



ESTATE PLANNING: Protecting Your Legacy



**California Estate Planning Law Practice focused on
Trusts, Probate, Asset Protection, and Will Contests**

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Welcome to Sowards Law guide on planning for the future, protecting your loved ones, and navigating through the unexpected. Please contact us directly for more detailed information or to arrange a strategy session to address your concerns. Furthermore, do not forget to visit our website for more information and resources.

Please bear in mind, this guide is simply an introduction to the fields of estate planning, elder law and probate and does not constitute as, or should be considered to be legal advice.

Attorney Benjamin J. Sowards (SBN #234434) is responsible for the content of this guide.



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THE IMPORTANCE OF PLANNING FOR THE FUTURE

The purpose of this guide is to educate you and provide you with an introduction to:

- Our firm and what we stand for;
- Why we believe it is critical to plan for your future;
- Legal terms and solutions used in estate planning, elder law, and probate that will help protect you and your family.

The Sowards Law Firm is a boutique Silicon Valley law firm focused on Estate Planning, Wills, Trusts, Asset Protection, Estate Administration, and Business Law. The members of our firm have been helping California families for over 25 years. This means you will be represented by some of the most qualified attorneys in the field that have devoted their careers to all aspects of estate planning. Our attorneys can offer you a wide variety of services to provide solutions to the problems you and your family may face.

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 and contact details of some of those organizations featured opposite, as well as later within their relevant sections, for your benefit.

Please bear in mind, this guide is simply an introduction to the fields of estate planning, elder law and probate and does not constitute as, or should be considered to be legal advice. Every individual's situation is unique and therefore, to be able to provide you with an effective plan for the future, we will need to learn about and consider yours in full.

Consequently, after reading this, should you be ready to take the next step on the road to protecting your legacy, we recommend you contact us to organize your FREE TELEPHONE CONSULTATION, within which we will LISTEN to your goals and ASSESS your current situation. Based on the information we learn, we will then put together a tailored plan that is best suited to YOU.

Should you have any questions based on anything featured in this guide or regarding how we may help in general, or to organize your free telephone consultation, please do not hesitate to contact our main office at 408-371-6000.

OUR LOCAL PARTNERS



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Mr. Sowards is an estate planning and wealth transfer attorney. He sets up estate plans, including living trusts, to help to avoid probate, minimize taxes and limit conflict. He also helps to settle out and administer trust and probate estates. He represents trustees to help them comply with the terms of the trust agreement and the California Probate Code. He minimizes conflict and lawsuits between trustees and beneficiaries or legal heirs. He also represents small and family owned businesses. He has saved his clients millions of dollars in probate fees and has successfully resolved several family conflicts that likely would have cost the trust hundreds of thousands of dollars. Mr. Sowards works to find creative solutions to allow all interested parties to benefit from his experience.

Mr. Sowards started his legal career as an associate with San Diego's oldest and largest law firm, Luce Forward LLP. Later, he joined the international law firm of Morrison & Foerster LLP where he focused on business law and complex corporate transactions. Mr. Sowards' experience dealing with California's Fortune 500 clients taught him how to address critical legal challenges in the most cost-effective manner.

Mr. Sowards attended San Jose State University where he was a President's Scholar – Top 1% of entire student body. He attended law school at the University of California at Davis where he graduated at the top of his class and was a member of the U.C. Davis Law Review and served as articles editor for the U.C. Davis Business Law Journal. Before graduating from U.C. Davis, Mr. Sowards worked for the Yolo County District Attorney's Office, the Santa Clara County Public Defender's Office and the Santa Clara County Superior Court. He also clerked for the California Resources Agency under Governor Gray Davis in Sacramento.

Mr. Sowards was selected as a California Super Lawyer – in 2020, 2021, 2022, 2023 & 2024 and also maintains a "Superb" rating (10 out of 10) on the lawyer rating service www.avvo.com.



Mr. Sowards looks forward to helping you and your family plan for incapacity and death. His goal is to help you keep more of your hard earned money for you and your family and pay minimal tax and professional fees after your passing. Call us today at (408) 371-6000.

Education

University of California, Davis

- Member of the U.C. Davis Law Review
- Editor of the U.C. Davis Business Law Journal

San Jose State University

- President's Scholar – Top 1% of entire student body
- Recipient of the Huck Schmidt Scholarship

Professional & Bar Association Memberships

California Bar Association

Member

Silicon Valley Bar Association

Member

National Academy of Elder Law Attorneys

Member

Recent Publications:

- Contributing Author, *Fiduciary Duties and Other Responsibilities of Corporate Directors and Officers*, R.R. Donnelley Capital Markets, 2008 edition.

Recognitions

Selected to Super Lawyers: 2020-2024

Selected to Super Lawyers - Rising Stars: 2011-2014

WHAT OUR CLIENTS ARE SAYING ABOUT US

My partner and I were looking for a law firm to help with our estate planning before our little girl was born. Everyone we crossed paths with at Sowards Law was generous and thoughtful. They were especially patient working with us while we navigated preparing for her arrival. We were thrilled with the final estate planning documentation package we got and recommend their services to anyone.

Ashley Sue Perry

Sowards Law Firm helped my sister and I resolve a Trust/Inheritance issue that we had been fighting for years. The entire staff that we worked with - Ben Sowards, David Tate, Cheryl Nelson, Krystal Robinson, and Yvonne Richey are AWESOME!!!! I will definitely go back to Sowards Law Firm in the future if needed (hope not ;o)

Valerie Lewis

I worked with Sowards Law Firm to set up an estate plan throughout 2020 and into 2021. Everyone at the firm was extremely proactive, responsive, professional and thoughtful. They took into consideration my unique situation and worked diligently, even through disruptions caused by the pandemic. I would definitely work with Sowards Law Firm again.

Mike Davis

I highly recommend the Sowards Law Firm for help in setting up a family trust. Ben and his entire firm are incredibly professional and responsive, but they are also down to earth, and they do a fantastic job of making the entire complicated process much easier to understand.

Andy Abrams

Krystal and Melissa were both very diligent and extremely helpful with our requests. Even though we were busy or inattentive in the process, they were excellent in hand-holding us throughout and helping us get to the end. This also included going above and beyond during the Shelter-in-place order in which they repeatedly used their personal time to meet us in person to notarize and finish the process.

Jerry Thrash

I really appreciate the time spent in explaining the process of preparing a Living Trust; the professionalism and friendliness of everyone! I also appreciate the presentation of the materials both binder/print and soft copies. I highly recommend Sowards Law Firm.

Karen O'Brien

We had a really good experience working with Ben and team on our planning. Good communications, prompt responses by emails and phone calls, everything was done as scheduled. All questions were answered very professionally and with all details we needed to understand whole process.

