

ESTATE PLANNING IN CALIFORNIA

Taking the Time to Understand Some Basic Issues that Are Involved in the Estate Planning Process Can Greatly Help As You Go About Creating Your Own Plan



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People who begin the estate planning process often do so without an extensive background in the law, or without any direct experience with the issues that surround estate planning. Fortunately, your estate planning attorney will guide you through the process of creating a comprehensive plan, so you don't have to worry about not being an expert.

However, the best estate plans are those you take an active role in creating. Taking the time to understand some basic issues that are involved in the estate planning process can greatly help as you go about creating your own plan. To that end, we are going to look at some important estate planning concepts.

YOUR ESTATE, YOUR LIFE, AND YOUR DEATH

Everyone dies. This simple fact of life is the basic foundation upon which all estate plans are based. People acquire a lot of property in their lives. After you die, the property you leave behind is collectively referred to as an estate. (Note, the term “estate” as used in the legal sense is much different than it is in the common sense. An estate is not simply a large piece of property or house. It’s just the collection of all the property that you owned while alive.)

In other words, everyone will leave behind some kind of estate. Though some mistakes are larger than others, and not all estates share the same issues or concerns, everyone has an estate and everyone can choose to create an estate plan.

ESTATE PLANNING

If your estate is the collection of property and issues you leave behind after death, estate planning is simply a process through which you make certain choices about what you want to happen to your estate after you are gone. As a capable adult, you have the legal right to make certain types of decisions. These decisions can address what you want to do on a day-to-day basis, but can also address estate planning concerns.

In order to create an estate plan you have to create some specific types of legal instruments. Each of these tools will allow you to make certain types of choices. Your estate planning attorney will guide you through the process of creating the

proper documents and making sure that they comply with state or federal law. While you don't have to understand the detailed intricacies of the tools you might use, what you should understand is that you can only make certain estate planning decisions by creating the correct type of legal instrument. Should you fail to make your choices in a legally recognized manner, those choices will not be honored after you are gone.

ESTATE PLANNING CHOICES

If estate planning is all about making choices, what kind of choices are we



talking about? While there are many different types of estate planning concerns, we can boil down estate planning into two general categories: choices that apply while you are still alive, and choices that apply only after you're dead.

Now, if you've been reading along so far, you might be surprised to find out that estate planning also addresses choices that will apply while you're still alive. This is because estate planning includes a topic known as incapacity planning. Should you one day become incapacitated and no longer able to make decisions or express yourself, you will still leave behind an estate. However, since you are still alive, your estate will not be under your control.

Incapacity planning, therefore, addresses the questions and issues that arise should you lose your ability to manage your own affairs. For example, appointing people who will manage your finances and pay your bills is one part of incapacity planning. Another part involves making documents that express the kinds of medical care and treatment you want to accept or refuse should you lose your ability to communicate.

Estate planning, on the other hand, involves making choices that will apply after you die. For example, if you should die tomorrow, do you know who would receive inheritances from you? Your estate plan will allow you to answer this questions, as well as others like it.

GETTING STARTED

Another important idea underlying the estate planning process is the idea of capacity. In order to begin the estate planning process, you have to be a mentally capable adult. Now, most people are presumed, under the law, to have the capability to make decisions.



For example, you don't have to ask anyone's permission to move to a different state, choose the kind of healthcare you want your children to receive, or make any other similar day-to-day decisions. This is because you are a capable adult who has the legal ability to make choices.



However, if you wait until you no longer have the mental capability required to make choices, you can no longer create an estate plan. For example, should you one day be diagnosed with Alzheimer's disease or some other type of mind-altering medical condition, you might lose your capacity. When this happens, the choices you could have made by creating an estate plan will have to be made by other people.

In other words, even though every capable adult can choose to create an estate plan, your ability to do so is limited, and could change at any moment.

GUIDANCE AND ADVICE

It in our next discussion of basic estate planning issues we will look at more specific tools that you will likely create as a part of the estate planning process.

In the meantime, if you have any questions, need advice, or want to begin estate planning immediately, contact the Northern California Center for Estate Planning and Elder Law as soon as possible. We cannot begin helping you until you make the decision to contact us for help.

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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