



The Ultimate Wealth and Estate Planning Checklist

Planning for the unexpected isn't easy, but this checklist breaks the entire process down and makes it simple and clear.

Basic Considerations in Estate Planning

As more and more online services appear touting “do-it-yourself” estate planning, it is important to remember that proper estate planning requires putting careful thought into every facet of the aging and post-death process.

Every estate and every family are different, and there is no such thing as “one-size-fits-all.” The list below is a checklist of various questions and discussions that we at Anderson Estate Law commonly encounter and are prepared to have with each of our clients. It is intended to get you thinking about your own circumstances and needs but is not intended as legal advice—only as an educational tool to prepare you for a meeting with your own qualified estate planning legal counsel.

Identify and Document Your Needs and Wishes

Proper planning requires determining the most prudent and responsible way for your estate to be managed and distributed, and the best people to help you achieve those goals. Here are some decisions that need to be made, and some possible concerns to consider in making them.

Identify your financial managers.

Identify the people that you feel are qualified, willing and the right fit to manage your assets during any period of incapacity, and to distribute the assets upon your death. You might want to designate several to serve in a particular order.

Identify your health care agents.

Identify the people that you trust to be able to rationally and carefully make prudent decisions about your health and personal care needs if you are incapacitated.

Identify beneficiaries of your estate.

Unfortunately, our mortality rate remains at 100%. When it's your time, who will receive your assets? Would it be prudent to place restrictions on how the gift is received? Here are a few helpful questions to ask:

- How will your estate best be used? If you have children, should it all pass to them and if so, are they responsible enough to accept the inheritance? If you do not have children, then be thoughtful about where you would be most pleased to see your assets distributed. Always consider the



impact of your gifts, and the legacy that you will leave by making them. When planning an estate, inheritance is a privilege, not a right.

- Do you regularly give to charity? Consider leaving a final gift in your estate documents or from your retirement accounts. In certain circumstances it can provide substantial tax benefits.
- Do you have minor beneficiaries? Determine who will hold, manage and distribute these assets for the benefit of your children until they are financially responsible enough to accept the gift.
- Is a beneficiary receiving needs-based public benefits (SSI or Medi-Cal/Medicaid) that they need to keep? Consider a Supplemental Needs Trust provision to ensure that the funds are used only to supplement the benefits being received so the beneficiary is not disqualified.
- Do you have a “spendthrift” beneficiary? This is a child or intended beneficiary that has proven irresponsible with money, and that may benefit from restrictions or conditions being placed on the inheritance over time.
- Does a beneficiary struggle with alcohol, drug or gambling addictions? It may be prudent to place conditions on the beneficiary's receipt of the funds, and to allow a third-party to cut-off distributions if receipt of the funds would only hurt the beneficiary.

Nominate guardians for your children.

If you have minor children, identify and nominate an individual or couple (we prefer seeing multiple nominees in order) to take physical custody of your children in the event that they are still minors upon your passing. You should choose the best home for your kids, and that might not always be with family. This might be the most important decision that you make.

Determine how your property should be distributed to a spouse.

Even though we are a community property state, you control the distribution of your separate property and your half of any community property at your death. Community property only automatically passes to your spouse if you don't make other plans.

Avoid Probate

Probate is the court-supervised process of administering an estate. The court appoints an individual to notify all creditors and potential heirs of their right to make a claim, to identify and collect the assets of the estate, to pay all debts, taxes and other valid claims, and to distribute the assets after obtaining approval of the court to do so. Probate is time consuming (12-18 mos. on average), and often a surviving spouse or a vulnerable beneficiary, such as a child or disabled dependent, cannot afford to wait that long to receive the assets of your estate. It is also expensive. An estate with a gross value of \$1,000,000.00 could cost the estate approximately \$50,000 in statutorily-approved fees. It



should only be an option if court oversight of the administration of your estate is absolutely necessary. Here are the most common ways to avoid it:

Set up a revocable living trust.

This is the preferred tool for avoiding probate. It provides the most flexibility and assurance that your property will be distributed as you intended. You can avoid probate, while at the same time making long-term provisions for your children, grandchildren or other beneficiaries.

Properly fill out your beneficiary designation forms.

Many assets include “beneficiary designation forms,” on which the account owner can designate one or more beneficiaries to receive the asset, or its death benefit, on the account owner’s death. Some common examples are retirement accounts, annuities, and life insurance policies.

Consider alternatives for small(er) estates.

The revocable living trust is the most versatile tool that we have for passing assets from one generation to the next. There are certain circumstances in which a trust should be used regardless of estate size... for instance, with minor, disabled, spendthrift or chemically-dependent beneficiaries. However, for small estates (less than \$150,000 in personal property and \$50,000 in real property) with fairly straightforward distribution provisions, there are some cheaper options. The following options all have the potential for negative and unintended tax and administration consequences, and should only be used after discussion with a qualified estate planner, and should only be used as part of a broader estate plan:

- Revocable Transfer on Death Deed
- Joint Tenancy
- POD (pay on death) or Totten Trust Account.
- Gifting Prior to Death

Avoid Conservatorship

Most people focus on death with estate planning, but an equally important aspect of your estate plan is making sure that you are taken care of if you become incapacitated prior to death. Alzheimer’s disease, dementia, stroke, illness or accident... the ways that you could suddenly and unexpectedly lose the physical and mental ability to care for your own affairs are endless. Unless you take preemptive action, if this happens to you, California law requires a conservator of the person to be appointed to manage your health and



personal care and a conservator of the estate appointed to manage your financial affairs. This requires public hearings in probate court, court costs and fees, attorney fees and other legal expenses, along with intrusive investigations and medical examinations. If you have trusted individuals in your life (spouse, children, friend, or professional), there are ways for you to voluntarily appoint them to step in to manage these affairs for you at that time without the cost, time and spectacle of probate court.