Valeryan Estrin

Very satisfied with Ben & team handling our family trusts. Our situation was pretty complicated so we had to spend a fair amount of time and thought on it. Ben offered several important strategic tips and steered us through the process with ease. He and his team was efficient and responsive.

Mark Ivey

Ben and team recently helped us with a new estate plan. Their service was timely, thorough, and very professional. They patiently explained concepts we were unfamiliar with. We were very satisfied and recommend their firm without hesitation.

Brian Giambattista

I was impressed by the efficiency of this Law Firm even during the Covid 19 crisis. I set up a basic trust through Sowards and it went very smoothly. There was constant communication by email and the staff was punctual and made sure all my questions were answered.

Titus Hodge

WHAT IS ESTATE PLANNING?

What is an Estate?

Believe it or not, you have an estate. In fact, nearly everyone does. Your estate is comprised of everything you own— your car, home, other real estate, checking and savings accounts, investments, life insurance, furniture, personal possessions, minus everything you owe. No matter how large or how modest, everyone has an estate and something in common—you can't take it with you when you die.

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?

Many people mistakenly think that estate planning only involves the writing of a Will, however, a comprehensive estate plan will also consider:

- **Incapacity planning** – incapacity can strike at any time. If you failed to plan for the possibility of incapacity you have no control over who will make life or death decisions for you. You also gave up the ability to decide who will control your assets in the event of your incapacity. This achieved through the use of both types of Power of Attorney (health care and durable) and a Living Will.
- **Long-term care planning** – your odds of spending time in a long-term care facility go up as you age. Long-term care costs can wipe out a lifetime of working hard and saving unless you planned ahead.

- **Business succession planning** – whether you own a family farm, a small online business, or interest in a multi-national conglomerate, the future of your business is likely important to you. Including a business succession plan in your overall estate plan ensures that your business will be handled according to your wishes should you die or become incapacitated.

- **Special needs planning** – if you have a special needs child you must plan for your child's future. To ensure that your child will benefit from much needed assistance programs such as Medi-Cal and SSI you must be careful with assets you intend to leave for your child's benefit. Typically, this requires the creation of a special needs trust.

- **Medi-Cal planning** – the Medi-Cal program will help with the high costs associated with long-term care; however, you must fall below the program's income and asset limits to qualify for benefits or you will be forced to deplete your own assets before Medi-Cal will kick in and start covering costs. A well thought out Medicaid plan can protect your hard-earned assets and ensure that you qualify for benefits when the time comes.

- **Probate and tax avoidance** – avoiding probate is a common estate planning goal because it saves your beneficiaries both time and money. By the same token, your estate plan can include various tax avoidance strategies aimed at reducing your estate's exposure to gift and estate taxes, thereby leaving more assets for your loved ones.

The following sections will look at each of these issues and the documents used to deal with them 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.



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?

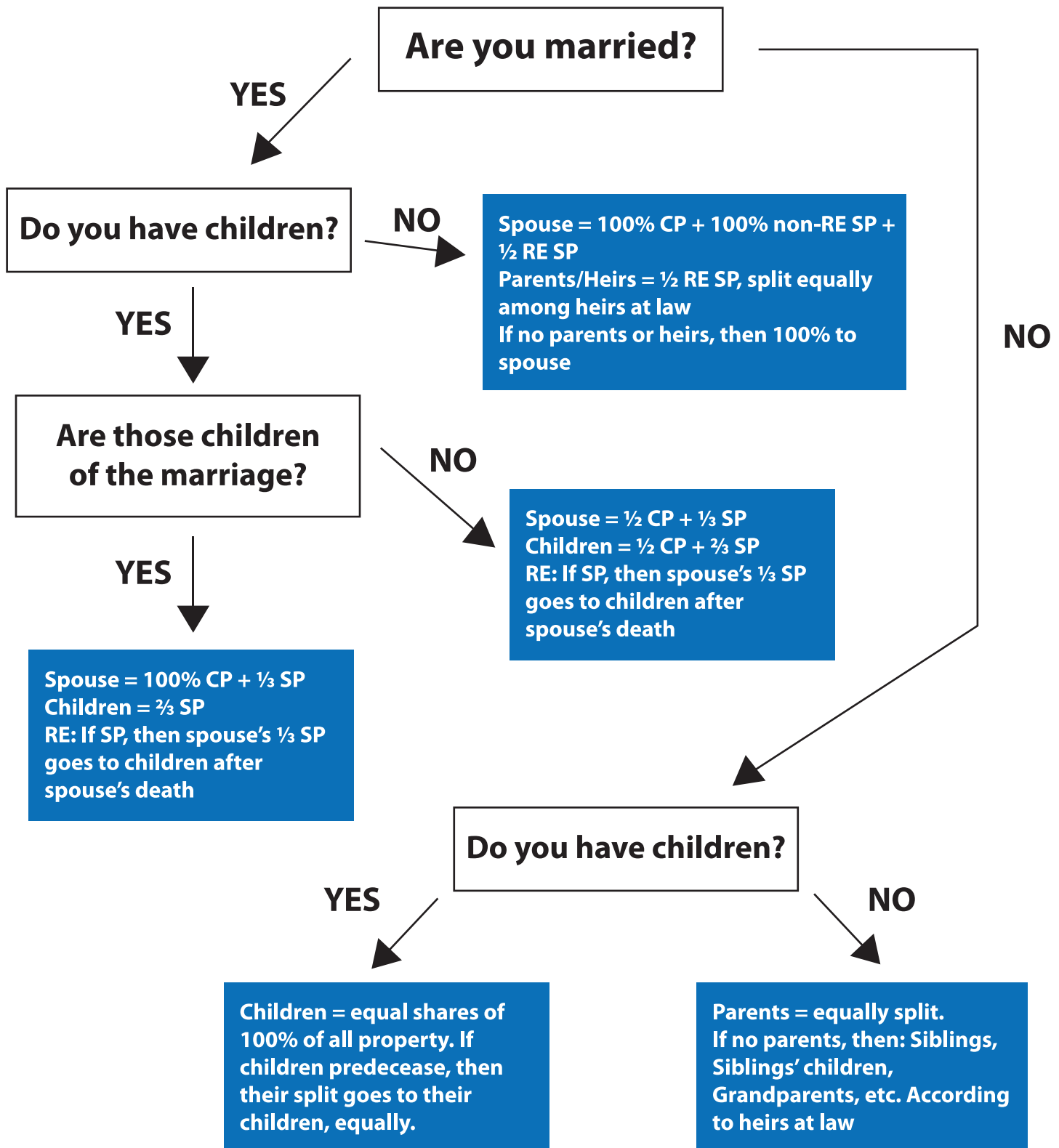
Probate is the process of administering someone's estate upon their death. Even if you have a Will, you still need to go through this legal process. It essentially involves:

- 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

Final thoughts...

