

Estate Planning Basics and Nuances, a Short Recap

Talk given Sat. Sept. 22, Novato, CA

Joining in this discussion were attorney Stacy Turner; CPA Tamara Hull; and Certified Financial Planner Kathleen Nemetz, We covered may need to know topics in the space of one hour, but acknowledge that the subject of estate planning, wills and trusts is quite extensive. Therefore, we are just providing some of the highlights of this discussion and invite you to contact any of the speakers for more specific information.

The talk was hosted by the Women's Collective of Marin, a nonprofit organization that aims to educate people about any aspect of personal finance, including those that intersect with aspects of law. Since nothing is certain in life except for death and taxes, it is apropos that we explore how to exit stage door right more gracefully. That is, how not to leave loved ones in the lurch. And how to protect ourselves in the event of incapacity.

We covered basic definitions, with Stacy turner outlining the differences between wills and trusts and explaining what happens in the event someone dies without any such document. She also covered how to avoid probate fees on estates, so that heirs don't need to ask a court for direction in how to divide assets. Probate fees can represent a significant cost to an estate once people pass away.

Many people are confused by whether a will or trust is needed. Stacy explained that a trust can govern assets and decisions while the creator of the trust, known as the grantor, is still alive. A will governs assets and disposition after death only.

While many people assume that one must have significant means to warrant creating a trust, this is not necessarily the situation. A trust normally comprises several documents, including a durable power of attorney and a health care directive. These documents can be useful to empower a person of the grantor's choice to take charge in the event of the incapacity. That way, someone can serve as the grantor's advocate in dealing with medical personnel or with financial institutions.

Kathleen Nemetz, the certified financial planner and registered investments advisor, described fiduciary responsibilities under wills, trusts and while someone is in the role of estate administration. The California probate code and prevailing case law govern the behavior of people in these roles and encourage fiduciaries to act in the interest of the people they serve. Often, in the role of an investment advisor, she is confronted with people who are competing to assert control over financial assets. Having clear direction in the form of a trust and in documents such as a trading power or trading authorization form allow decisions about money to proceed in an orderly fashion. These documents supplement a trust in establishing clear roles and lines of authority for controlling assets during life and death.

Tamara addressed tax considerations, such as the step up in basis that can occur after the death of someone who owns assets. The heirs can benefit from this step up as it can erase taxable gains that otherwise could be costly to address in the final estate tax filing. She also mentioned the need to review old trusts as the estate taxation threshold has been lifted, allowing many more people to escape levies of estate tax on assets after death. Trusts may need to be rewritten to take advantage of these new codes.

Finally, the speakers touched on issues pertaining to separate and community property. This is an area of estate law that intersects with family law. Preplanning is necessary to assure that one's intended separation of personal vs. community or marital property is maintained.

All speakers emphasized the importance of seeking professional counsel before making any decision about these subjects, as the ramifications of false moves can be long lived, and costly. For more information, the reader is invited to contact the speakers at these URL addresses:

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Tamara Hull, CPA, delahuntcpa.com

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Prepared for the Women's Collective of Marin

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