Create a trust.

If you set up a trust and appoint yourself as the sole lifetime beneficiary, the successor Trustee will continue to manage those assets for your benefit upon your incapacity. Since the assets are not in your name, the court does not need to be involved in overseeing their management.

Create a durable power of attorney for asset management.

While the Trustee will manage the trust assets, there are other financial concerns that require some attention, such as life insurance, retirement accounts, annuities, and more.

Create an advance health care directive.

With this document you appoint someone to essentially take physical custody of you upon your incapacity.

Have your physician fill out a “Physicians Order for Life Sustaining Treatment” (POLST) form with you.

Avoid Unnecessary Taxes

You may be the sort of person that likes to give Uncle Sam a little something extra for the effort, but you're in rare company. Most of our clients are looking to keep as much of the money that they have worked so hard to acquire as possible, or to use or gift it in ways that they feel are important and beneficial. Here are some ways to consider avoiding unnecessary taxes. Of course, this is not meant as legal or financial advice, and before taking any action speak to a qualified estate planner, financial planner, or tax adviser.

Avoid estate taxes.

The estate tax exclusion is currently \$11,180,000 (\$10 million, indexed for inflation) per individual, meaning that a single person can transfer that amount of money at death without estate tax being paid on it, and a married couple can double it. On everything above that amount, the estate is taxed at 40%.



Avoid capital gains taxes.

A capital gain is the difference between the sales price of an asset and its tax basis. Here are a couple of ways to avoid these taxes, or at least to defer them:

- Do not gift appreciated assets prior to death
- Consider a charitable remainder trust
- Consult with your CPA each year regarding offsetting capital gains with capital or other losses

Avoid deferred income taxes.

This generally applies to qualified retirement plans funded with pre-tax income. These taxes do not go away at death, and the beneficiaries will still need to pay them on receipt. Here are a few ways to lessen the hit:

- Properly plan beneficiary designation forms. It is crucial to pay attention to who is receiving your tax-deferred retirement accounts and how. Poor planning could lead to the entire sum being paid out at death with all deferred taxes being immediately due. Before filling them out, talk to a qualified estate planner.
- Ensure trust qualifies as a “see-through” IRA trust. If you have minor or disabled beneficiaries, and want a third-party to hold the proceeds in trust for your beneficiaries, it is possible to name a trust as the beneficiary of your retirement account. However, the trust must meet certain qualifications based upon your needs, so make sure that if this decision has been made, the trust is properly drafted to accommodate it.
- Gift retirement accounts to charity. If you plan to give a gift to charity, consider gifting from retirement accounts. The charity will be exempt from paying the deferred tax, and your children or other beneficiaries can receive other tax-free gifts, resulting in a pretty big net positive to everyone.

Follow Through with the Plan

Whether you prepare your own documents, or get qualified assistance in establishing an estate plan, it is imperative that you follow through with the plan for your lifetime. Here are some often overlooked items that can blow up a plan at your death.

Properly title your trust assets.

A trust is only as good as the assets that have been transferred into it. A good estate planner will assist with and guide you through this process, but we can't be there at all times.

Pay attention when acquiring new assets.

Selling a trust asset doesn't require any particular action on your part, but when you acquire a new asset, make sure that the title of the account fits with your plan. Do not be afraid to call your estate planning attorney for advice on this (our office



does not charge our clients for these phone calls or e-mails and we are happy to help without sending a bill!).

Do not forget about it.

Take a look at your plan every couple of years or on the occurrence of a major life event (birth or death of a family member, substantial increase or decrease in worth, out-of-state move, etc). Remember that this is intended to work at your death, and life happens in between, so change is inevitable.

Keep all of your important documents in one accessible place.

These documents should not be hidden. If you have a safe deposit box and want to keep these there, make sure a trusted loved one knows where to find the key. If you have a safe at home, make sure someone else knows the combination. Nothing is irreplaceable when it comes to these documents, so they don't need to be held in Fort Knox. I often recommend creating a "legacy drawer" or file cabinet to hold your estate plan, copies of pertinent financial statements, retirement account beneficiary designation forms and life insurance policy information, testimonial statements, lists designating who should receive certain heirlooms and personal property items, and any other information that would be necessary or important for your family to find and to know.

I hope this guide has given you something to think about and to consider in coming to some decisions about your own planning. There is no substitute for qualified counsel and I highly encourage you to seek the advice of an estate planning attorney, financial advisor, and CPA prior to making any major planning decisions. We are happy to help and look forward to meeting you.

About Anderson Estate Law

If you are looking for a San Diego estate planning attorney or Orange County estate planning attorney, you've come to the right place. Our firm specializes in family Wealth and Estate Planning, Estate and Trust Administration, Special Needs Planning and Leaving a Legacy that goes way beyond material possessions.

We help families and individuals transfer their wealth and values to loved ones with minimal taxes and expenses, while avoiding probate and promoting peace and harmony in the family.



Give us a call today to schedule a free consultation!
(760) 489-2938

