

Planning Ahead



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Estate Planning By Default

They say more than 50% of us don't have an estate plan. Estate planning costs money, it is unpleasant to think about death and incapacity, and often family dynamics create conflicts seemingly impossible to plan for.

But even if you don't have a Will or Trust, you still have an estate plan. California law dictates how your estate will be distributed if you don't plan otherwise. And how you take title to your home and how you set up your financial accounts can be a form of estate planning. For example, a home owned in joint tenancy means that if one joint tenant dies, the home will belong to the surviving joint tenant. A bank or brokerage account with a pay on death beneficiary will pass to the named beneficiary. A joint account will belong to the surviving joint account owner. That's all great so long as it matches your wishes for how your estate should be distributed.

Here are some ways default estate planning can go wrong:

A share going to a minor child will be tied up in a Court Guardianship which could be avoided by a trust for the child that can be distributed without Court involvement.

A share going to a beneficiary with "special needs" will likely cause the beneficiary to lose eligibility for his or her public benefits. A Special Needs Trust for the beneficiary could preserve public benefits and provide for the many things public benefits don't cover, including special therapies, a handicap accessible van, travel and entertainment, which would provide a better quality of life.

A joint account intended for convenience only, may belong to the surviving joint account holder and not other family members, even if that was not the intent. There are better ways to provide another person access to accounts, including signing authority, without putting them on the account.

Adding pay on death beneficiaries to accounts based on current account balances can result in great disparity of inheritance if years later one account has been drawn down and not another. What was intended to be equal ends up not. This could be avoided by a Will or Trust providing for equal distribution of all assets owned at death, instead of account by account.

Without a Will or Trust, community property will all go to the surviving spouse, but not separate property. If there are no children, separate property could end up going to your sister or brother, not your husband or wife. Only a Will or Trust or beneficiary designation would prevent such an unintended result.

The moral of the story is to make your own estate plan that matches your wishes. It's easy to put it off, but don't.

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