

Estate Planning Essentials



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7 Essential Things to Know

1. Everyone has an estate plan
2. Estate planning is not just about death
3. Who gets what at death
4. Probate 101
5. Estate planning is for everyone, not just the rich
6. Everyone believes their plan is “simple”
7. Finding a professional

One: Everyone Has an Estate Plan

California's Default Estate Plan

- Incapacity
 - Conservatorship
- Who gets what
 - Intestacy
- When and how
 - Probate

Concerns About the Default Plan

- Not what the person wants
 - Different beneficiaries
 - Different distribution scheme
- Inefficiency
 - Cost
 - Delay
 - Frustration
- Unknown Outcomes
 - Who will be appointed/designated

Two: Estate Planning is Not Just About Death

Incapacity

California's Default

- Conservatorship of the person
 - care and protection of the person
- Conservatorship of the estate
 - care and protection of the money and property

Incapacity

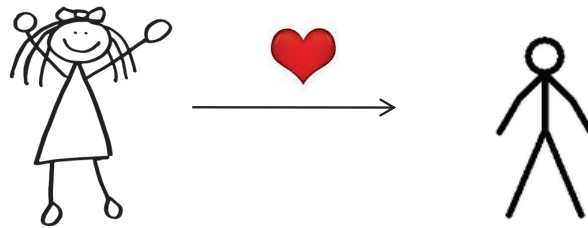
Planning Around the Default

- **Financial Power of Attorney**
 - Designates your “Agent,” who will make financial decisions on your behalf (for those assets outside your revocable living trust) if you become incapacitated
- **Revocable Living Trust**
 - Designates your successor “Trustee,” who will make financial decisions on your behalf (for those assets held in your revocable living trust) if you become incapacitated
- **Advance Health Care Directive (and related documents)**
 - Designates your “Health Care Agent,” who will make medical decisions on your behalf if you become incapacitated
 - States your wishes regarding the types of medical decisions you want made on your behalf

Three: Who Gets What at Death

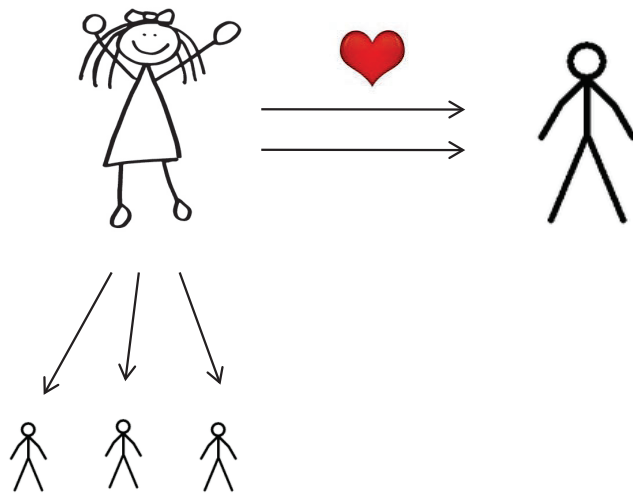
California Default - Intestacy

With spouse, no children:

