



PHILIP M. FLANIGAN

Attorney-at-Law

Life Care Planning is a Family Affair

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HELPING PROTECT WHAT'S IMPORTANT TO YOU

Your estate encompasses all the assets you've spent a lifetime working to accumulate. I help families and individuals plan their estates so that their loved ones are properly cared for in the future. Failure to plan can leave a mess, with families facing court and conflict when they are at their most vulnerable. A sound plan gives you the peace of mind of knowing that your affairs are in order for the day when you are unavailable or unable to manage them.

Please bear in mind, this guide is simply an introduction to the field of estate planning and elder law and does not constitute, nor should it be considered as being, legal advice.



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- **Admitted in 1986**, California and U.S. District Court, Eastern District of California
- **1987**, U.S. Court of Appeals, Ninth Circuit
- **1990**, U.S. District Court, Central and Northern Districts of California
- **1992**, U.S. District Court, Southern District of California

- **Pepperdine University**
Class of 1986
J.D.
cum laude

- **California State University at Fresno**
Class of 1983
B.S.

Philip M. Flanigan holds a B.S. degree from California State University-Fresno and a J.D. degree from Pepperdine University School of Law, having graduated cum laude. Mr. Flanigan is a member of the California State Bar Association, the Trusts and Estates Section of the State Bar, the Fresno County Bar Association, the National Academy of Elder Law Attorneys, a member of WealthCounsel, LLC and Elder Counsel, LLC.

Mr. Flanigan devotes his practice exclusively to the counseling and representation of clients in the areas of estate planning, wills and trusts, Medi-Cal planning and probate and estate administration and has helped hundreds of families just like yours protect their assets and provide for their loved ones. Mr. Flanigan is rated as AV Preeminent® by Martindale Hubbell. This is the highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers.

In addition to his busy practice, Mr. Flanigan is a frequent speaker on estate and Medi-Cal planning topics, regularly presenting educational seminars for public as well as private groups.

**From Medi-Cal planning & Veterans Benefits to wills & trusts, we can help with all your estate planning needs.
Call 559-435-0455 or 1-888-435-0455.**



Testimonials of Appreciative Clients and Children of Clients

B., June – “I Like the People.”

B., Rod – “Everyone is very friendly.”

Rod N. – “When I signed up with Phil it was important to have Annual Review meetings. I thought the VIP program was a really good idea. I have a whole different level of peace knowing I did this for my family.

Al B. – “Phil is a great guy; Very concise and thorough. The VIP program is a 1st Class thing. And a great opportunity for all parties to our estate plan. It makes a lot of sense.”

John E. – “We were impressed with the clarity Phil Flanigan brought to the subject of estate planning and revocable living trusts in his public presentations we attended. The VIP Membership Program benefits are intended to provide participants the tools, knowledge and services to maintain and improve their estate plan. There are other amenities related to health issues in the VIP Program as well. We are pleased to know our estate plan will be reviewed annually by the Law Offices of Philip Flanigan and that amendments can be made as needed. We are pleased with the warm personal services we are receiving by Philip Flanigan’s Law Office and the knowledge that the needs of our heirs will receive the same.”

P. Marquez – “[Phil] gives a great presentation. Clear and Precise.

S. Rippie – “Was the information I gathered today useful? Yes, very.”

Harry A. – “We didn’t realize how important the Annual Review was. The information was very useful... We really needed it... We don’t want anyone taking our beneficiaries gift from them... Life just goes on, and you don’t think about all the changes that occur that can affect your [estate] plan... We really enjoyed it.”

Peggy G. – “I have only attended this one event since becoming a VIP member, but am very appreciative of the time, effort and expense that went into this evening. It was actually a very enjoyable, entertaining, summer evening. My hopes are to get my daughter and son-in-law to the next event, providing they are in town. They would be the people who might possibly be your next clients. The time that has been given me over the phone and in person is well worth the VIP fee expense. I feel I have not been slighted of time, in any way, and my questions and concerns have been addressed.

Chuck and Betty R. – “We were pleased with the way you updated our final papers. You were very thorough and covered things that we hadn’t thought about. We were impressed with your staff. Aubrey did a fine job of going over the papers with us. She was gracious and knowledgeable. We will certainly continue to tell our friends and acquaintances that you are a fine lawyer and a credit to your profession.”

June V. – “Thank you for a very memorable evening of food and film. The film was a “treasure” and I have bought, and already read the book. I told several friends and relatives about it. Also, the food was delicious. I appreciate your sharing this gift with your clients. Aubrey is always very helpful in a very professional and knowledgeable manner. You both made working with your office a pleasant experience.”

Margaret T. – “My Annual Review helped me tie-up a lot of loose-ends that I needed to take care of. It now feels like a weight has been lifted off my shoulders, especially knowing that the gifts to my children and grandchildren will be given to them in way that is protected and stays in the family. I couldn’t say enough nice things about Philip’s firm, and the way everyone has helped me. My son, who is a judge, thinks Phil is the best Estate Planning attorney around, and wouldn’t want anyone else working for our estate.”

Rod S. – “We were all impressed with the meeting and were reassured about your vast knowledge – your answers were well received by all of us.”

Anita G. – Thank you for your clear, precise and comfortable experience. I enjoyed the seminar, our meeting and business transaction. And congratulations on your new offices. Very beautiful.

WHAT IS ESTATE PLANNING?

What is an Estate?

An estate is the net worth of a person at any point in time, alive or dead. It is the sum of a person's assets including savings, possessions, property, businesses, etc. – minus all liabilities at that time. It is everything you own; minus everything you owe.

What is Estate Planning?

Estate planning is the process of arranging, during a person's life, the management and disposal of that person's estate, both during the person's life (in case of medical incapacity) and after their death (how your estate is distributed to your loved ones). It is a way of controlling how your assets are distributed or used, and it even gives you the chance to name your children's guardian in the event of your early death or incapacity.

Why is it important?

It ensures you remain in control, even after your death, of how your hard-earned wealth is distributed or used. It gives you the opportunity to decide who receives what and how they receive it, while at the same time, minimizing or even avoiding tax exposure. It allows you to protect your loved ones, ensuring their best interests are met.

What documents does an effective estate plan require?

The following documents are essential for Californians:

- Last Will and Testament to designate your beneficiaries, name your executor, and choose a guardian for your children if you and your spouse have both passed away or are incapacitated
- Durable Power of Attorney to designate someone to take care of your financial matters if you become incapacitated
- Advance Directive to designate someone who will make medical decisions if you are unable to make them yourself

- Directive to Physicians (Living will) to spell out your end-of-life wishes and care
- And potentially a Living Trust, should you wish to avoid probate and have the additional privacy a Trust provides

The following sections will look at each of these documents individually, explaining their importance in more detail.