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.

HOW INTESTACY WORKS



JP = Joint 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 Medi-Cal.

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.

Trusts for Married Couples In the past, a married couple often chose the form of a trust that they created together

based on how the trust could affect which estate tax savings were available to their children after they passed. Under the American Tax Relief Act of 2012, spouses can now shelter over \$10 million from the estate tax, irrespective of Trust type. The amount exempt from the estate tax is temporarily now twice what it was, such that spouses can shield over \$20 million. Consequently, your spouse and you can now select a form of Trust based on how much and which type of control you want to have over Trust assets. These include:

Simple Living Trusts for Married Couples are where a couple can share the control and benefits of the Trust while they are living. Once one spouse dies, the other spouse will have total control over the Trust. After one spouse's death, the survivor can alter the beneficiaries if they wish. Once the survivor passes, the assets in the Living Trust will be distributed to beneficiaries without Probate. However, estate taxes will be imposed if the size of the survivor's estate exceeds the applicable exclusion amount that a survivor can access upon death. An exclusion will turn on whether a survivor filed an election when the deceased spouse passed and made a large lifetime gift.

A/B Trusts involve the same kind of administration as a Living Trust, while both spouses are alive. Once a spouse dies, the A/B Trust splits the estate into two. The Bypass Trust will be the same as the applicable exclusion sum or the decedent's separate property and half of the community property, whichever is less. The Survivor's Trust will include the balance of the assets. The Survivor's Trust is for the survivor's use without limitation. The surviving spouse can also amend this trust. Even if the surviving spouse is the sole beneficiary or trustee of the Bypass Trust, the Bypass Trust will restrict the spouse's use of funds to support, education, health, and keeping up a particular living standard. When funds are needed for presents or recreational travel, they should be pulled from the Survivor's Trust, and the survivor of the marriage cannot alter the Bypass Trust's beneficiaries. The Bypass Trust shields the decedent's heirs, since the marriage's survivor does not have the power to alter the beneficiaries or reduce the funds for other reasons. However, the survivor will need to do more work to administer the separate accounts contained in the Bypass Trust. A Bypass Trust will transfer to heirs without estate tax, even if the assets grow in value to more than the relevant exclusion amount.

A/B/QTIP Trusts may wish to be established by wealthy couples. In this arrangement, when one spouse dies, a certain amount is held in the Bypass Trust, but the rest of the estate is held only by the survivor in a Survivor's Trust. This form of trust permits greater control for the decedent and more than the applicable exclusion amount kept in the Bypass Trust. What exceeds the exclusion amount is put in the QTIP Trust, for which the survivor is the only beneficiary. Under certain circumstances, the survivor can change the beneficiaries and terms of the Survivor's Trust, and only what is in the Bypass Trust is distributed to the people whom the decedent hoped would have benefits. When the spouses have a huge estate or do not agree about how assets should be distributed to beneficiaries, such as when there are kids from a prior marriage, the A/B/QTIP Trust can be a more suitable arrangement than the A/B Trust.

WILL OR TRUST - WHICH IS BETTER?

What is important to you?	Will	Trust
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.
Probate	Any assets featured will go through Probate.	Any assets featured will avoid Probate.
Disability Planning	Should have a current power of attorney. 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. Certain asset protection available in advanced trust planning.
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	None
Cost Later	Probate fees usually start at 5% of the gross value of the estate and can increase with creditor claims, disputes and litigation.	Trust administration fees are usually about half of a probate estate as there is less work involved. Thus, more money to your heirs.

PET TRUSTS

If you are a pet owner you probably treat your pet as part of the family. Given that your pet is considered part of the family now, don't forget about Fido or Fluffy when it comes time to estate planning. To ensure that your family pet continues to be well cared for in the event of your death or disability it is imperative that you plan ahead now.

In 2007, Maltese lapdog Trouble became the richest dog in the world when owner Leona Helmsley left Trouble an inheritance of \$12 million. Until her death in 2011, Trouble lived in the lap of luxury, receiving care totaling \$100,000 annually and enjoying a full-time security guard. Although most pet owners will never see Trouble's wealth, many treat their pets as part of the family.

Sadly, thousands of dogs, cats, and other animals wind up homeless or in an animal shelter each year because of the death or incapacity of their owner. In the confusion and grief surrounding a death or sudden incapacity a beloved pet can be forgotten or even lost. Even when the pet is remembered there is often no one who is both willing and financially able to take in the animal. For these reasons it is imperative that you decide ahead of time who will take over the daily care of your pet and provide a mechanism for the financial means to provide that care.

An Informal Arrangement May Not Be Enough

Often, pet owners will simply make informal agreements with loved ones concerning the care of a pet. These informal agreements typically consist of a verbal conversation during which a friend or family member of the pet owner agrees to care for the pet after the owner becomes incapacitated or passes away.

If you would like to provide for your pet through an informal arrangement, be sure that you select a trusted family member or friend. This is important, because you have no way to control how the pet guardian spends the money you leave him or her in order to care for the pet, and you cannot prevent the pet guardian from abandoning the pet in an informal arrangement.

Your Will Isn't the Best Answer

A bequest in a Will is not the best way to provide for a pet for several reasons. First, a Will typically has to pass through probate before any gifts can be transferred to the beneficiary, meaning that your pet will not receive his or her inheritance for months, even year, after your death. Second, a gift in a Will doesn't help if you become incapacitated. Third, Fido or Fluffy cannot actually inherit directly, meaning that the assets will have to be left to a person. You must then trust that person to use the funds according to your wishes. Even if that individual is 100 percent trustworthy and dependable, what happens if he or she dies?

A Pet Trust May Be the Answer

A pet trust is a common alternative to a direct bequest in a Will. A pet trust can be created in a way that bypasses the probate process, making the assets immediately available for the continued care of your pet. Because you decide the terms of your trust you are able to activate the trust upon your incapacity as well as your death. Those same terms allow you to decide who will have the day to day care of your pet, what veterinarian the animal will use, and even what brand of food the animal will be fed. Moreover, the pet guardian will have a legal responsibility to care for the pet.

The [estate planning attorneys](#) at [Sowards Law Firm](#) are committed to ensuring that your family pet is protected and provided for in your Petaluma or Salinas, California estate plan. Contact the office today by calling [\(408\) 371-6000](#) to discuss how best to include your family pet in your estate plan.



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 a Health Care Power of Attorney and a Durable Power of Attorney.

What is a Health Care 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 a Health Care Power of Attorney covers all health care 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.

Final thoughts...

We believe powers of attorney are ESSENTIAL documents that EVERYBODY over the age of 18, regardless of their situation, should have. No one knows what the future has in store for them; however, with these documents in place, you ensure that regardless of what happens, you can have a say in what happens.

