

Talking to Families and Friends about Estate Planning for You and Them



During the holidays, many of us have a chance to visit with parents, grandparents, siblings, cousins, aunts, uncles, in-laws and some of our closest friends. In addition to having meals together, catching up on each other's lives and the lives of our young ones, and just enjoying each other's company, it can also be a time we talk with each other about important family and personal matters: care issues for parents and grandparents, family and personal finance concerns, job and career issues, investment opportunities and the like.

One issue that can arise when we are spending time with people we care about is **our own estate planning and that of our loved ones**. Wills, living trusts, health care directives, powers of attorney – who has them, who doesn't, who is named as Trustee or Agent or Executor, what these people are supposed to do, and what do all of these documents mean for us and our loved ones anyway?

If you find yourself in these conversations, or wanting to have them with your friends and family members, the following ideas might be helpful as a guide to navigate some of the issues.

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What Am I Supposed to Say?

You are sitting at the table with your parents, grandparents, relatives or close friends. It becomes clear that they do not have an estate plan, or if they do, that they have not even looked at them since five, ten, twenty years ago when they originally executed them.

You think that they might really benefit from doing planning, or having their plans at least looked at and possibly updated. Now the topic seems to be on the table, ripe for discussion. Where do you start?

Step 1: Do you have a sense of whether they might benefit from visiting an estate planning attorney?

If you have done your own estate planning within the last five or ten years, especially if you had an attorney draft your documents,

you may remember some of the reasons why you originally had your documents done. Common examples include:

- ***Owning real property*** (e.g., house, condo, land), especially if you have an unmarried partner or same-sex partner,
- Having total assets - all your property combined - are worth close to, or ***more than \$100,000***,
- Wanting to plan for the care and finances of ***minor children***, or for some parents, children under age 25 years old,
- Concern that one's heirs (e.g., children) might have ***conflicts about who controls the estate*** and how the property should be divided,

- Concern about *estate and inheritance taxes* (estates over \$2 million, including life insurance proceeds for policies on your life that are owned by you), Wanting to plan for other dependents or relatives who are receiving *government disability benefits* who rely on them for support,
- Concern about *creditor exposure of assets* or for the people who will inherit from you.

You may also have had concerns about who would take care of your finances in the event of your incapacity, or who would handle your health care decisions if you were too ill or incoherent to communicate directly with your health care providers.

You can also think about the benefits to you and your own family upon completion of your own planning, including, if relevant, **peace of mind**.

Step 2: Figure out how to broach the topic.

One of the most important things when discussing estate planning issues for loved ones, especially those of one's parents or grandparents, is to **be clear that you are not interested in their money or inheriting it.**

If you find yourself wanting to talk with parents or grandparents out of some feeling of expectation (or entitlement) about the prospect of a future inheritance, or because you want to convince them that that you somehow "deserve" a greater share of inheritance because of your loser brother or sister who never amounted to anything.... well, that could be a good time to check yourself and your motivations and to take a break from the conversation.

- "I just want to make sure that neither of you runs into problems with *probate or inheritance taxes* later."
- "I want to make sure that things are clearly defined, so that *my brother and I don't end up fighting about things after you're gone.*" (Or so I and my sister don't end up fighting with our step-mother, etc.)

- "Have you ever thought about *whether you need to set up a revocable trust?*"

Other ideas include:

- With parents and grandparents, consider *discussing the issues beforehand with the other siblings or grandchildren*, and getting agreement with them about approaching the parents or grandparents together, and what might be helpful to say.
- Mention some key points about avoiding *probate*, minimizing potential *estate taxes* and avoiding *property tax reassessment*. This last issue is particularly relevant for people who own California real property (house, condo, etc.) and who either own property with someone other than a spouse, child or parent, or who wants to name such a person to inherit the property.

Step 3: Figure out how to get people in touch with estate planning resources, including an attorney.

Having some sense of what some of the issues are before or during an estate planning process can be very helpful. There are **many good resources available** for gaining a better understanding of the estate planning process, both in print and online. One of my favorites is the Nolo Press book (www.nolo.com) called **Plan Your Estate**, which is written in plain English for non-lawyers interested in understanding how the law works. Many of these resources are fairly clear about when it is appropriate to bring a lawyer into the process, versus what can be done without a lawyer.

You can also invite your loved ones to **visit with your own estate planning attorney**, or one that you know that practices in their geographical area. Some people have also found it helpful to accompany their loved one for the initial meeting. Almost all estate planning attorneys offer a no obligation initial consultation. Just bear in mind that, should your loved ones choose to move forward with their estate

planning, the attorney will invariably wish to meet privately with them and not be willing to discuss any of the private details of the planning with you. These limitations are important for minimizing the impression of undue influence that can arise later.

If you do not know an estate planning attorney in the geographical area where your friends or family members live, there are several **resources available for finding attorneys**. Among the online sources are **MartindaleHubbell.com**, **Lawyers.com** and the websites of the respective State Bars (e.g., calbar.org). The State Bar websites can also be helpful to get more background on attorneys, such as specialization certifications and a history of disciplinary action against the attorney.

A favorite resource for finding an attorney, for many people, is **word of mouth**. The online resources might give you information about educational background and the like, but does not give clear information on how attorneys approach doing planning work, what it is really like for clients to work with them and how clear the attorneys are at communicating complex issues.

DISCLAIMER: This article contains general information about issues and should not be construed as legal advice. Every case must be analyzed independently, based on the specific facts of the case. If you have questions or concerns about your particular situation, please consult an attorney.

For more information, please visit our website at: www.becklawgroup.com

101 HOWARD STREET, STE. 490 SAN FRANCISCO, CA 94105
TEL 415.642.9930 FAX 415.593.9951
ALMA@BECKLAWGROUP.COM | WWW.BECKLAWGROUP.COM