How will we help you create an estate plan?

We are all different and it is important that time is taken to understand your personal situation. During our initial meeting, we will ask you questions that will allow us to gain a complete understanding of your full financial picture and goals. This will allow us to recommend and tailor an estate plan for your unique circumstances, wording each document precisely as you wish.

Furthermore, we believe the creation of an estate plan is an ongoing process that includes continuing education and advice for the client and their family as their circumstances and situations change.

Finally...

We also pride ourselves on our relationships with other professionals and service providers in our community. We strive to provide educational resources to our partners and work simultaneously with them to be available for their clients' needs. We also strongly believe in the "planning team concept" – ensuring planning is a collaborative effort between ourselves and the other services you may inevitably require, such as a financial advisor, Certified Public Accountant (CPA), insurance agent, and healthcare providers among others. Through these relationships, we want to ensure all clients have access to professionals that will be able to assist and guide them through their life's journeys. You will find the logos of some of those organizations featured opposite, as well as later within their relevant sections, for your benefit.

LOGOS, BUSINESS NAMES AND NUMBERS OF ALL THE ADVERTISERS

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Sierra Pacific Wealth Advisory Group
Chris Murray - 559-570-2242

For insurance advice:



DiBuduo & DeFendis Insurance brokers
Steve Ellsworth - 559-437-6560

For help with property sales:



GREimagined Properties
Nico Gentile - 559-860-9105

For help with picking an assisted living facility:



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For home care:



A-Plus In Home Care
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TEN REASONS FOR AN ESTATE PLAN

Many people think that estate planning is for someone else, not them. They may rationalize that they are too young or don't have enough money to reap the benefits of an estate "plan". But as the following list makes clear, estate planning is for everyone, regardless of age or net worth.

1. Loss of capacity. What if you become incapacitated and unable to manage your own affairs? Without a plan the court will select the person to manage your affairs. With a plan, you pick that person (through a durable Power of Attorney or Living Trust.)

2. Minor children. Who will raise your children if you die? Without a plan, a court will make that decision. With a plan, you are able to nominate the guardian of your choice.

3. Dying without a will. Who will inherit your assets? Without a plan, your assets pass to your heirs according to the laws of intestate succession (dying without a will). Your family members (and perhaps not the ones you would choose) will receive your assets without benefit of your direction or of trust protection. With a plan, you decide who gets your assets, and when and how they receive them.

4. Blended families. What if your family is the result of multiple marriages? Without a plan, children from different marriages may not be treated as you would wish. With a plan, you determine what goes to your current spouse and to the children from a prior marriage or marriages.

5. Children with special needs. Without a plan, a child with special needs risks being disqualified from receiving Medi-Cal or SSI benefits, and may have to use his or her inheritance to pay for care. With a plan, you can set up a Special Needs Trust that will allow the child to remain eligible for government benefits while using the trust assets to pay for non-covered expenses.

6. Keeping assets in the family. Would you prefer that your assets stay in your own family? Without a plan, your child's spouse may wind up with your money if your child passes away

prematurely. If your child divorces his or her current spouse, half of your assets could go to the spouse. With a plan, you can set up a trust that ensures that your assets will stay in your family and, for example, pass to your grandchildren.

7. Financial security. Will your spouse and children be able to survive financially? Without a plan and the income replacement provided by life insurance, your family may be unable to maintain its current living standard. With a plan, life insurance can mean that your family will enjoy financial security.

8. Retirement accounts. Do you have an IRA or similar retirement account? Without a plan, your designated beneficiary for the retirement account funds may not reflect your current wishes and may result in burdensome tax consequences for your heirs. With a plan, you can choose the optimal beneficiary.

9. Business ownership. Do you own a business? Without a plan, you don't name a successor, thus risking that your family could lose control of the business. With a plan, you choose who will own and control the business after you are gone.

10. Avoiding probate. Without a plan, your estate may be subject to court delays and excess fees and your assets will be a matter of public record. With a plan, you can structure things so that probate can be avoided entirely. This will assure that your assets pass to your heirs as quickly and efficiently as possible.

As you can see, estate planning really is for everyone. Whether you have a little or a lot, taking steps to assure that your wishes are made known will give you the peace of mind in knowing that your affairs are in order. Taking steps now will help minimize delays, minimize costs and help make sure that your heirs do not fight over your assets once you are gone. Call and schedule your free consultation today and be on your way to achieving peace of mind through a well planned estate.



LAST WILL AND TESTAMENT

What is a Last Will and Testament?

A Last Will and Testament is a legally binding document that allows you to decide how your estate will be distributed upon your death. It will also help ensure that your wishes are carried out and your legacy lives on for generations to come.

Do I need a will?

Yes, a will is a basic estate planning tool that every person should have.

Why? What happens if I die without a will?

If you die without a will, it means you have died "intestate." So, rather than your estate being handled the way you would have wanted, the intestacy laws of the state will determine how your property is distributed. In most cases, this means your loved ones are not guaranteed to benefit in the way you would have hoped. See the chart opposite to see how the California state intestacy laws would affect you and your family.

How does a will work?

Once you have an idea of what all your assets are, you then decide who receives what after your death. Furthermore, you should also use your will as an opportunity to make your wishes known on other important details, such as appointing a guardian for any minor children you have and making your wishes known regarding your funeral, burial or cremation and/or memorial. Within your will, you will also appoint an individual to act as your "executor," making it their responsibility to administer your estate.

What are an executor's responsibilities?

An executor is responsible for many things. It is their responsibility to act in a manner that protects the interest of your estate. This includes resolving

all debts and obligations to any taxing authorities and any creditors claims, tax returns, non-probate property, inventory, and distributions.

What will happen on my death?

Upon death, it is required that your will be filed with the appropriate probate court, which will begin the probate process.

What is probate?

Probate is the process of administering someone's estate upon their death. Even if you have a will, you still need to go through this legal process. It essentially involves:

- Filing the will with the probate court, or if the person died without a will, someone would have to petition the probate court to become an administrator of their estate
- Collecting details of the deceased's assets (filed with the court as a list, called the inventory)
- Pay all outstanding bills and taxes
- Filing an income tax return for the deceased
- Distribution of the assets (this can take up to a year and some will be retained as a reserve for unexpected claims and costs)
- Filing a final account with the probate court
- when approved, it will allow the executor / administrator to distribute any remaining funds to the beneficiaries

What are the benefits and limitations of having a will?

