

# ESTATE PLANNING



McNamara Law Firm, PC

*Elder Law, Estate Planning, Special Needs,  
After-Death Administration*

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## ESTATE PLANNING-AN OVERVIEW

People often think that estate planning is only for the wealthy. The reality is that an estate simply includes the assets you have, including your “stuff”. Merriam Webster defines an estate as possessions and property. A properly prepared estate plan is a tool kit that can ensure that if you are incapacitated, temporarily or permanently, your financial and health care needs are handled per your direction, that your wishes are honored at your death and, of course, it can help you to avoid probate court. *As such, estate planning can benefit virtually everyone.*

Each estate plan is unique. However, the foundational documents that usually are the main elements that make up an estate plan are: Revocable Living Trust, Pour Over Will, Advance Health Care Directive with HIPAA release and Durable Power of Attorney. Each of these documents is a powerful tool in your tool kit that can be accessed at different times of your life and/or upon your death.

**REVOCABLE LIVING TRUST-** Most Californians, who are homeowners, will benefit from having a Revocable Living Trust. The home is typically put into the Trust, as are other assets, such as bank accounts, regular investments, CDs, etc. Other assets, such as IRAS, 401ks, pension benefits and insurance policies often do not go into the Trust. The reason they are not included in the Trust is that there should be named beneficiaries on these assets and the institution handling these accounts will pay out to your named beneficiaries upon your death with no need for probate. However, there are times when it may be advisable to put some non-Trust assets into a Trust. Meeting with an attorney who focuses on estate planning can help you decide what is best for your situation.

While you are alive, you are the beneficiary of your Trust and, while you are in good health, you are typically the Trustee (“boss”) of the Trust. The Trust names successor Trustees who will manage assets if you are ill or incapacitated. The named Trustee will also handle your estate should you die, wrapping up your estate and making distributions per your instruction to Trust beneficiaries, without the intrusion, cost, and delay of the probate court. Trusts can be designed in a variety of ways, and often include “sub-Trusts” for children for management of inherited funds.

These Trusts are revocable, meaning that they can be discontinued, amended or restated. In other words, once you establish a Trust, you can make changes to it later. Furthermore, you can add and subtract assets from it as you see fit.

There are other types of Trusts that may be appropriate depending on your circumstances. Among them are:

Special Needs Trusts: Parents who have special needs or disabled children must carefully plan for the time when they are no longer able to provide support and guidance. Special Needs Trusts allow the disabled person to continue to receive SSI and/or Medi-Cal, while having a Trust for their benefit managed by a Trustee. The Trust typically contains an inheritance from a deceased parent.

Asset Protection Trusts: Seniors who have expensive care costs and need public assistance often benefit from Asset Protection Trusts. These are Irrevocable Trusts, which comply with complex VA and Medi-Cal rules. They are unique and complicated Trusts and can save family homes, protect assets, and provide for the senior needing care.

Mandatory Split Trusts: These Trusts appeal to many married couples who have children by prior marriages or different intended beneficiaries. Upon the first spouse's death, the estate is "split" into sub-Trusts for a variety of reasons, including estate tax minimization (or elimination), and protecting beneficiaries.

There are incidences in which an estate may be small enough that no Trust is necessary and a standard will can be used to make sure your wishes are honored upon your death.

**POUR OVER WILL-**A Pour Over Will (POW) is a backup document to the Trust. If an asset is accidentally not titled in the name of the Trust, the POW acts as an instruction to the probate court that the asset should be automatically transferred to your Trust upon your death. The Will names a person or persons to act as your personal representative(s) in probate court, if there is any such need at all. Usually, the Will never has to be used. The POW can also be used to name guardians if you have young children.

**ADVANCE HEALTH CARE DIRECTIVE AND HIPAA RELEASE-**

An Advance Health Care Directive (AHCD) allows you to designate a person or persons, called an agent, to act as your decision maker and advocate regarding your health care, when you are unable to do so. The AHCD gives your agent the legal power to speak on your behalf and give directions for your care. Furthermore, the AHCD gives your agent instructions regarding such decisions as burial versus cremation, life support, dementia care, organ donation, etc. This document is accompanied by a HIPAA release/waiver, or more formally, an Authorization for Release of Protected Health Information. Per the release, you designate certain persons who will be able to talk to your doctors and obtain your medical records, so your agent can make informed decisions regarding your health care, when you cannot.

**DURABLE POWER OF ATTORNEY-**A Durable Power of Attorney allows you to appoint an agent(s) to manage items not handled by a Trustee under your Trust or by an agent under an AHCD. If you are incapacitated, an agent can typically deal with insurance companies, banks, and other institutions on your behalf, as well as apply for benefits for you (such as MediCal), restructure and preserve assets if nursing home care is needed and pursue and defend lawsuits, among many other powers.

These documents, together, compromise an estate plan. Other documents may also be necessary to make *your* plan complete. Furthermore, it may also may be that you need more than a Revocable Living Trust to accomplish your goals. The bottom line is that you are unique and your estate plan should be unique to you.

*Please note: This informational packet is not legal advice. Each person's matter is different and facts and circumstances should be evaluated by an attorney versed in estate planning.*

*For an appointment, please call the McNamara Law Firm, PC, at (661) 287-3260, or visit [www.themcnamaralawfirm.com](http://www.themcnamaralawfirm.com).*