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

POA **vs.** Conservatorship

Conservatorship	POA
<ul style="list-style-type: none">• No or limited retained rights• Difficult to revoke• Invasive<ul style="list-style-type: none">- Establishment- On-Going Reports• Poses possible psychological effects on potential guardian and ward• May cause financial hardship for the potential guardian	<ul style="list-style-type: none">• Retained Rights• Easily revocable• Allows matters to be kept private.• Does not protect against bad decisions• Relatively inexpensive• May be a “temporary fix”



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LIVING WILL / DIRECTIVE TO PHYSICIANS

What is a Living Will?

Also known as A Directive to Physicians, 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.





ESTATE PLANNING FOR FAMILIES WITH YOUNG CHILDREN

People frequently make the mistake of assuming that unless they have accumulated a significant amount of wealth an estate plan isn't necessary. If you are the parent of a minor child you need an estate plan regardless of the value of your estate assets because your most valuable asset is your child.

Nominating a Guardian

Whether you are just starting out in life and have little in the way of material assets or are well-established with a large estate, an estate plan allows you to protect your most precious asset by the nomination of a guardian in your Last Will and Testament. If tragedy strikes while your child is still young, taking you away from your child, who will be appointed as your child's legal guardian? Your Will is the only opportunity you have to let a court know who you choose to be the guardian for your child.

You may be counting on your child's other parent to continue to care for your child in the event of your death; however, he or she could be unwilling or unable to take over legal responsibility for your child in the event of your death. Ultimately, a court will decide who to appoint as your child's guardian, though the court will be heavily influenced by your wishes as expressed by a nomination in your Will.

Creating a Trust for a Minor

Your minor child cannot inherit directly from your estate; however, you can provide for your child financially by creating a trust. Any, or all, of your assets can be transferred into the trust now or at the time of your death. You can also arrange for proceeds of a life insurance policy to be transferred into a trust when you die. Your child is then named as the beneficiary of the trust, allowing you to provide for your child long after you are no longer here to do so in person.

You will be required to name a trustee to oversee the day to day operation of the trust. The trustee can also be your child's guardian or you may choose to appoint a professional trustee, further ensuring that the trust funds are prudently invested and protected. The terms you create will determine when disbursements are made and the amount of the trust disbursements. When your child reaches the age of majority, typically age 18, the remaining trust funds can be disbursed to your child or you may decide to wait and provide for staggered disbursements as your child matures.

The [estate planning attorneys](#) at [Sowards Law Firm](#) understand how important it is to families with young children to protect and provide for those children through the creation of a comprehensive estate plan. We are proud to help families from areas such as [Union City](#), San Jose and [San Carlos](#) to create estate plans that reflect their needs and wishes. To get started on your estate plan, contact the firm today by calling [\(408\) 371-6000](tel:(408)371-6000).

Phone: (408) 371-6000
info@sowardslawfirm.com
www.sowardslawfirm.com



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SPECIAL NEEDS PLANNING

Why is it important for a family with special needs to ensure they have a detailed estate plan?

If you have a child with special needs, estate planning is critical for ensuring their needs are still met after you die or become seriously ill or disabled. For example, because Medicaid and the Supplemental Security Income (SSI) program impose special rules about how much money a person with disabilities can have to remain eligible, your estate plan may need to include a Special Needs Trust. Furthermore, if you have specific goals or preferences for how your child should be cared for after your death, these can be specified in your Will or Living Trust.

How does a Special Needs Trust work?

A Special Needs Trust covers the percentage of a person's financial needs that are not covered by public assistance payments. The assets held in the Trust do not count for the purposes of qualifying for public assistance, as long as they are not used for certain food or shelter or other prohibited expenditures. Proceeds from this type of Trust are commonly used for medical expenses, payments for caregivers, transportation costs, and other permitted expenses. The party who creates the Trust will designate a trustee who will have control over the Trust. This trustee will also oversee its management and the disbursement of funds. Assets originally belonging to the disabled individual that get placed into the Trust may be subject to Medicaid's repayment rules, but assets provided by third parties such as parents are not. This type of Trust is sometimes also called a "Supplemental Needs Trust."

What are the benefits of a Special Needs Trust?

Establishing a Special Needs Trust can have benefits for both parties. The beneficiary has a way to receive financial support without putting their eligibility for income-restricted programs or services in jeopardy. Meanwhile, the person or party that creates the Trust has some reassurance that the proceeds will go to expenses they stipulate. When a third party puts money in a Special Needs Trust, the party is assured that the money will be used for its intended purpose. For example, parents might put assets in a Special Needs Trust to provide for their disabled daughter instead of giving that money to their son. Special Needs Trusts are irrevocable, and their assets cannot be seized by creditors or by the winner of a lawsuit. It is important that the person who creates the Trust or their legal representative word the terms of the Trust documents very carefully to ensure the Trust's validity and to confirm that the directives and purpose of the document are explicitly clear. The Special Needs Trust must be established before the beneficiary turns 65.

When do I need Guardianship for my special needs child?

As a parent of a special needs child, you are the child's "natural guardian" and can make all decisions regarding the child. However, your rights as guardian do not allow you to have access or control of your child's assets (i.e., proceeds from a lawsuit or gifts from a family member). In addition, when your child reaches the age of 18, you lose your rights as the natural guardian to make healthcare and other life decisions for them. To maintain these rights, you must commence a guardianship proceeding or the State will assume legal authority over your disabled loved one. To avoid losing your authority, you should contact a qualified attorney to begin a guardianship proceeding at least six months prior to your child's 18th birthday.





BUSINESS SUCCESSION PLANNING

Why is Business Succession Planning essential?

As a business owner, you are cognizant that meeting the day-to-day needs of your clients and employees is not sufficient. If you want your business to succeed you must always be thinking about long-term goals and planning for the future. While many people routinely consider whether they will be expanding or downsizing, hiring, or laying off employees, they sometimes forget that planning for how the company will function without them is also critical. Whether you want to retire at a certain age or simply prepare for contingencies, you need a strategy to keep the business you worked so hard to build intact as part of your legacy. If you are being rational about the future, you have to plan for:

- Desired or necessary retirement
- Your death
- Your incapacity

What else should you consider when putting together your plan?