A will is an estate planning tool that ensures your estate is distributed the way you want it to be. However, it is still subject to the probate process, which can be time consuming and is subject to public record.

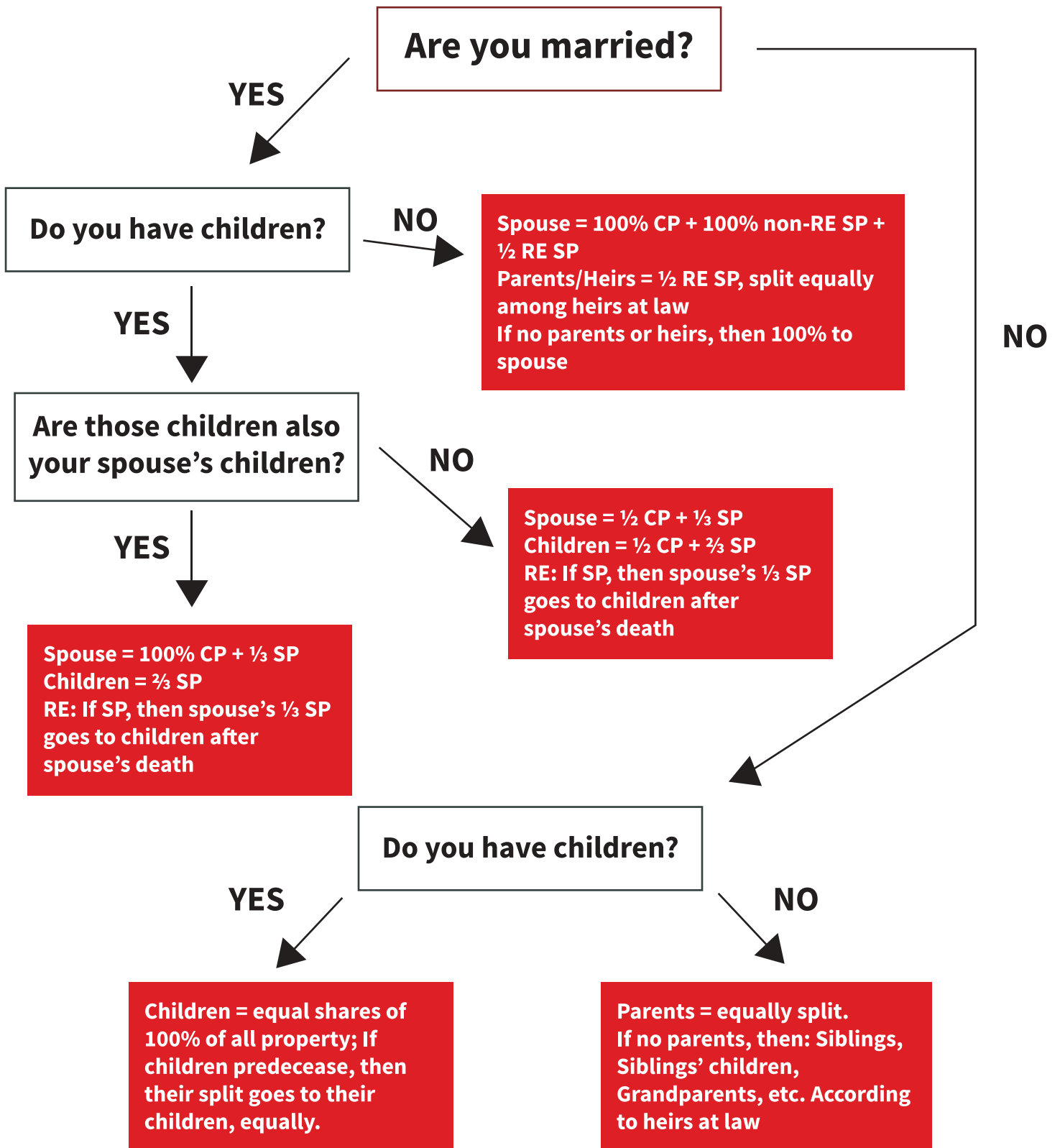
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DIAGRAM / FLOW CHART DEMONSTRATION HOW INTESTACY WORKS



CP= community property | SP=Separate property | RE= Real Estate

TRUSTS

What is a trust?

Trusts are important tools in estate planning. Depending on the type of trust established, it can serve many purposes: to decrease tax liabilities, to protect accumulated funds from creditors, and to protect privacy, since trusts, unlike wills, are not public documents. A trust is legally defined as a relationship in which property is held by one party for the benefit of another. A trust is created by the owner, also called a “settlor” or “trustor” who transfers property to the trustee, an individual chosen to manage the designated funds for the trust’s beneficiaries.

What are the different types of trust we offer?

Revocable Trusts are also known as living trusts; as such they can be altered or revoked throughout your lifetime. The price of this flexibility is that the revocable trust remains part of your estate and can therefore be taxed. Even so, when you die, the revocable trust will become irrevocable and the property held in trust will be passed on to your beneficiaries. Two major advantages of revocable trusts are that:

- [1] they avoid probate and
- [2] they preserve your financial privacy since, unlike wills, they are not public record.

Irrevocable Trusts cannot be revoked once they have been created. Examples of irrevocable trusts are trusts for minors, insurance trusts, and charitable trusts. Though they are permanent and do not give you the flexibility of revocable trusts, they are advantageous in terms of taxation and asset protection.

Trusts for Minors are established to protect a minor child until he or she reaches adulthood. While some minors trusts provide specific benefits to the minor during childhood, others designate that the funds are only to be distributed when the minor reaches adulthood. Some have restrictions that only permit the minor to inherit funds when he or she reaches a particular age or achieves a particular goal, like finishing college.

Special Needs Trusts (also known as Supplemental Needs Trusts) are created to protect individuals who are disabled in a way that prevents them from consistently managing their own finances. The beneficiary may be cognitively or psychiatrically disabled to the point that he or she is incapable of using money in a reasonable way. The trustee of a special needs trust is tasked with distributing the money gradually so that the vulnerable individual will have enough money for the rest of his or her life. The trustee also manages the funds so that the special needs person does not “own” them and is therefore still eligible to receive government benefits like Medicaid.

