you, his or her share passes to his or her descendants rather than simply passing to your surviving children. This is also sometimes called "by right of representation."

- **Personal representative.** Your "personal representative" is the executor of your estate. The personal representative is responsible for winding down your affairs, safeguarding assets, handling probate administration (if necessary), paying valid debts and final expenses, taking care of tax matters, and ultimately distributing assets to your named beneficiaries, or to the heirs entitled to inherit under state law if you didn't have valid estate planning documents in place.

- **Power of attorney.** A "power of attorney" is a legal document authorizing someone else to handle your finances while you are alive. If you create a durable power of attorney and later become incapacitated, your named attorney-in-fact/agent can manage your financial affairs seamlessly, without going to court.

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- **Probate.** “Probate” is the process of proving someone’s will through a court proceeding. If someone dies without a will, probate serves to ensure the estate is administered according to state law. During the probate process, the court appoints the personal representative, notifies creditors and other interested parties of the proceedings, and the personal representative administers the estate.

- **Testamentary trust**. As opposed to an inter vivos trust, a “testamentary trust” is a trust that does not spring into being until after death. It’s a type of trust created inside of a will or another trust and it does not technically exist while you are alive.

- **Testator.** A “testator” is simply a person who creates a will.

- **Trust.** A “trust” is a legal mechanism you can use to hold assets and provide for distribution to family members, friends, and/or charitable organizations. The trust identifies a trustee and includes directions to the trustee on how to administer the estate if the grantor becomes incapacitated, and at the grantor’s death.

- **Trust funding.** In order for the trust to work effectively, you need to put assets inside of it. This is referred to as “funding” the trust. Once a trust instrument is in place, you can transfer to the trust title to real estate, bank accounts, investments and more, or you can point assets to the trust by means of beneficiary designations. We guide our clients through this process at our third meeting, called the funding meeting.

- **Trustee.** The “trustee” is the person who has authority to manage and distribute trust assets, according to the terms of the underlying trust agreement. When people create revocable living “inter vivos” trusts, they normally serve as their own trustees during their lifetimes. However, it is important to name at least one successor trustee, who will have authority to act if the first-named trustee dies, becomes incapacitated, or is otherwise unable to serve.

- **Will.** A “will” is probably the most familiar term in the estate planning dictionary. Wills nominate someone to serve as the personal representative and designate how, and to whom, assets passing through the estate should be distributed. A will does not take effect until after the testator’s death and is subject to probate in the state of California.

This is not an exhaustive list of estate planning terminology. If you run across another word you don’t understand, ask your attorney to clarify it for you!

WHAT TO EXPECT FROM THE ESTATE PLANNING PROCESS

Estate planning doesn't need to be scary; the hardest part is usually just taking the first step toward getting your plan in place. When you work with an experienced estate planning attorney, the process starts with an initial consultation. During that meeting, you should be prepared to share detailed information about your assets and liabilities, as well as about your wishes and goals.

Clients often want to know what the "best" estate planning tool is. In reality, there is not a "one-size-fits-all" solution when it comes to estate planning; the best documents, tools, and strategy will depend on your specific situation and goals. Your attorney can help you understand the pros and cons of using various types of estate planning tools, and will recommend a strategy for you based on the information you share.

For some people, a simple will makes the most sense. However, for Californians who own a home or have minor children, a combination of a revocable trust and a will may better meet their needs. Estate planning also includes looking at how assets are owned and titled, and how beneficiary designations are made for assets like retirement accounts, life insurance, and annuities.

Be prepared to provide information about your intended beneficiaries and about the person or people you want to put in charge of various aspects of your estate plan. If you have minor children, you should think about who you would want to have physical custody (guardianship) of them if you and their other parent die prematurely. You should also consider who should manage money for your children in that event, at what age(s) they should be able to make their own financial decisions, and under what circumstances your trustee could distribute assets (i.e. for your children's health, education, maintenance, and support.)

Your estate planning attorney will then prepare draft documents which you will walk through carefully together. When you are ready to sign, your signatures will be witnessed and notarized, making the documents legally binding.

Estate planning is not a "set it and forget it" process. You should revisit your will, trust, and advance directives periodically and make adjustments as needed to reflect changed circumstances or wishes.

THERE'S NO BETTER TIME THAN THE PRESENT TO BEGIN – OR UPDATE – YOUR ESTATE PLAN

Creating your estate plan is a valuable gift. No matter how old you are or what types of assets make up your estate, you can benefit from the process.

Our firm helps California residents create and update tailored estate plans designed to provide peace of mind for them – and their loved ones.

About The Estate Planning & Legacy Law Center

Based in Carlsbad, CA, we are dedicated to protecting your wealth and ensuring that your assets go to your intended beneficiaries. We specialize in revocable living trusts, pour-over wills, powers of attorney, trust administration and a range of other services.

No matter what your estate planning requirements may be, we are here for you. We will carefully listen to you to create an estate plan that meets your wishes and needs.

Our team of experts has the experience and ability to tailor a comprehensive estate plan for you. After a thorough review of your assets we will present you with various estate planning techniques that will suit your needs no matter what type of estate you have.

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