Business succession plans must be customized to your situation. It makes a big difference in strategizing, for example, if you want to keep your business in the family or eventually sell it to the highest bidder. Whichever you plan to do, there are two aspects of business succession planning that must be considered:

- How your business will be transferred to a new owner when you decide to retire and/or sell it
- What provisions you want to make in case you die or become suddenly incapacitated

The first scenario presumes that you will be alive at the time you decide to transfer your business to someone else. For this purpose, we will help you draft your business succession documents and will make sure to help update them regularly as your circumstances change. To facilitate a smooth transition when the time comes, we will also assist you in communicating your chosen plan to your family and employees. Planning for emergency business succession may be more emotionally taxing in the short-term but will make life much easier for your loved ones should the worst occur. The future is unknown to all of us and it is not a rarity for a business owner (or anyone else) to die or become incapacitated unexpectedly. Unless you have a plan in place, your business may come to a halt or die a slow death. In either case, your family may be left with financial instability and uncertainty about how to proceed — all while they are simultaneously dealing with your sudden incapacity or death.

Who will take over?

A strong business succession plan ensures that someone is designated to take over managerial duties temporarily or permanently and that he or she has access to the financial resources necessary to pay the business bills as they come due and to make necessary business purchases. The individual you choose to take over should be knowledgeable about the workings of your business and be trustworthy, and should be available on short notice to step in and take over. Whether a member of your family or not, this person should have the leadership qualities necessary to take the helm. As your business succession attorneys, we will make sure that all required papers are signed and delivered to the appropriate parties at the appropriate times, so that your business continues to function efficiently.





ASSET PROTECTION

What is Asset Protection?

We all want to protect our accumulated assets. Usually, by the time you engage in estate planning, you have accumulated some kind of “estate” throughout your lifetime and are looking for ways to protect it for your own retirement and the future needs of your loved ones. You may also have inherited wealth that you have managed well and want to preserve. With some foresight and the assistance of a skilled asset protection attorney, you can ensure that the wealth you have amassed will be safe from excessive taxation, creditors, potential lawsuits, and will leave a legacy that will provide for your loved ones.

Why is it important?

Though we tend to think that doctors and celebrities are the only ones likely to be targeted in lawsuits, we are all at risk. The possibility that you will be sued or have fraudulent claims or frivolous lawsuits brought against your collected resources is always there. The types of lawsuits we have seen include:

- Malpractice liability claims
- Personal liability lawsuits brought by former business associates
- Premises liability lawsuits for personal injury
- Personal injury lawsuits for liability in vehicular accidents
- Liability resulting from misconduct or criminal behavior
- Liability for being a guarantor of someone else's debts
- Fraudulent claims that cannot be disproven
- Claims made by a present or former partner or spouse

Furthermore, if you are helping an elderly relative protect his or her assets, you may also want to ensure that your loved one does not mistakenly give money to a scam artist or spend it on sweepstakes or unreasonable purchases. We can help you preserve your family's accumulated wealth from your relative's declining ability to make rational decisions.

How can we protect against these issues?

Trusts – these are among the most popular tools for protecting property. They are legal arrangements in which you hand over your assets to the trust to be managed by a trustee for the benefit of beneficiaries. You can set conditions for the use of the assets. There are many different types of trusts, including irrevocable trusts, inter vivos trusts, spendthrift trusts, discretionary trusts, special needs trusts, and qualified personal residence trusts. These trusts have varying degrees of effectiveness for asset protection purposes. For example, a qualified personal residence trust may be appropriate to protect real estate. A qualified personal residence trust is a type of irrevocable trust in which a homeowner shifts their residence out of their estate and gives it as a low-tax gift. However, they retain the right to live in the residence without rent for a certain term. California does not allow domestic asset protection trusts. If you want this type of protection, you must set up the trust out of state. Sometimes people in California set up domestic asset protection trusts in other states or offshore trusts in jurisdictions that have laws that protect property owners.

Retirement Plans - another strategy with which we might assist you involves placing funds in a retirement plan. The Employee Retirement Income Security Act of 1974 (ERISA) mandates that a qualified retirement plan must include provisions that do not allow the retirement property to be alienated. Assets in retirement plans established under ERISA, such as 401(k) plans, are protected. Plans that are not established under ERISA, such as a Roth IRA or traditional IRA, do not provide the same degree of protection. In California, private retirement plans may be protected from collection by creditors. They can be funded by using any valuable asset, including stocks, mutual funds, accounts receivable, or limited liability company interests. However, under section 704.115, to be protected from judgments and bankruptcy, the private retirement plan needs to be designed and used for retirement purposes. If the plan is misused or created only for asset protection, it is disqualified as a private retirement plan. These are complex legal structures that require careful planning.



The Homestead Exemption - California has a homestead exemption. This can keep a creditor from selling your home if your equity qualifies. The amount of this exemption varies for single people, married spouses, and the elderly or disabled. It can be difficult to protect an entire home by using the homestead exemption, although the amount of the exemption will be greater as of January 2021.

Business Structures That Allow Asset Protection - we may be able to help you form business structures to keep commercial creditors from reaching your personal assets as long as you have a valid business purpose. Structures that may allow you to protect personal assets include corporations and limited liability companies. Corporations are legal entities that are wholly distinct from owners or shareholders in case of litigation. One of the primary purposes of corporations is to shield a business owner's personal assets from corporate debts and liabilities. Limited liability companies restrict the personal liability of partners and shareholders. There are circumstances, however, in which the distinction between company and owner can be pierced, and personal assets may be seized. Formalities must be scrupulously followed in connection with business structures such as corporations and limited liability companies.

PRIVATE RETIREMENT PLANS

Private Retirement Plans have become one of the most powerful protection and wealth preservation strategies in California in the last decade, because it can be structured as one of the strongest, safest and most cost-effective planning tools for anyone in California who is building private equity, business interests, real estate, or any other investment for their future retirement.

What Is It?

Private Retirement Plans or PRPs are programs that are held under California state creditor law in which all funds, distributions and death benefits are “exempt” from lien and seizure both in bankruptcy and non-bankruptcy (creditor lawsuit) situations.

Values & Benefits:

- Safer: funded with exemption rights, not transferring or gifting assets.
- Stronger: all assets, earnings, gains and future values are protected during accumulation and even after disbursement for lifetime benefits or death benefits for heirs.
- Little Cost, if any: if done correctly, PRPs can capitalize on a multitude of tax benefits and can become a profit-center instead of cost by harvesting savings throughout the life of the program:
 - Tax Deductions
 - Tax Deferrals
 - Tax Credits

Management Requirements:

There are key components that get tested under case law, and create planning success when present:

- Must be established primarily for retirement, not for creditor evasion.
- Must have a Plan. The Plan must have an actuarial basis for funding.
- Must have a Trust for each Participant, which must specify its tax intent.
- Must have an independent Trustee.
- Must have an independent Plan Administrator.

How Do You Find Out More?

We have partnered with in industry leader in PRP administration **TRUST-CFO®**, who has developed all the required analysis including upfront funding, annual benchmarking, and future plan distribution testing, to maximize the Plan strength when/if tested.