Spendthrift Trusts protect irresponsible beneficiaries from their own potential bad decisions. Individuals who are addicted to alcohol, drugs, gambling, or tend to go on shopping sprees need someone else (the trustee) to keep them from having access to a large sum of money. The trustee is given the power to dispense assets in reasonable amounts for rational purchases. In other words, the trustee’s sound judgment substitutes for the spendthrift’s questionable one.

Testamentary Trusts are designed to go into effect after you pass away. They can hold assets you have amassed during your lifetime as well as assets that are only distributed upon death, such as life insurance proceeds or funds from a wrongful death settlement.

Charitable trusts, as mentioned earlier, are irrevocable. In California, a charitable trust receives favorable federal tax treatment. In California, you have the added advantage of not having to pay state income tax. We can set up your charitable trust as a remainder trust which means that you and your family retain the income generated by the amount given to charity. In some cases, we can arrange for the surviving spouse to receive the remainder of the benefits when the first spouse dies.

Pet trusts allow you to ensure that your beloved pet will be well cared for during its lifetime, even if you predecease your pet or become too incapacitated to care for them yourself.

Will or Trust - Which is Better?

What is important to you?	Will: What happens	Trust: What happens
Privacy	No privacy. All documents and proceedings after death are public.	Completely private unless court intervention is required, usually due to improper drafting, lack of funding or loss of trustee.
Disability Planning	No provisions for mental or physical disability. Need a power of attorney, updated every 2 years. A power of attorney cannot provide that disability be determined privately by family members and friends. Without one, the disabled individual is subject to the court process for guardianship.	Handles assets upon disability without court intervention. Need a power of attorney for non-trust assets. A trust can provide that disability be determined privately by family members and friends.
Creditor/Predator Protection	None while alive. Creditors have only a specified amount of time to present claims or they are forever barred. Testamentary trusts can give protection.	None while alive. There is no creditor claim "shut-off" period and most trusts provide that valid debts be paid. Trusts which become irrevocable at death can give protection
Effort Required	Less effort now unless you require tax planning and asset protection for your heirs, but a great deal of work for your heirs after disability or death.	More effort now to properly design the trust to accomplish all of your goals upon disability and/or after death, but far less work for your heirs after disability or death.
Cost Now	Less	More
Cost to Amend	Similar	Similar
Cost Later	Probate fees start around \$2,000 in Texas and increase depending on creditor claims, disputes and litigation.	Minimal probate fees if the trust has been fully funded and properly maintained.

POWER OF ATTORNEY

What is a power of attorney?

A Power of Attorney is a document in which an individual appoints someone to serve as their Attorney in Fact (also known as their Agent), or in other words, to make decisions on their behalf. There are different types that cover decision making in different aspects of your life. The two that we recommend are an Advance Directive and a durable power of attorney.

What is an Advance Directive?

Also known as a healthcare power of attorney, this allows you to appoint someone you trust to make medical decisions for you if you cannot do so. It is different than a living will since a living will only covers terminal illnesses and irreversible medical conditions, while an Advance Directive covers all healthcare decisions.

What is a durable power of attorney?

This allows you to appoint someone you trust to handle your affairs (i.e. legal and financial decisions) if you cannot do so. Why does an estate plan need a power of attorney? A power of attorney is an essential estate planning tool because not only does it allow you to choose who you want to act on your behalf should you become incapacitated, but it is also your opportunity to dictate what decisions they can or cannot make. If you cannot pay bills, get records, or make other decisions, your family will be prevented from helping you get treatment, pay doctors, or get qualified for Medi-Cal.

What happens if I become incapacitated without a power of attorney?

Without a power of attorney, your family may have to file what is known as an Application for Appointment of Conservator, seeking conservatorship of the disabled person. This process involves court hearings, multiple lawyers and is a very costly process. The cost of a proper estate plan is minimal compared to the amount you may spend in court fees. See the diagram on the next page for a comparison of the two processes.

In summary, what are the benefits and limitations of a power of attorney?

They are an essential estate planning tool because they are relatively inexpensive and they ensure that your family does not have to go through the costly and time-consuming process of applying for conservatorship should you become incapacitated.

Due to the potential power the person you appoint will have over your life; it is important you choose wisely.



POA vs. Conservatorship

Conservatorship

- No retained rights
- Difficult to revoke
- Invasive
 - Establishment
 - On-Going Reports
- Psychological effect on Allegedly Incapacitated Person

POA

- Retained Rights
- Easily revocable
- Privacy
- Does not protect against bad decisions
- Relatively inexpensive
- May be a “temporary fix”

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DIRECTIVE TO PHYSICIANS (LIVING WILL)

What is a living will?

A Directive to Physicians, also known as a living will, is a document within which you can state your wishes regarding end-of-life medical care and what treatments you would or would not like to receive. They become relevant if there comes a time when you are unable to make or communicate your own decisions. It allows you to refuse treatment, even if this might lead to your death.

Do I need a living will?

It is tempting to think that a living will is only needed by seniors, however, even healthy young adults can be injured or become unexpectedly ill. Because of this, we believe that a living will is a crucial part of every estate plan because it ensures you will have the peace of mind that comes from knowing that your wishes will be followed and your family will have some comfort during a stressful time, knowing they are doing what you want. Should the worst happen, your parents or spouse are the people most likely to be faced with these terrible decisions at a difficult time. When you create a living will, you take some of the burden off of your loved ones.

Why? What could happen if I do not have one?

Medical staff are duty bound to use everything within the powers of modern medicine to keep a patient alive as long as possible. This means, if you are unable to communicate your decisions, your life will be preserved without necessarily considering yours or your family's opinions and concerns.

How does a living will work?

If you are conscious and capable of making decisions, your living will cannot come into effect. Furthermore, someone cannot just declare you as unfit, unconscious, or unable to make decisions; it needs to be a true medical condition and agreed upon by a medical professional. Discussing your living will and your wishes with your doctor ahead of time can help ensure your needs are met and that he or she is willing to comply with the medical decisions you have outlined.

Can a living will be changed?

Yes, you can choose to either revoke it or make changes to it at any time by meeting with an estate planning attorney.



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ELDER LAW

What Is Elder Law?

Elder Law is an area of law that concentrates in representing, counselling and assisting seniors, people with disabilities and their families in connection with a variety of legal issues, from estate planning to long term care issues, with a primary emphasis on promoting the highest quality of life for the individuals. Typically, Elder Law attorneys address the client's perspective from a holistic viewpoint by considering legal, medical, financial, social and family issues.

Why is it important?

