

ESTATE PLANNING IN CALIFORNIA SPECIFIC ISSUES

*When You Choose to Create an Estate Plan,
You Choose to Create a Plan that Must Address Your
Individual Needs, Choices, and Circumstances*



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In our first discussion on estate planning we looked at some of the foundational concepts that you should understand in order to give you a better idea of what estate planning is. In this second part in our two-part series, we are going to build on that knowledge and look at the individual pieces that will allow you to address the specific issues your plan needs to focus on. While your plan may or may not include the tools we talk about here, most people who create an estate plan in California will have plans that do.

MAKING INHERITANCE CHOICES

Making choices about the kinds of inheritances you wish to leave behind after you die is the single biggest issue that most estate plans address. Whether you have moderate assets, a high net worth, or anything else, you have a wide range of options when it comes to making inheritance choices.

Many people are surprised to learn that the law does not require them to leave inheritances to their family. While you cannot disinherit your spouse, you are otherwise free to make almost any inheritance choice you like.

For example, you are under no legal obligation to leave your children or other relatives any kind of inheritance at all. If you wish to, you can choose to give your entire estate to a complete stranger, a charitable organization, or even the state or federal government.

While it is up to you to make the decisions on the kinds of inheritances you wish to leave, and decide upon who will receive an inheritance, there are several ways

you can accomplish your desires. One of the most basic estate planning tools around, for example, is the last will and testament. Beyond the will, one of the more popular inheritance tools of recent years is the revocable living trust. Beyond those, less well-known tools, such as transfer-on-death accounts and even jointly owned property, can also allow you more inheritance options.

ADDRESSING INCAPACITY



You leave behind an estate after you die, but you will also leave one behind should you become incapacitated. You can make the best inheritance plan in the world, but that plan will do nothing to protect you and your estate should you

lose your ability to communicate and make choices. That's where incapacity planning comes in.

Through an incapacity plan you will address the important issues that will arise should you be involved in a serious accident, suffer from a debilitating illness, or become incapacitated for any reason.

Incapacity planning includes specific tools such as durable powers of attorney. A durable power of attorney gives you the ability to manage someone, an agent, who will have the legal ability to begin managing your affairs immediately upon your incapacitation. Should you regain your ability to make choices, you can then relieve your agent of his or her responsibilities.

Beyond that, there are also advance health care directives. An advance directive allows you greater control over the kinds of health care treatment you do or do not wish to receive should you become incapacitated. Because incapable people are not able to grant or deny consent, you will use your directives to inform your health care providers of your medical wishes. As long as those directives are properly drafted and comply with relevant California laws, your healthcare providers will be legally obligated to abide by the decisions you make.

TRUSTING IN TRUSTS

Another key tool that many, if not most, modern estate plans use is the trust. A trust is a kind of legal entity that can exist, and own property, separate from the

person who creates it. These properties give trusts a wide range of potential uses when you create an estate plan.



For example, if you want to leave inheritances so that the property will pass outside of the California probate process, you can use a trust to accomplish this goal. Similarly, you can use trusts to protect inheritances, establish charitable organizations, and

provide family members with disabilities a way to protect their financial well-being while still allowing them to apply for and receive available government assistance.

In other words, if you have an estate planning goal, there is a very good chance that creating one or more trusts could help you accomplish it.

ASSEMBLING THE PIECES INTO A WHOLE

Now that we have gone over the essential ideas and individual elements surrounding estate planning, it can be useful to take a step back and look at the process a little more objectively. On the surface, different estate plans might appear to be very similar. Most people, for example, will create a will, advance medical directives, and other basic tools that almost every other plan similarly relies upon.

But beyond the surface there are significant, and important differences. When you choose to create an estate plan, you choose to create a plan that must address your individual needs, choices, and circumstances. Because no one shares the same life, each estate plan must be different. Some of these differences might appear slight, but they are nevertheless vital if you intend to provide yourself with as many protections as is possible.

At the Northern California Center for Estate Planning and Elder Lawm we have many years of experience counseling clients from all walks of life. We know how to guide you through the issues and help you develop a plan that will give you the protections you require.

What we cannot do, unfortunately, is start your estate plan with out you. You need to take it upon yourself to reach out to us so we can begin the process of developing the right plan that fits your needs. Until you make the decision to get started, all of our experience and expertise will do you no good.

About the Author



Timothy P. Murphy

Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for over 30 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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