

PROTECTING YOUR FAMILY WITH A
COMPREHENSIVE ESTATE PLAN

ESTATE PLANNING GUIDE

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Protecting Your Family With a Comprehensive Estate Plan

Planning for uncertain or difficult times can be challenging at any age and few people are excited about estate planning because there are so many factors to consider. Maybe you don't want to face your own mortality or admit that one day you may no longer be able to make your own medical and financial decisions. It's a natural reaction to avoid the subject entirely. But, it can be a risky one in terms of protecting your estate and your loved ones.

At Garmo & Garmo, LLP, we believe that knowledge and preparation will protect you and your family for years to come. It will also give you the peace of mind that you and your loved ones are protected. We don't want any of our clients to be afraid of or confused about estate planning. That's why we offer this free comprehensive estate planning guide and invite you to contact us for a strategy session to learn more about your options.

Who Needs an Estate Plan?

Everyone. Without a plan, the state of California will decide who receives your assets and how and when your heirs will receive them. If you become incapacitated, the state will determine who has the authority to make medical and financial decisions on your behalf. Even more troubling, without a plan, your loved ones will have to make some tough choices while grieving or trying to protect your interests.

But it goes even further than this. If you have minor children, the state can decide who will take care of them and where they live if something happens to you. Even as you get older, planning for things like nursing home care can save you and your loved ones a lot of stress and protect your assets.

When Should You Plan?

The tough part about planning is that you need to do the planning before the plan is actually needed. Deep down, many people know they need an estate plan but keep putting it off. In fact, [nearly half of Americans](#) over the age of 55 do not have a will and only about 18% of people in this age group have any estate planning documents in place.

The longer you wait, the fewer options you'll have to protect your legacy and make decisions about your medical and financial future. Worse, if you become incapacitated, you will lose your ability and right to make these decisions. Your family may be able to make them for you, but your wishes might be something different.

What is an Estate?

A common misconception held by many people is that “estates” are only held by the wealthy. This is not correct. Part of your estate is all of the wealth you have accumulated over your lifetime, which might include your home, vehicles, personal effects, retirement plans, bank accounts, insurance, business interests, and anything else you own.

Your legacy is also part of your estate. This includes everything from your sense of purpose to the institutions and issues that have come to have the most meaning to you over your lifetime. All of these, along with your assets, can be passed along to your beneficiaries, which may be family, friends, or other members of society.

What is Estate Planning?

Estate planning is the process of planning for the proper use of your assets during your lifetime so they are consistent with your needs and goals and then the distribution of those assets after your death, also in a way that is consistent with your needs and goals. It's a legal process that enables and allows you to do several things:

- Decide how your estate will be managed in the event of your incapacity;
- Decide how your assets will be passed along to your loved ones;
- Pass on your assets and avoid the **probate process**;
- Make your wishes known with regard to the care of minor children or children with special needs, your medical care, burial arrangements, and much more;
- Avoid potential conflicts between siblings or beneficiaries over an estate; and
- Create an efficient plan that minimizes expenses and taxes as much as possible.

Many people envision estate planning as only creating documents that will deal with what happens after they pass away. But what happens if you become incapacitated is just as important, so this should be a significant part of your planning process.

What is Probate?

Probate is the method by which the State of California facilitates the orderly transfer of assets after death according to the deceased's Will or if no will is in place, the applicable law. According to California law, deaths on or after April 1, 2022, with estates valued at \$184,500 or less do not need to be probated if there is a Will. If there is no Will, the court will get involved to gather assets, pay or dispute debts, and distribute the remainder to whomever they see fit.

It might sound simple, but it's not. The party appointed by the court to administer the probate won't care about the decedent's wishes. They will only follow the letter of the law. In general, you want to create an estate plan to avoid probate for several reasons:

- **Time Delays** — Because probate is a court-administered process, it can slow down the settlement of an estate. This can take anywhere from six months to two years.
- **Privacy** — Since the probate process is court-administered, it is a public process. Therefore, anyone can access any court-filed documents, which include a list of your assets and debts, eventual distributions, and potential disputes.
- **Unnecessary Costs** — Probate costs, as well as attorney's fees, can be quite large depending on the size of your estate. These costs can be avoided entirely with a comprehensive estate plan
- **Loss of Control** — Legal professionals (judges, lawyers, etc.) you may have never met will be arguing and making decisions about how your assets will be distributed. The outcome may conflict with your true wishes.