The Census department reports that the number of people age 65 and older in the United States on July 1, 2019 was 54 million. This group accounted for 16.5% of the total population. Furthermore, they predicted that the projected population of people age 65 and older in 2060 would be 98.2 million. People in this age group will comprise nearly 25% of U.S. residents. Of this number, 19.7 million will be age 85 or older. As we are living longer, it is important we take steps and measures to ensure the quality of our life and living standards are maintained, not just for ourselves, but also our loved ones, whose lives are impacted too. Elder law is one response to this, its purpose being to help elderly people and their loved ones take control of their various issues facing them as they age.

What differentiates Elder Law attorneys from others in the legal profession?

Qualified Elder Law attorneys bring a different perspective to the delivery of services to their clients. Elder Law attorneys use a holistic, multi-disciplinary approach to help seniors, people with disabilities and their families in a caring, compassionate way that seeks to preserve dignity for such individuals. Elder Law attorneys look at what is best for the aging client from all points of view, and are able to address these issues in an objective way.

What problems can be created by not taking these steps and measures?

The costs of long-term care are extremely expensive, so it is common for people who have not planned ahead to see all the assets they have accrued over their life spent on covering these costs. This means any hopes of passing down assets to your family and loved ones will also be threatened.

How do I create a plan to deal with these issues?

We are all different and it is important that time is taken to understand your personal situation. During our initial meeting, we will ask you questions that will allow us to gain a complete understanding of your full financial picture and goals. This will allow us to recommend and tailor an estate plan for your unique circumstances. Furthermore, we believe the creation of an estate and later-in-life plan is an ongoing process that includes continuing education and advice for the client and their family as their circumstances and situation changes.

Services include:

- Revocable Living Trusts
- Simple Wills
- Probate Services
- Guardianships and Conservatorships
- Financial Powers of Attorney
- Medical Care Powers of Attorney
- Medi-Cal Planning



MEDI-CAL v MEDICARE

1. Medicare

Medicare is a federal insurance program paid out of Social Security deductions. All persons over 65 who have made Social Security contributions are entitled to the benefits, as well as disabled workers who have been eligible for Social Security disability benefits for at least two years.

Medicare has several parts including Hospital Insurance (Part A) and Medical Insurance (Part B). Those persons eligible for Social Security or Railroad Retirement benefits as workers, dependents or survivors, are eligible for Part A, Hospital Insurance, when they turn 65. If a person has not worked long enough to be covered for benefits, s/he may enroll in Part A and pay a monthly premium. If Medicare Hospital Insurance is purchased, that person must also enroll in Part B, Medical Insurance. Participants in the Medicare program are liable for co-payments and deductibles as well as for monthly payments for Part B coverage. Medicare is not based on financial need. Anyone who meets the age, disability and/or coverage requirements is eligible.

Medicare does not pay for all medical expenses, and usually must be supplemented with private insurance ("medigap") or consumers can enroll in an HMO plan that contracts with Medicare. After 3 days of prior hospitalization, Medicare will pay up to 100% for the first 20 days of skilled nursing care. For the 21- 100 days, the patient will pay a co-payment. The premiums and copayments are increased every year. There will be no Medicare coverage for nursing home care beyond 100 days in any single benefit period.

It should be noted that Medicare only pays for "skilled nursing care," does not pay for "custodial care" and the average stay under Medicare is usually less than 24 days. Thus, few can look to Medicare to pay for any substantial nursing home costs.

2. Medi-Cal

Medi-Cal is a combined federal and California State program designed to help pay for medical care for public assistance recipients and other low-income persons. Although Medi-Cal recipients may receive Medicare, the Medi-Cal program is not related to the Medicare program. Medi-Cal is a need-based program and is funded jointly with state and federal Medicaid funds.



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MEDI-CAL ELIGIBILITY

SSI and other categorically-related recipients are automatically eligible. Others, whose income would make them ineligible for public benefits, may also qualify as “medically needy” if their income and resources are within the Medi-Cal limits, (current resource limit is \$130,000 for a single individual.

This includes:

- Low-income persons who are 65 or over, blind or disabled may qualify for the Aged and
- Disabled Federal Poverty Level Program
- Low-income persons with dependent children
- Children under 21
- Pregnant women
- Medically indigent adults in skilled nursing or intermediate care or those who qualify for
- Medi-Cal funded home and community based option programs.



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SHARE OF COSTS

The State sets a “maintenance need standard”. Since January 1, 1990 the maintenance need standard for a single elderly/disabled person in the community has been \$600 monthly; the Long Term Care maintenance need level (i.e., personal needs allowance when someone is in a nursing home) remains at \$35 monthly for each person.

Individuals whose net monthly income is higher than the state payment rate may qualify for the program if they pay or agree to pay a portion of their income on monthly medical costs. This is called the share of cost.

Individuals eligible with a share of cost must pay or take responsibility for a portion of their medical bills each month before they receive coverage. Medi-Cal then pays the remainder, provided the services are covered by the program. This works much like an insurance deductible. The amount of the share of cost is equal to the difference between the “maintenance need standard” and the individual’s net non-exempt monthly income.

Other Deductions From The Share Of Cost:

In addition to the “any income deduction” and the monthly maintenance needs allowance, any monthly medical premiums can also be deducted before the share of cost is determined. Other deductions can also be made, depending on the circumstances.

For example, under a legal settlement, *Hunt v. Kizer*, recipients may use old, unpaid medical bills for which the beneficiary is still legally responsible to reduce the monthly Medi-Cal share of cost. Some original documentation showing the billing statement is an outstanding balance should be provided to the County eligibility worker. The Share of Cost will be adjusted to reflect the cost of the outstanding balance, which could, for example, mean no share of cost until the old, unpaid bills are paid off. This is not automatic and should be discussed with the eligibility worker upon application for Medi-Cal. Under the *Johnson v. Rank* settlement, recipients may use their share of cost to pay for medically necessary supplies, equipment or services not covered under the Medi-Cal program. A current physician’s prescription is necessary and must be put in the recipient’s record at the facility. This prescription must be a part of the physician’s plan of care. After a copy of the prescription and the bill is presented to the facility, the facility will deduct the cost from that month’s share of cost and bill the resident for the remaining share of cost.

RESOURCE LIMITATIONS (PROPERTY/ASSETS)

To qualify for Medi-Cal the recipient must demonstrate that s/he has limited resources available. Effective July 1, 2022, the property limit for one person is \$130,000.

Medi-Cal classifies property as “exempt” and “non-exempt”. Exempt property is not counted in determining eligibility; non-exempt property is counted. If the applicant has more than \$130,000 in non-exempt property, he/she will not be eligible, unless the property is spent down for adequate consideration before the end of the application month.