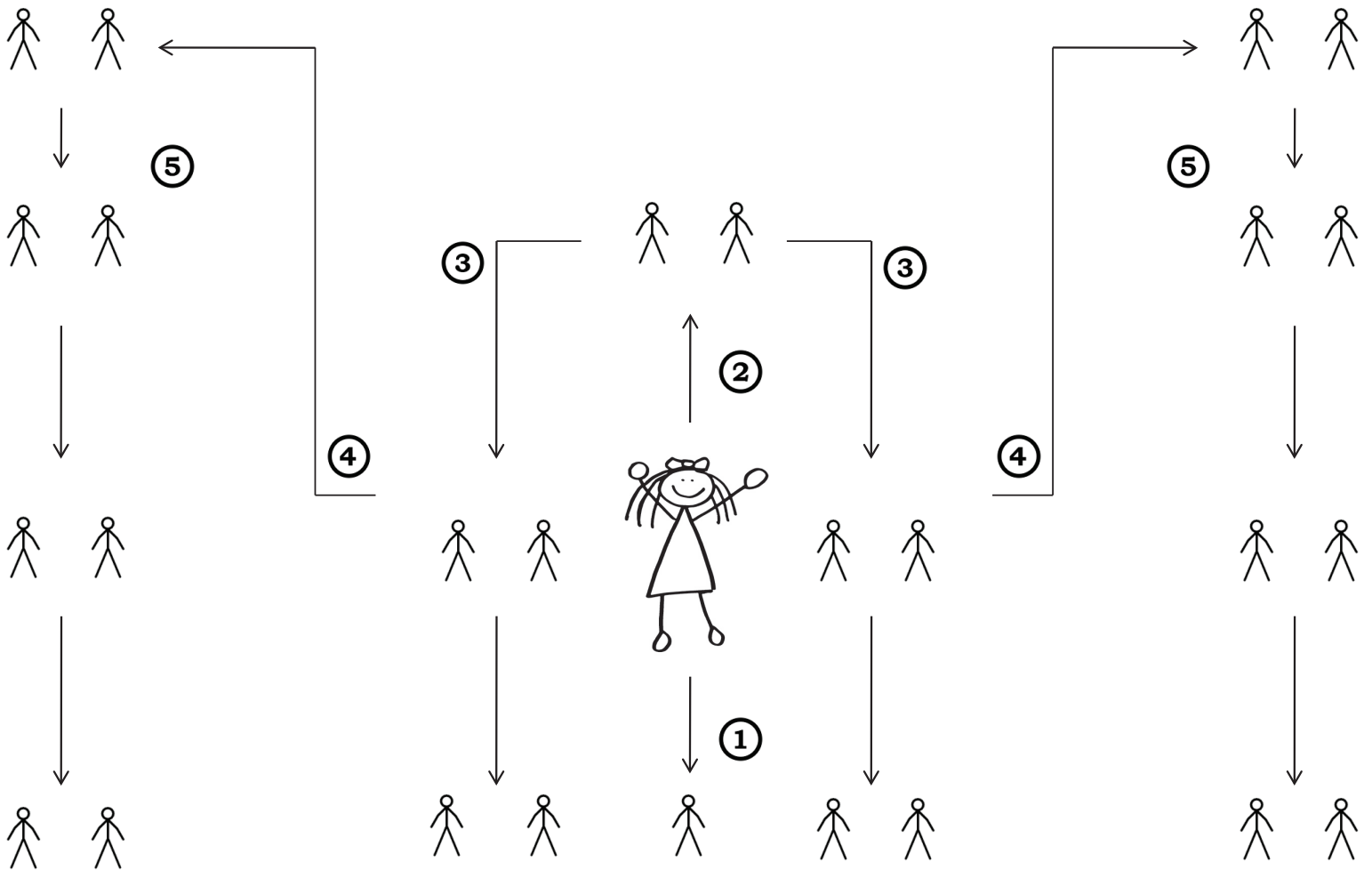


Who Gets What - Intestacy

With spouse and children:



Who Gets What - Intestacy



Who Gets What

Planning Around the Default

- Will
 - Nominates the “Executor,” who will administer the estate
 - Nominates Guardians of minor children
 - Provides for how assets should be distributed upon death (if no revocable living trust)
 - **Note: any asset passing via the Will is subject to probate**
- Revocable Trust
 - Avoids probate to the extent assets are held in the revocable living trust at death
 - Designates the “Trustee,” who will manage and distribute the assets upon incapacity or death
 - Acts as a funnel for assets
 - Directs who gets what, when and how
 - Provides a plan to make the estate as tax efficient as possible

Four: Probate 101

When and How - Probate

- *Court supervised* process of transferring assets from a Decedent to the beneficiaries
- State of residence **plus** each state with real property interests
- Some assets do not pass through Probate
 - Beneficiary Designations (life insurance, 401k, IRA)
 - Jointly held real property in “Joint Tenancy” or “Community Property with Right of Survivorship”

Concerns with Probate

- Delays
- Privacy Issues
- Statutory Fees

Probate Fees

- Statutory Fees
 - Based on *gross* value
 - Attorney
 - Executor

Estate	Probate Fees	
\$100,000	\$4,000	(\$8,000)
\$200,000	\$7,000	(\$14,000)
\$300,000	\$9,000	(\$18,000)
\$400,000	\$11,000	(\$22,000)
\$500,000	\$13,000	(\$26,000)
\$600,000	\$15,000	(\$30,000)
\$700,000	\$17,000	(\$34,000)
\$800,000	\$19,000	(\$38,000)
\$900,000	\$21,000	(\$42,000)
\$1,000,000	\$23,000	(\$46,000)

- Additional “Extraordinary” Fees
 - At the Court’s discretion

Opting Out of the Default: Planning the Estate Illustration

The “Will” based estate plan

Financial
Power of
Attorney

Advance
Health Care
Directive
(and related
documents)

Will

Opting Out of the Default: Planning the Estate Illustration

The “Trust” based estate plan

Financial
Power of
Attorney

Will

Advance
Health Care
Directive
(and related
documents)

Revocable
Trust

Five: Estate Planning is for Everyone, Not Just the Rich

Issues Applicable to Everyone

- Management of Financial Affairs
- Health Care Decisions
- Guardianship
- Probate
 - Affidavit procedure where total value of personal property does not exceed \$150,000
 - Affidavit (filed with the Court) where the *gross* value of all real property in the estate does not exceed \$50,000

**Six: Everyone Believes Their Plan is
“Simple”**

Estate Planning Provisions

- Family considerations
 - Limiting distributions to the spouse (can the spouse leave the assets to a new spouse?)
 - Providing for a significant other
 - Separated
 - Getting a divorce
 - Engaged to be married
 - Blended family
 - Providing for stepchildren
 - Unequal shares for children
 - Disinheriting a child
 - Children who do not get along
 - A lot of children (e.g., getting 5 children to agree)

Estate Planning Provisions

- Family considerations (continued)
 - Providing for multiple generations (e.g., children and grandchildren)
 - Distributions when there are no children
 - Providing for a parent
 - Providing for a beneficiary with special needs
 - Specific distributions of personal property
 - Beneficiary with a drug problem
 - Beneficiary who is a spendthrift
 - Beneficiary with creditor issues
 - Beneficiary in a high liability field (e.g., doctor, real estate developer, lawyer, small business owner)

Estate Planning Provisions

- Assets
 - Separate property assets
 - Joint ownership with others
 - Use by others
 - Unique assets

Seven: Finding a Professional

Recommendations and Professionals

- Estate planning is the SECOND highest area of legal malpractice
- Best course - use an experienced estate planning attorney
 - Areas of practice
 - Certified Specialist
 - Experience
 - Who is preparing the documents?
 - What is the hourly rate and how much time is spent?
- Other Options
 - Public forms
 - Do-it-yourself
 - Trust mills

Resources and Links

Informational Publications

[Do I Need Estate Planning?](#)

California State Bar

Available in English and Spanish

[Do I Need A Will?](#)

California State Bar

Available in English and Spanish

[Do I Need A Living Trust?](#)

California State Bar

Available in English and Spanish

[Conservatorship](#)

California Courts Self-Help Center

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