Common Estate Planning Mistakes to Avoid

An estate can be a terrible thing to waste. Improper, or lack of estate planning, can cost you or your loved one's money in the form of taxes, probate costs, and unnecessary medical expenditures, and create stress, confusion, and conflict for your heirs. Here are some of the most common estate planning mistakes you'll want to avoid.

1. Dying Intestate

If you die without a will or without some other form of estate planning, the state of California and the IRS will simply make a plan for you. Of course, these entities don't

care about reducing your estate taxes, minimizing estate administration costs, or protecting your interests.

The distribution of your assets will simply be turned over to the Probate Court. In most cases, probate is a costly, time-consuming, and frustrating process. It's also open to the public, meaning the details of your estate will become part of the public record.

2. Relying on Joint Tenancy

Joint tenancy is often viewed as a simple way to pass assets along to loved ones without going through probate. Using a joint tenancy agreement with rights of survivorship, you can co-own property with one or more other people. But it's not the best estate planning tool.

For example, if a couple owns a home in joint tenancy and they both die together, the estate will still need to go through probate. Or if only one spouse dies, the surviving spouse will receive the property outright through joint tenancy. If the surviving spouse remarries and includes their new spouse as a joint tenant, this could leave the children out of the legacy entirely.

3. Leaving Property Outright to Children

Leaving equal shares of your estate to your children outright at the time of your death might seem like the most logical solution on the surface. But, the reality can turn out much different.

In many instances, a child may be too immature to handle the financial responsibility of a large inheritance on their own. Or a child may get remarried, divorced, or have other serious issues impacting their future and well-being. The right type of estate plan with specific planning techniques can protect your heirs and their inheritance from their own poor choices and from others.

4. Not Taking Advantage of a Trust

A trust is one of the most effective estate planning tools you can use. It not only protects your privacy, but it also allows you to create an economic plan that dictates who will get what, how they will get it, and when they will receive it.

But many people take the time to create elaborate trusts and then don't use them. In addition to forming a trust, you also have to fund the trust with your assets. In other

words, your bank accounts, investments, and real estate must be titled in the name of the trust. If you don't do this, it's as good as not having a trust at all.

5. Failing to Plan for Incapacity

Many people don't want to think about the possibility of their own incapacity. So, they don't plan for what might happen if they are physically or mentally incapable of making medical or financial decisions. This is a major estate planning error you want to avoid. It's important to think about and plan for various contingencies, such as long-term care, medical choices, and avoiding formal guardianship proceedings.

6. Not Keeping Your Estate Plan Updated

Once you create an estate plan, or if you have an existing plan, it's important that you review and update your estate planning documents from time to time. Unfortunately, many people neglect this step, and someone ends up paying the price.

Laws can change with respect to taxes or other issues. More importantly, your life circumstances (marriage, divorce, new children or grandchildren, deaths, new assets, etc.) will certainly change over the years. Your estate plan should reflect your changing circumstances and wishes.

7. Attempting to Create a DIY Estate Plan

These days, it's simple enough to find online resources that allow you to create a do-it-yourself estate plan without having to involve an attorney. Some services might even be free, while others charge a nominal fee.

These DIY wills and estate plan services ask you to fill in a few blanks to produce a standard form. What they fail to do is consider your unique family and financial circumstances or guarantee that the documents will be valid and enforceable in your state. If you want to protect your family and assets, the best approach is to consult with an attorney who will ensure your plan is legal, thorough, and executed properly.

Creating Your Comprehensive Estate Plan

A properly-structured estate plan allows you to protect yourself and your loved ones without giving up control. You can clearly state your wishes when it comes to your own care or the distribution of your estate after you pass away. Here are some of the basic elements of a comprehensive estate plan.