The following property is generally exempt and, therefore, not counted in determining eligibility:

- **The Home:** totally excluded, if it is the principal residence. Includes mobile home, houseboat, or an entire multi-unit dwelling as long as any portion serves as the principal residence of the applicant. The property remains exempt if a person in a nursing home or the person’s representative expresses an intent to return home on the current Medi-Cal Application and Statement of Facts, or if an “exempt” individual resides in the home, such as a spouse, a minor, blind or disabled child (of any age) or a sibling or son or daughter who has lived in the home continuously for at least one year before the applicant entered a nursing home. Note that when the home is exempt, it can be transferred without penalty and without affecting the Medi-Cal eligibility.
- **Other Real Property:** can be exempt if the net market value of the property (minus any encumbrances such as mortgages, loans, etc.) is \$6,000 or less and the beneficiary is “utilizing” the property, i.e., receiving yearly income of at least 6% of the net market value. Property used as a business can also be exempt if it meets the standards under the program, i.e., it is actually used as a business, reported to the IRS as such, etc.
- **Household Goods and Personal Effects:** totally exempt.
- **Jewelry:** for a single person, wedding, engagement rings and heirlooms are totally exempt and other items of jewelry with a total net market value of \$100 or less are exempt; for spouses, when one spouse is in a nursing home, there is no limit on exempt jewelry for determining institutionalized spouse’s eligibility.
- **Cars/motor Vehicles:** one car is generally exempt if used for the benefit of the applicant/beneficiary or if needed for medical reasons.
- **Whole Life Insurance:** policies with a total face value of \$1,500 or less. If the total face value of the policy or policies exceeds \$1,500, then the cash surrender value of the policies is counted toward the \$130,000 cash reserve. If the cash surrender value exceeds the \$130,000 cash reserve, the applicant will not be eligible unless, he/she reduces the value of the policy.
- **Term Life Insurance:** totally excluded.
- **Burial Plots:** totally excluded.
- **Prepaid irrevocable burial plan of any amount and \$1,500 in designated burial funds:** There is no limit on the amount of the irrevocable burial fund, but the \$1,500 in designated funds must be kept separate from all other accounts. Accumulated interest on burial funds is also exempt.
- **IRAs and work-related pensions:**
In applicant’s/beneficiary’s name: The balance of the IRA or the pension is considered unavailable if applicant/beneficiary is receiving periodic payments of interest and principal.
In spouse’s name: The balance of the IRA or Pension fund is totally exempt from consideration and is not included in the community spouse resource allowance (CSRA).
- **Non work-related annuities:**
Annuities purchased prior to 8/11/93: Balance is considered unavailable if applicant/beneficiary is receiving periodic payments (of any amount) of interest and principal.
Annuities purchased between 8/11/93 and 3/1/96: Annuities purchased between 8/11/93 (the date the federal law changed) and 3/1/96 (the date California law changed) that cannot be

restructured to meet the new requirements will continue to be treated under the old rules (see above). Written verification from the company or agent who issued or sold the annuity must be obtained stating that the annuity cannot be restructured.

Annuities purchased on or after 3/1/96 by the applicant or the applicant's spouse: the individual and/or spouse must take steps to receive periodic payments of interest and principal; payments must be scheduled to exhaust the balance of the annuity at or before the end of the annuitant's life expectancy. Annuities structured to exceed the life expectancy will result in denial or termination of benefits due to transfer of non-exempt assets.

Note: Annuities purchased by the applicant/beneficiary on or after 9/1/04 will be subject to Medi-Cal recovery when the beneficiary dies.

- **Cash reserve:** Applicant/beneficiary may retain up to \$130,000 in liquid assets, e.g., savings, checking, excess cash surrender value of life insurance.
- **Community Spouse Resource Allowance (CSRA):** Community (at home) spouse may retain up to \$137,400 (as of 1/1/2022) in liquid assets, not including the home and other exempt assets, such as IRAs and retirement funds.

Any assets above the property reserve limit of \$130,000 or \$137,400, in the case of a community spouse, or any asset that is not exempt will be counted by Medi-Cal in determining eligibility.

SPENDING DOWN

An individual whose personal property is above the Medi-Cal resource limit may spend down to \$130,000. Resources must be reduced to the property limit for at least one day during the month in which a person is establishing eligibility. Giving away resources may render a person ineligible for a period of time running from the date of the transfer.

Penalties for transferring or gifting away assets only apply if a Medi-Cal beneficiary or applicant enters a nursing home. If an applicant lives at home and gifts away property, the penalty will not apply. A Medi-Cal applicant can give away assets and still be eligible for Medi-Cal depending on when the asset was transferred, the value of the transfer and whether he or she enters a nursing home. The transfer rules are triggered when a person enters a nursing home and applies for Medi-Cal. The Medi-Cal application will ask if the applicant transferred any assets within the 30 months prior to the date of the application. The transfer rules apply only to non-exempt (countable) assets.

A transfer of non-exempt assets can result in a period of ineligibility. But, with correct legal guidance, the penalty period can be reduced if not completely eliminated.

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MEDI-CAL RECOVERY

After the Medi-Cal beneficiary's death, the state can make a claim against the estate of an individual who was 55 years of age or older at the time he or she received Medi-Cal benefits or who (at any age) received benefits in a nursing home, unless there is a surviving spouse or a minor, blind or disabled child. Thus, if there are any assets left in the estate of the deceased beneficiary, Medi-Cal will seek to be reimbursed for benefits paid. It is important to note that, even if you received Medi-Cal at home, any benefits paid while you were 55 years of age or older will be subject to Medi-Cal recovery.

How Much Can The State Recover?

California's definition of "estate" is limited to a decedent's probate estate. Thus, as long as probate is avoided there will be no estate recovery. (Effective January 1st, 2017)

However, the amount of recovery is limited to the amount of benefits paid or the value of the beneficiary's estate, whichever is less. For example, if the appraised value of your home is \$200,000 and you left it in joint tenancy with your three children, the state can only collect up to \$50,000, which is your part of the estate – even if the Medi-Cal benefits paid to you is more than \$50,000. The value of the estate is also reduced by any outstanding mortgages or debts on the home. For example, if the home had an outstanding mortgage of \$100,000, this reduces the value of the estate to \$100,000 (the appraised value of \$200,000, minus the mortgage). This, in turn, reduces the amount of the estate claim to \$25,000. (The value of the home (\$100,000) divided by the four joint tenants.) Deducting the amount of burial costs or estate settlement costs can also reduce the claim.