Please use these key tools to help you evaluate your current circumstance and find out what “Creditor & Tax’ exemption protection rights you have, which ones you may be forfeiting, and which ones you can claim to protect against asset seizure, erosion, and loss.





FAMILY BANK TRUSTS AKA SLATS

You must act before the New Year

As you may know, the 2024 lifetime estate and gift tax exemption is \$13,610,000 per individual, which permits married couples to combine their exemptions to transfer up to \$27,220,000 estate tax-free. Any portion of an individual's estate in excess of the exemption amount at death will be subject to a 40% estate tax. The exemption amount was established by the 2017 Tax Cuts and Jobs Act (TCJA); **however, the TCJA is scheduled to sunset on 01/01/26 and the individual exclusion amount will revert to \$5,000,000(indexed for inflation)**

For clients with a net worth (or anticipated net worth) in a range near or over the reduced exemption amount, it is prudent to consider implementing various estate planning techniques to transfer assets outside of the estate to avoid estate taxes. Many planning techniques involve the creation of an irrevocable trust that is considered a separate entity from the estate. For a trust to be excluded from a trustmakers (person who establishes and funds the trust) estate, the trustmaker cannot be a beneficiary of the trust.

For trustmakers that may require their assets to supplement their standard of living, transferring assets to an entity that eliminates their ability to utilize the assets can stop the planning process before it even begins. If, however, a trust is established by someone else for the benefit of a person, then the assets are not included in that person's estate, and they can receive distributions from the trust. Family Bank Trusts (aka SLATs) are precisely this type of structure. It allows a person to establish an irrevocable trust for their spouse or children as the beneficiary and provides the family access to the assets. This removes the asset from both the person and their spouses' estate. Not only can the spouse or children be a lifetime beneficiary, but they can also be the trustee, providing them with management and distribution authority. In addition, as with any properly created irrevocable trust, the assets in the trust may be afforded asset protection from creditors.

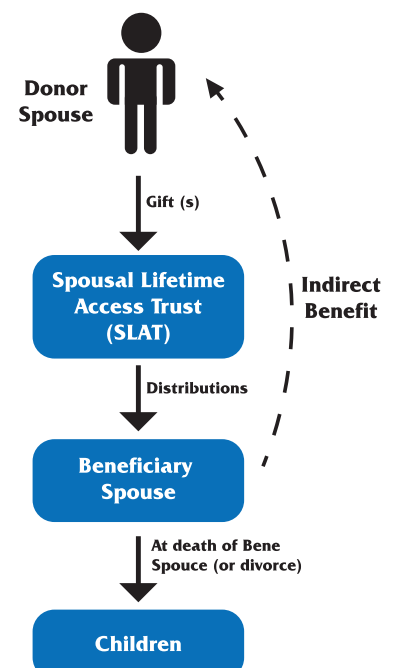
		SLAT	
		Spouse	Children
Grantor creates Irrevocable trust for the benefit of their spouse	Grantor transfers assets (gift and/or sale) to the trust	<ul style="list-style-type: none">• May act trustee• Has access to funds for health, education, maintenance and support as needed• Assets are removed from estate	<ul style="list-style-type: none">• May act trustee' successor trustee• May be current or remainder beneficiaries• Asset may be removed from their estate

While each spouse may create a trust for the other, it is important that the trusts are not perceived to be tax-avoidance vehicles created pursuant to an agreement and in exchange of the other. Attempts to establish reciprocal trusts will be "uncrossed" by the IRS and treated as though each person created a trust for his/her own benefit. Some factors that contribute to a finding of reciprocal trusts include: if the trusts are identical in substance, are executed closely in time, or are funded with the same (or similar) assets in equal quantities.

Individuals considering the use of a Family Bank Trust should fully comprehend the ramifications of their spouse being the beneficiary of the trust. If there is a divorce or if the spouse passes away, access to the trust will cease. An analysis of the individual's future cash flow should be conducted to ensure the ability to provide for a continued standard of living should one of these situations occur.

Ultimately, Family Bank Trusts offer married couples and families with possible estate tax liabilities the ability to transfer assets outside of their estates while providing peace of mind that the assets continue to be available to maintain their standard of living, if needed.

Basic SLAT Overview





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.





LONG TERM CARE PLANNING

Why is long-term care planning necessary?

Nowadays, people are living longer, which gives many Californians more time to enjoy their retirement years. However, aging also brings difficult challenges, such as declining health and the necessity of planning for long-term care. Because the costs of elder care can be exorbitant, particularly at a skilled nursing facility, it is critically important to plan for your care in a way that will preserve your legacy.

What are the common long-term care issues?

Our comprehensive estate planning services encompass a wide range of long-term care issues, such as:

- Planning for incapacity (Advance Directives, Living Wills)
- Selecting the right nursing home or assisted living facility
- Arranging for home care
- Qualifying for public benefits (e.g. Medi-Cal, Veteran's Benefits)
- Guardianship
- Asset Protection

Is Medicare a viable option for long-term care?

Many people mistakenly assume that Medicare will cover the costs of skilled care at a nursing home or assisted living facility. Medicare only pays for limited services on a short term basis, such as nursing home care or rehabilitation services for a set number of days. Moreover, many elders require non-skilled care to assist with daily tasks of living — dressing, feeding, light housekeeping — not covered by Medicare. This makes long-term care planning critically important. One of the following sections will take a closer look at how Medicare operates and what it does and does not cover.

Should I consider long-term care insurance?

This type of insurance is designed to cover the cost of personal and custodial care at home, an assisted living facility or nursing home. You may also be covered for a certain amount of assistance with daily activities such as bathing, dressing, or eating. Qualifying for such coverage can be complicated because pre-existing conditions may render you ineligible. Moreover, premiums are costly and based on factors such as your age, the maximum amount per day the policy will pay, and the maximum number of days or years covered. Our attorneys can help determine if long-term care insurance is the

best option for you and consider alternatives if the premiums are not affordable or you do not qualify.

Medi-Cal Planning and Long-Term Care

While Medi-Cal is the largest payer of nursing home care in the California, the program is needs based, and many elders have financial resources that exceed the eligibility threshold. Our legal team can help you qualify for Medi-Cal and protect your assets through a variety of strategies such as spousal income and asset transfers, annuities, and Qualified Income Trusts. The following section will look at Medi-Cal planning in more detail.

Long-Term Care Options for Veterans

Our attorneys can advise veterans and their spouses about benefits available through the Veterans Administration, such as Aid and Attendance. This is a pension program that assists individuals who need assistance with performing daily tasks or require long-term care in a skilled nursing or assisted living facility. Aid and Attendance is only provided to qualified war veterans — those who served at least one day of active duty during a designated period of war. Veterans may also be eligible for disability compensation, free or low-cost medical care through VA hospitals and medical facilities, and education programs.

