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## Why Everyone Should Have an Estate Plan

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Q. My wife and I have been married several years. We have a fast-paced California lifestyle, which, unfortunately has resulted in us having not yet put together a will. Can a will guarantee that our wishes will be carried out when we are no longer here? Is there a better alternative?

A. As the saying goes, nothing is certain except death and taxes. A good estate plan can help you prepare for both.

Any estate plan should, of course, provide for the distribution of your assets after your death. Other goals which can be accomplished with a good estate plan include, for example, designation of an executor for your will or trustee for your trust; nomination of a guardian(s) for your minor child(ren); tax planning; and certain pre-death matters.

Formally stating one's desires for post-death division and distribution of one's assets is probably the most recognized and understood purpose of an estate plan. People often, if not usually, want their property divided and distributed in a manner which deviates, in at least some respect, from the division and distribution which would be made pursuant to intestacy laws, the "default" laws which apply when a person does not have an estate plan. Perhaps a person creating an estate plan wants to provide for a distribution to someone who would not be a beneficiary under the intestacy laws or, alternatively, wants to prevent distribution to someone who otherwise would receive a distribution under the intestacy laws. Or, perhaps a beneficiary should receive a distribution in the form of payments over time, rather than as a lump sum. The estate plan is

the place where these, and other, deviations from intestacy laws can be accomplished.

If you have a child(ren), chances are that you would prefer to state your preference and order of preference of guardians, rather than leaving that choice to a judge. An estate plan is the place for you to nominate guardians for your minor children so that if necessary, a court can be guided by your wishes. In the absence of such nomination, the court will have no choice but to use its own discretion in determining the "best interests" of your child(ren).

Tax law is complicated and ever-changing. However, with certain trusts, and depending on the value of your estate, certain tax planning strategies can be employed which often will result in significant tax savings. For this reason alone, you should review your estate plan with your attorney anytime there is a significant change in your personal situation, as well as when significant changes occur in tax law.

Although usually not a primary purpose in creating an estate plan, planning for pre-death issues can sometimes be just as important – if not more important – than planning for post-death matters. Pre-death issues include giving decision-making authority to someone – usually one's spouse, if married – over health care issues (Advance Health Care Directive) and/or over the handling and management of property (Durable Power of Attorney). Such authorizations to make health care decisions or to manage property become effective only when the person who grants those powers becomes incapacitated, for example, in the event of a serious illness.

A comprehensive California estate plan – one that includes a trust, pour-over will, Advance Health Care Directive (ACHD), and durable power of attorney will give most people all the flexibility they need to accomplish their estate planning goals. A trust provides for private (with certain limited exceptions) and efficient handling of one's affairs; a pour-over will provides for the transfer into the trust of any assets which inadvertently were not placed into the trust before death, and the ACHD and durable power of attorney will provide guidance for decisions relating to medical treatment and management of property, respectively, during periods of incapacity.

You and your spouse should obtain the assistance of an attorney who will help the two of you create, implement, and maintain an estate plan that will best meet each of your individual and joint needs. Doing so will lessen the burden your loved ones will have to endure when the inevitable occurs.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of bankruptcy, business law, constitutional and civil rights law, family law, real estate law, tax law, and trusts and estates.

\* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has served as a Judge Pro Tempore for the Santa Clara Superior Court, and is also a licensed Real Estate Broker.

Mr. Earle received his law degree from the Santa Clara University School of Law, where he served as an Editor of the school's Law Review, and where he received awards for academic excellence. He received his undergraduate degree, with honors, in business administration from the University of La Verne.

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