When the state files an estate claim, they are also required to send an itemized billing of benefits paid over your lifetime. It is important to review the billing to see if there are any errors. As of September 1, 2000, the state ceased collecting for the amount of In Home Supportive Services (IHSS) paid. Thus, if IHSS services are included in the itemized billing, the collection representative should delete this from the billing.

Are There Any Exceptions To A Recovery Claim?

- **Surviving Spouse:** The state is prohibited from recovery if a surviving spouse of a deceased Medi-Cal beneficiary is alive.
- **Minor, Blind or Disabled Child:** If a minor child or a blind or disabled child of any age survives the beneficiary, a claim is prohibited by federal law. The surviving child or his/her representative only needs to send proof, such as a birth certificate, that they are the child of the decedent and, in the case of disability, documentation of disability or blindness, such as a Social Security or SSI award letter. If the surviving child does not have documentation of disability from the Social Security Administration, he/she can still file for a disability determination with the Department of Health Services. It is important to note that the surviving child does not have to live in the home (or even in the state, for that matter) in order for recovery to be barred.
- **When There is Nothing Left in the Estate:** Since most deceased Medi-Cal beneficiaries leave nothing but their homes, it is most important to look at the deed to the property. Whose name was on the property at the date of death? If the beneficiary transferred the property outright prior to death, then send a copy of the deed, along with a letter explaining that the beneficiary left nothing in his/her estate and ask that the case be closed. If the beneficiary left any funds in an account, these funds must be paid to the state, after documented expenses are deducted, unless there is an exempt survivor or unless you file for a hardship waiver.



There Are Ways To Use Estate Planning To Prevent Spending Down Your Life Savings Due To The Tremendous Cost Of Long Term Nursing Care.

You may have heard this described as “Medicaid” or “Medi-Cal” planning. Medicaid and Medi-Cal are the federal and state government agencies that pay for long term nursing home care for those who qualify. Qualifying for Medicaid or Medi-Cal is based on certain financial criteria, including your income and assets. Some people think that only poor people can qualify – in reality, many people can qualify if they plan ahead.

We Are Experts In This Type Of Planning, And We Can Develop A Plan For You To Be Able To Qualify For Medicaid/ Medi-Cal When You Need It.

These planning strategies are legal, legitimate and proven. You can leave your home and your assets to your family, instead of giving them to the government! If you or someone you love may need nursing home care soon, we can help. If someone you know is already in a nursing home, it is not too late to plan. If done correctly, assets can still be legally protected.

SOURCING SUITABLE PROVIDERS OF CARE

What are the different forms of care available?

Home Health Care Providers - Healthcare agencies are becoming more and more common and a more popular alternative. They can provide anything from companion services to skilled nursing services on an a la carte basis. Many families feel paying for 4 to 8 hours a day for assistance from a home healthcare agency is a preferred method of starting the process of getting the care for their parents. If a family member does not require around the clock skilled nursing care, this part-time arrangement usually works well.

Assisted Living Facilities - The assisted living industry has experienced tremendous growth over the last 10 years. These facilities usually provide room, board and around-the-clock availability of a nurse while others provide assistance with the activities of daily living. Usually a person can remain in an assisted living facility as long as whatever assistance they require can be provided by one person. Most of these facilities usually charge somewhere around half of what the cost of a nursing home would be.

Senior Citizen Apartments - Senior citizen apartments have generally been around longer than assisted living facilities and can vary greatly. They can be as simple as providing apartment-style living for people over age 60 but these facilities generally do not provide medical services and they may or may not provide cleaning services. Generally, they do provide transportation and they do have somebody on call in the event of an emergency.

Memory Units - With people living longer, more and more people are living with some degree of dementia or Alzheimer's. Many assisted living facilities have memory units where everything is generally the same as an assisted living apartment but the stove is removed to prevent a cooking hazard, there is increased awareness by the staff of the potential memory-related issues and the outside doors are typically alarmed so that staff can be alerted in the event the senior attempts to leave the facility.

Nursing Homes - Residents in a nursing home require around the clock care and monitoring. They typically live with more complex health care conditions that require the assistance of a skilled nurse or a physical or speech therapist. Some require respiratory care services.

Does Medicaid cover all the different types of care mentioned above?

Every state has different regulations regarding what is and is not covered. However, as part of your consultation, we will be happy to explain exactly what types of coverage are included and also help you source reputable local facilities and organizations that accept Medicaid contributions, some of which we have featured opposite for your benefit.

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FINANCIAL PLANNING

As explained at the beginning of this guide, estate and later-in-life planning will require the input of professionals from a variety of different sectors. A financial advisor helps you create strategies for managing financial risk and building wealth over the long term. They can give you a plan that puts you on track to achieve your financial goals. Typically, this will include:

Retirement and pension planning – with people living longer lives, it is important to have a plan in place for retirement. Typically, this will involve one or more pension products, which a financial advisor will be able to assist you with.

Mortgage advice – purchasing a property, for most people, will be the largest purchase they make and will typically involve borrowing money in the form of a mortgage loan. Furthermore, more and more people are choosing to invest in property, using buy-to-let mortgages or accessing funds later in life through equity release, which is a type of loan secured on a property. A financial advisor will be able to organize and advise you on the various products and lenders available to you.

Savings and investments - there are a variety of ways in which you can choose to invest your money ranging from placing it in a bank account to investing in shares on the Stock Market. A financial advisor will listen to your goals as well as assess your attitude towards financial risks, before advising you on the various products and services that best match your overall goal.

Insurance and protection – these are covered in more detail in the following section.

Can you cancel a funeral plan? Yes, the contract can be cancelled by giving written notice to the seller. The seller will then send you the required cancellation forms which must be completed and returned to the seller. The seller has 30 days from receipt of the completed forms to refund the cancellation benefit. If the contract cancelled is an insurance-funded contract, the cancellation benefit will be the cash surrender value of the policy. If the contract cancelled is a trust-funded contract, the cancellation benefit in most cases will be the amount paid in less 10% of the total face value. Additionally, purchasers of contracts sold after September 1, 2001 are entitled to receive 50% of the net accrued earnings upon cancellation provided the purchaser has complied with the terms of the contract and the contract was outstanding more than one year. A purchaser cancelling a prepaid funeral contract sold before September 1, 2001 is not entitled to any accrued earnings.

PLEASE NOTE...