Planning for Incapacity and Long-Term Care

Although thinking about the possibility of becoming incapacitated is unpleasant, it is crucial to plan your finances and healthcare around the possibility of being unable to speak for yourself. Our estate planning attorneys can draft a tailored estate plan that authorizes a trusted person to manage your personal and financial affairs — paying monthly bills, managing real estate, bank accounts, and investments — when you are unable to do so. We also recommend having a Health Care Power of Attorney, which appoint someone to act as your agent in coordinating your preferred medical care when you cannot make such decisions independently. Finally, a Living Will declares the type of end-of-life care you wish to receive or have withheld (e.g. a ventilator or feeding tube) if you are terminally ill or in an irreversible condition.

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ELDER LAW AND MEDI-CAL PLANNING

With the percentage of older Americans expected to outnumber their younger counterparts by the year 2050 it should be no surprise that services geared toward the elderly are becoming more frequent in the United States. The law has also taken note of the increasing elderly population by creating a specialty area, known as “elder law” that is aimed at addressing the unique legal issues faced by older individuals and those who care for them. Long-term care is one of those issues for most elderly individuals.

The average American can expect to live almost twice as long as his or her counterpart lived a century ago. A longer life expectancy, however, dramatically increases the likelihood that you will spend time in a long-term care facility at some point in your life. With an average cost of over \$75,000 per year to stay in a long-term care facility can easily wipe out a lifetime’s worth of careful saving and prudent investing. California’s Medi-Cal program can help; however, those same assets could prevent eligibility for the program. By including Medi-Cal planning in your overall estate plan you can protect your hard-earned assets and significantly increase the odds of qualifying for assistance paying for long-term care should you need it in the future.

Sowards Law Firm offers its specialized knowledge, skill, and experience to help you follow all the proper application procedures, and handle all of the necessary legal correspondence with your local Medi-Cal office. We will see your case through to its conclusion and work hard to produce a positive outcome for you and your family.

What’s the Difference Between Medicare and Medi-Cal?

Medicare is health insurance for people over sixty-five. It pays for hospital stays, doctor visits, and medical tests. It covers only limited skilled nursing care. Medi-Cal is a California state program that provides health insurance for limited income individuals who meet certain economic criteria for eligibility – it does cover the costs of nursing care.

What is Medi-Cal Planning?

Medi-Cal Planning involves developing a plan to reallocate your assets in such a way that Medi-Cal will not take them into consideration when determining your eligibility for coverage. If

nursing home care is needed in the future, you can qualify to have Medi-Cal pay for the cost of care, rather than depleting your own resources to cover these costs.

Will You Need Long-Term Care?

Though people prefer not to think about it, the odds are favorable that you will end up in a long-term care facility at some point. You have a one in five chance of needing long-term care prior to retirement age. For those who live to age 65, two in five will go on to need long-term care and by age 80 the likelihood of needing long-term care drops to three in four.

Paying for Long-Term Care

The average stay in a long-term care facility is 2.5 years – a stay that is typically not covered by private health insurance or by the Medicare program. The good news is that California’s Medi-Cal will cover costs associated with long-term care if you qualify for benefits. By incorporating Medi-Cal planning into your existing estate plan you can significantly increase your chances of qualifying for benefits when you need them.

Qualifying for Medi-Cal

California’s 2023 Medi-Cal program asset limits are very low - \$130,000 for a single applicant and \$195,000 for married applicants (in January 2024 there will no longer be a limit on assets for anyone on any Medi-Cal program). This means you cannot own countable assets that exceed the limit and qualify for Medi-Cal. Those assets will need to be depleted before Medi-Cal benefits will start paying for your care. Moreover, simply transferring assets prior to applying isn’t a solution because the program uses a five year “look-back” period. Medi-Cal planning, however, is a solution. By using proven legal strategies and techniques you can protect your assets and ensure eligibility for much needed benefits down the road.

The elder law attorneys at Sowards Law Firm understand the unique legal issues that the elderly, and those who care for them, face and are dedicated to helping resolve those issues. One issue that can be prevented is the loss of assets because of long-term care expenses. To get started with your Medi-Cal planning, contact the San Jose and South San Francisco elder law attorneys today by calling (408) 371-6000.



DOWNSIZING AND SELLING YOUR HOME

So, you've decided to sell your house. What steps do you take?

Moving at any age, regardless of the circumstances, can be stressful and overwhelming, particularly when you consider downsizing to a smaller home or moving into an assisted living facility. The fact of the matter is that you, like us, likely have too much stuff to take to your new home. However, there are steps you can take to make this transition as seamless as possible, such as:

- (1) Managing your time well early** — Begin planning for your downsizing two to three months in advance. This is generally how long the process takes, and you want to begin well in advance of listing the house, in case it sells quickly;
- (2) Sort your possessions into categories**— Organize your possessions into the following categories: (i) keep and move; (ii) keep and decide later whether to throw out (if it hasn't been touched for more than a year, it should be thrown out, given away, or sold); (iii) give to loved ones; (iv) sell (auction, yard sale, etc.); (v) donate to charity; or (vi) trash. This categorization will help you prioritize what to take with you to your new home;
- (3) Review a floor plan of your new home** — If you do not have one, ask for a customized floor plan of your new home. This floor plan can help you determine what furniture to take with you to your new home, and where to place that new furniture in the home; and
- (4) Ask for and hire help if necessary** — Moving is often overwhelming. Don't be afraid to ask family and friends for help, and hire professional movers if necessary.

Tips for Selling Your House

We recommend the following tips when it comes to selling your house:

- (1) Declutter your house** — If you have not moved your belongings before listing the house, keep in mind that the buyer is interested in your house, not your personal property in the house. You want your buyer to be able to see as much of the walls and floors as possible;
- (2) Make minor repairs** — Fix leaky faucets, burned-out light bulbs, missing light sockets, and other fixes that are relatively cheap and easy to make;
- (3) Give a first good impression** — The first impression of your home is important to a prospective buyer. If it is not too expensive and will help with the first impression, consider putting down fresh paint and floors in the rooms of the house that appear dated. This will give the home an updated look, even if it is not renovated;
- (4) Make major repairs only if your realtor recommends it** — Don't make the mistake of making any major changes or renovations that are not needed before selling your home. Unless the realtor says it will add value to your home or help it sell, don't worry about making these major repairs. Often, the buyer will make changes upon purchasing the home to suit their tastes and decorating preferences.

We have featured realtors that can help you with the sale of your home on the next page for your convenience.

WHO
DO YOU
WANT TO
BLESS?

WHAT CAN A REAL ESTATE PLANNER DO FOR ME?

