

I'm not dead yet! Why do I need Estate Planning? Part 1

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Although Estate Planning is generally thought of in the context of what happens after your death, there are several instances when comprehensive Estate Planning can be crucial while you are still alive.

If you can't conduct business due to mental or physical incapacity (Alzheimer's, stroke, heart attack, etc.), and you do not have a comprehensive estate plan, only a court appointee can make decisions for you - even if you have a will. (Remember, a will only goes into effect after you die.) In California, this is known as a conservatorship. Once the court gets involved, it usually stays involved for the rest of your life and the court, not your family, will ultimately control how your assets are used to care for you. This public court process can be expensive, time consuming and is very difficult to end. It does not replace probate at death, so your family may still have to go through the court system twice! Once for a conservatorship, and the second time to probate your estate.

A comprehensive Estate Plan in California has four documents that assist you while you are alive but incapacitated. A Trust, a Durable Power of Attorney, an Advanced Health Care Directive, and a HIPAA authorization are all very important documents that you need in order to keep your affairs out of court while you are alive.

A Trust can be a very important part of your incapacity plan. All too often, we focus on who will be the trustee of my trust after I am gone - who will pay my bills and distribute my assets? However, the vast majority of us will become incapacitated before we die. Your successor trustee (think of your successor trustee as a manager) will manage your assets that are named in your trust when you cannot manage them yourself. Financial institutions and title companies are much more comfortable working with a successor trustee than they are with an agent under a power of attorney.