There are various Federal and State organizations that regulate the activities of financial advisors by providing them with strict guidelines regarding how they can operate. We can confirm that the companies featured in this guide are registered with the necessary Federal and State regulators and therefore have demonstrated their adherence to their guidelines and are featured here for your convenience, however, you are under no obligation to use them.

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Christopher Murray

Chris, a CFP® professional, has been helping individuals, small businesses, and institutions achieve their financial goals since 1994. Chris and his team will analyze your goals, taking into account your current portfolio and financial situation, and recommend an investment strategy designed to meet your risk tolerance and achieve your objectives.

An independent firm, built on integrity and honesty, we embrace a client-centered strategy focused on your needs. We take the time to listen carefully to understand what's most important to you, while taking an educational approach to help you understand effective and personalized financial strategies for retirement planning.

Achieving Goals

“An investment in knowledge pays the best interest.” –Benjamin Franklin

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INSURANCE

There are a variety of different insurance products available that can help protect every aspect of your life and that of your family's.

Health Insurance

Getting sick can be expensive. Even minor illnesses and injuries can cost thousands of dollars to diagnose and treat. Major illnesses can cost many times that. Health care coverage helps you get the care you need and protects you and your family financially if you get sick or injured. Health insurance can be provided through your job, provided through a government program like Medicare or Medicaid, or if you do not qualify for those, you may purchase a private healthcare plan.

Life Insurance

We all want to protect what is important to us - our home and our loved ones. Dying is obviously not on your to-do list, but the reality is if anything happened to you, life insurance pays out a lump-sum, which will help ensure your family does not have to worry about money.

Long-Term Care Insurance

This is insurance that is designed to help people pay the costs of long-term care. However, such insurance is not a cure-all because individuals with pre-existing conditions may not be eligible, premiums are expensive, policies have high deductibles and the services covered varies from insurer to insurer.

Critical Illness Insurance

This insurance pays out a lump sum, or regular payment, if you are diagnosed with a serious illness specified in your policy, giving you peace of mind to help you concentrate on getting better.

Income Protection Insurance

This offers short-term and long-term disability coverage that protects your income by paying a percentage of your pay check if you become disabled and can't work due to a medical illness, injury, or pregnancy.

Mortgage Protection Insurance

This is insurance specifically designed to protect a mortgage, ensuring that your family home is secured, with the mortgage paid off, in the event of your death.

Please Note...

There are various Federal and State organizations that regulate the activities of financial and insurance advisors by providing them with strict guidelines regarding how they can operate. We can confirm that the companies featured in this guide are registered with the necessary Federal and State regulators and therefore have demonstrated their adherence to their guidelines and are featured here for your convenience, however, you are under no obligation to use them.

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TAX PLANNING

Should you work with a CPA long before your estate needs to be distributed or finalized?

The answer is generally yes and here are a few of the most important reasons why:

They will help reduce taxes

Your estate may or may not be subject to taxes upon your passing. While the threshold for owing federal estate taxes is high, an estate with such features as a business, substantial amount of real estate, or other expected inheritances can surpass the taxable minimum over the years due to changes in legislation. An accountant is also up-to-date on tax law changes that could affect your estate. With recent tax reform through the TCJA (Tax Cuts and Jobs Act), even existing estate plans – especially those involving spouses – may need to be updated to avoid potential problems later on.

They can aid in Trust planning

Do you know how to deploy trusts within your estate plan? Trusts are legal tools you can use for a variety of purposes, including preparing arrangements in case you are incapacitated and cannot make your own financial decisions. Trusts are also used for the ongoing care of someone with special needs, minor children, or even adult children who need more structure in their financial assets. An attorney can help set up Trusts, but a CPA will aid you in ensuring you follow the tax rules, understand and file proper tax forms, and use the right type of Trust. For instance, the income earned by a Grantor Trust is often taxable to the grantor, if not sufficiently decoupled from your control. These distinctions are important if you want to protect your financial interests.

They may advise early actions

Not all estate planning activities happen within your Will or Trust. Many people also find that making some smart moves now will help everyone down the line. For instance, if your estate may exceed the tax exemption, the CPA may suggest using the gift tax exclusion to give money annually to heirs in advance. If the fair market value of your business could be the problem, you may diversify ownership or alter the business entity now in order to reduce the value of your stake in it.

They can help your trustee

The intended trustee of your estate will have a big job ahead of them. How prepared are they for their responsibilities? Most trustees are unfamiliar with what they need to do and will have a lot of responsibilities during a difficult time. If you're proactive about working with them, you increase the likelihood that your wishes will be carried out and that everyone will experience a smooth transition. The CPA will develop a relationship with the trustee to ensure any of their questions are answered and the CPA can provide practical help filing a final tax return and estate forms.

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PROBATE AND TRUST ADMINISTRATION

If you have a loved one who has passed away, and you need guidance on what to do next, we can help.

IF YOUR LOVED ONE PASSED AWAY WITH NO ESTATE PLAN OR A WILL...

Dying without an estate plan is called dying intestate. The estate will be subject to state intestacy laws and go through probate court. This means the division and distribution of the estate will be subject to a predetermined formula, usually providing half of the estate to a spouse and the remaining half allocated in equal portions to the biological children. A will guarantees probate. The probate court will take over at the time of death to make sure debts are paid, assets are distributed to heirs, and any loose ends are taken care of. All property that is controlled by the will must go through the probate court. It is a demanding and challenging job, with many deadlines to be met, most of which are within nine months of the person's death — the mourning period for the family.

Depending on the size of the estate, the complexity of the estate plan, and the nature and extent of the assets involved, there may be additional demands placed on the executor. However, we can help smooth the process.

IF YOUR LOVED ONE CREATED A LIVING TRUST...

Your family will go through a process called trust administration. Upon death, the successor trustee must take steps to distribute trust assets to beneficiaries and fulfill any other obligations of the trust. Here at The Law Office of Philip M Flanigan, PC we serve as counsel to the trustee and provide assistance with the administrative duties required of the trustee, as well as help them take advantage of any benefits offered by the trust. When a trust is not administered properly, the trustee runs the risk of causing the beneficiaries to pay penalties or additional fees.

For advice and help administering an Estate or Trust, please contact us today on either (559)-435-0455 or 1-888-435-0455.

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THE NEXT STEPS

We hope this guide has proved to be informative and helped you realize the benefits you will receive by taking a pro-active approach to planning for the future of yourself and your loved ones.

Please bear in mind, this guide is simply an introduction to the field of estate planning and does not constitute, nor should it be considered as being, legal advice.

If you are ready to start the process of securing your family's legacy, then contact us today to schedule your FREE Consultation:

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