

WHAT IS ESTATE PLANNING?

In simple words, ‘estate planning’ means planning for any uncertainties caused by death or incapacity. In either scenario, you should set things in place to take care of your family without the involvement of a court process.

Estate planning consists of three verticals – each has a different purpose and a specific goal in mind. The first vertical focuses on the distribution of your wealth (i.e., estate) after death to your surviving family members without going through probate; the second vertical is for taking care of your minor children by setting up guardianship for them so that they don’t end up in foster care if their parents (i.e., you) are dead or incapacitated; and the third vertical involves taking care of yourself when you are incapacitated (i.e., medically unfit) and cannot make your own decisions. In such situations, you should authorize other adults to have access to your financial and medical records and make related decisions for you during your incapacity.

First Vertical – Wills & Trusts

The first vertical involves setting up a living trust, creating back up wills (also known as ‘Pour Over Wills’), and funding your trust, i.e., transferring the title of all your assets to your trust. Setting up a living trust makes financial sense even if you are unmarried, do not own a home, you are not a parent, or even a millionaire as probate is super-expensive. For instance, for a \$1 Million ‘gross’ estate, the total probate cost would be about \$45,000!

Second Vertical – Guardianship

‘Guardianship’ refers to a process whereby the parents of a minor child nominate other adults to take the legal custody of such a child when the parents are incapacitated or after their death. Most parents typically nominate their adult family members, relatives and/or friends to act as legal guardians of their minor child(ren). Guardianship is critical as otherwise your minor child(ren) could end up in foster care if there are no nominated guardians at the time of the parent’s death or incapacity. Guardianship must be set up for every minor child living in California regardless of such child’s citizenship or nationality. While guardianship provisions are often included in a person’s Will, it is also important to have a stand-alone guardianship document as a Will does not become effective until the person dies (i.e., it will not be active if such person is merely incapacitated). Also, the Will typically contains other confidential provisions relating to wealth distribution, family matters, funeral arrangements and organ donation, which you may not want to disclose before your death to anyone, including your guardians.

Third Vertical – Financial & Medical Authorizations

The third vertical relates to creating legal documents that authorize other adults to access your financial and medical records and make financial and medical decisions for you when you are incapacitated. These documents typically consist of (i) a financial/durable power of attorney (for appointing agents authorized to access your financial records and make your financial decisions), (ii) an advance health care directive or a living will (for documenting your medical choices), (iii) a health care power of attorney (for appointing agents authorized to make your medical decisions), and (iv) a HIPAA authorization (for appointing agents authorized to access your medical records).