Last Will and Testament

In its most basic form, a will is a signed, witnessed document that allows you to declare how you wish for your estate to be distributed after death. You can also name a guardian in your will who is to be appointed to care for your minor children or other dependents should you die or become incapacitated. If you don't make this choice, the state will do it for you.

Your will names an executor, which is the person designated to carry out the directions laid out in the document. You can revise your will as often as you wish. The only stipulation is that you must follow the proper execution formalities and be mentally competent at the time of execution.

Trusts

A trust is one of the most important and powerful estate planning tools you can use. There are many types of trusts that can help you achieve a variety of goals. But most people use something called a Revocable Living Trust.

A Revocable Living Trust allows you to transfer your assets into the trust over time and as you acquire new ones, such as real estate and investments. You continue to maintain complete control over the management of assets in the trust and can change elements, such as the beneficiaries at any time until your death or such time as you are found incompetent.

When you use a trust, you can set various benchmarks that a trust beneficiary must meet prior to being eligible for distributions. These conditions can range from a person reaching a certain age to attaining a certain level of education or something else.

One thing that's vital to understand about Revocable Living Trusts is that the assets placed in the trust are not subject to probate. Also, if you become incapacitated, your estate is protected from a conservatorship. Instead, your successor trustee would take over the role of the trustee to continue carrying out your stated wishes.

Powers of Attorney

A person named as your durable power of attorney has the legal ability to make financial decisions regarding your estate. This document gives a trusted person the authority to enter into financial arrangements or make real estate transactions on your behalf.

If you are ruled to be mentally incompetent or incapacitated and do not have a durable power of attorney, the court will have the final power in making decisions regarding the management and distribution of your assets while you are still alive.

Advance Healthcare Directives

This part of your estate plan includes a named healthcare proxy and a living will. A named healthcare proxy works similarly to a power of attorney, but it gives someone else that you designate the power to make medical decisions on your behalf should you become incapacitated.

A living will is a legal document describing your specific wishes and instructions for medical care if you become incapacitated or terminally ill. In other words, when you are no longer able to verbally communicate your wishes to healthcare providers, such as not wishing to be placed on life support, this document will speak for you.

HIPAA Authorization

In California, to obtain someone's medical records, you either have to be the person requesting the records or you have to have written authority to obtain the records.

A valid HIPAA Authorization provides a trusted person of your choosing the ability to access your medical records.

Other Estate Planning Tools You May Need

Your estate plan should be customized to meet your needs and achieve your particular goals. So, what you want and need may not be the same as someone else. Here are a few other tools that many people find useful.

Transfer on Death or Pay on Death Designations

A Transfer on Death (TOD) designation can be placed on assets like automobiles and boats. Similarly, a Pay on Death (POD) designation can specify beneficiaries for things like bank accounts, retirement accounts, 401k plans, and brokerage accounts. Both TOD and POD accounts can bypass the probate process.

Long-Term Care Planning

If you've considered the possibility that you or a loved one might someday require long-term care, you should think about how you will afford this without draining your hard-earned life savings. Medi-Cal is the state's version of Medicaid that provides a

long-term care safety net for seniors. If you would like to secure eligibility for Medi-Cal, it's important to begin planning years before you require assisted living or nursing home care.

Garmo & Garmo, LLP — Helping You Protect Your Family's Future

Few people get excited about starting the estate planning process. But many will tell you about the immense peace of mind they feel once their estate planning documents are in place. If you're ready to take the next step, the knowledgeable and compassionate estate planning attorneys at Garmo & Garmo, LLP can sit down with you and get to know more about you and your family.

Our lawyers have nearly a century of combined experience helping clients plan for their future needs. We understand that every family situation is unique and that every client has their own estate planning goals. We don't offer cookie-cutter services but instead customize our services so that you receive precisely the plan you need.

If you would like additional information, please schedule a free initial consultation today in our La Mesa office by calling (619) 441-2500 or send us an online message with your information.