1 ELIMINATE FAMILY
DISPUTES

2 REMOVE PROPERTY
BURDENS

3 MINIMIZE
CAPITAL
GAINS



4 BUILD AND TRANSFER WEALTH

5 CREATE THE LIFE YOU DESIRE

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FINANCIAL PLANNING

Should I work with a Financial Advisor during Estate Planning?

Yes, it is generally recommended that you consult with a financial advisor when doing estate planning, as they can help you create strategies for managing financial risk, as well as for building wealth in a manner that will put you on track to achieve your financial goals.

Are there different types of Financial Advisors?

In reality, there are many different types of financial advisors. Financial advisors who serve individuals and families make up the majority of financial advisors, and they fall into three categories: investment advisors, Certified Financial Planner (CFP) professionals, and Registered Representatives (RRs), previously known as stock brokers. Note that many advisors wear all three of these hats, which is why it's important to understand the differences before you begin your search.

What is an Investment Advisor?

Investment advisor is the official title for Registered Investment Advisors (RIAs). An RIA is licensed by their state and/or the Securities and Exchange Commission (SEC) to offer investment advice and manage client portfolios. Investment advisors are held to the fiduciary standard, meaning they are legally required to act in their clients' best interests.

What does acting in your best interest mean?

- Their recommendations and actions must accurately reflect your financial objectives, timeframes, and risk tolerance.
- They must strive to keep their own fees (as well as other fees) reasonable.
- They must avoid exposing their clients' assets to excessive risk.

What is a Certified Financial Planner (CFP®)?

Unlike investment advisors and brokers, those who call themselves financial planners are not regulated or licensed. Technically, anyone can call themselves a financial planner. To bring credibility and accountability to the profession, a number of industry organizations have formed to award formal certifications to financial planners. The most well known is the Certified Financial Planner Board of Standards (CFP Board.) To earn the CFP certification financial advisors must:

- **Bachelor's Degree** - Have at least a Bachelor's degree and 3 years of relevant experience in the financial services industry
- **Certification Examination** - Pass a comprehensive CFP Certification Examination covering a wide range of financial planning and investment topics, ethics and rules
- **Ethic and Rules** - Agree to abide by the CFP Board's code of ethics and rules of conduct, which require them to act with integrity and accountability and to always put their clients' best interests first
- **30 Hours of CFP Continuing Education** - Agree to complete 30 hours of CFP Board-approved continuing education courses over a specified reporting period, to keep up to date with developments in the financial planning field

What is a Registered Representative?

Back in your parents' day, if someone wanted to invest in stocks or bonds they used stock brokers. Today, they're generally just called brokers, because most of them make their living selling mutual funds and life insurance to clients rather than trading securities. Their formal name is Registered Representative (RR). They work for broker dealers and are licensed and regulated by the Financial Industry Regulatory Authority, or FINRA. Unlike investment advisors, brokers are not paid directly by clients; instead, they earn commissions for trading stocks and bonds, and for selling mutual funds and other products.

Your quality of life – carefully considered

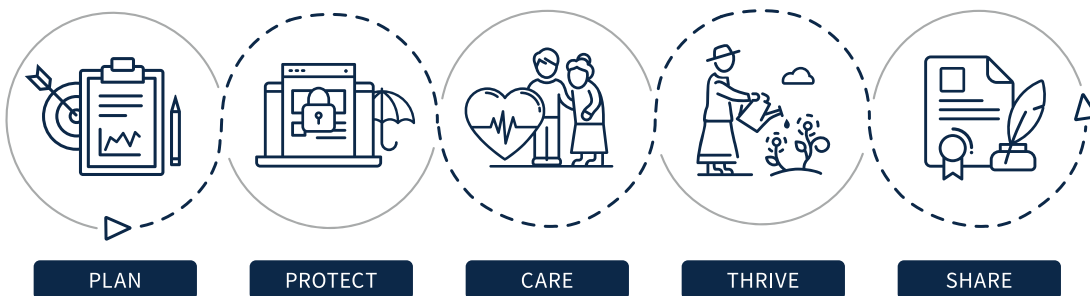
Our approach to longevity planning helps you
answer tomorrow's big questions today

HELPING YOU PLAN TODAY FOR THE TOMORROW YOU ENVISION



PERSONALIZED PLANNING **FOR YOUR FINANCIAL GOALS**

Your future is too important to leave up to chance. Together, we can create a longevity plan that'll help you confidently step into the tomorrow you envision.



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FINANCIAL PLANNING

What are Financial Consultants and Wealth Managers?

Like the term financial advisor, financial consultant and wealth manager are both generic job titles that do not require licenses or certifications. In the past, financial consultant was often used by brokers who offered financial-planning services. Likewise, in recent years, wealth manager has emerged as a marketing term to describe financial advisors who focus on high-net-worth clients, usually those with \$5 million or more in investable assets. They're almost always licensed as investment advisors and brokers, and a growing number are CFP professionals.

What are the different ways in which a Financial Advisor is paid?

In the financial world, advisors and planners are compensated in one of two basic ways: by earning flat fees or by earning commissions. A fee-only financial advisor is paid a set rate for the services they provide rather than getting paid by commission on the products they sell or trade.

What are the different areas of Financial Planning that Financial Advisors can help you with?

Savings and Related Investments

A financial advisor will consult with you, assessing both your attitude towards financial risk and your financial goals before giving you proper advice on how you should invest your money. These investments vary and can include, among other options, money markets, certificates of deposit (CDs), annuities, stocks, and bonds.

Retirement Planning

A financial advisor can give you advice on how much money you need to save per year to maintain the same standard of living in retirement. Retirement planning can include investing in retirement accounts like 401ks and 403bs, as well as pension products that can also help supplement your income in retirement.

Insurance

Insurance is covered in more detail in the following section.

Mortgage and Real Property Advice

For most people, the purchase of their home will be the largest purchase that they make and generally involves borrowing money in the form of a mortgage loan. Further, more people are choosing to invest in real property and are obtaining mortgage loans or accessing funds that they have accumulated to do so. A financial advisor can give you advice on the products and lenders that are available to you when purchasing real property.

We have featured financial advisors that are knowledgeable and can help you reach your financial goals on the previous and following page for your convenience.





INSURANCE

Insurance products can help protect every aspect of your life for the benefit of you and your loved ones. Some of these products include:

Health Insurance

Health insurance is one of the most important types of insurance to have because: (1) it will allow you to obtain any health care that you need; and (2) it will do so while protecting you and your family from the exorbitant costs that can come with major illnesses and injuries. Health insurance is often provided through an employer or a government program such as Medicare or Medicaid, but for those who are not provided for in these manners, it is important to spend the money on a private health care plan.

Life Insurance

Life insurance provides a lump sum to your family and loved ones if something unexpected happens to you. Nobody wants to die unexpectedly, but the fact of the matter is that it happens. It is good to have the peace of mind that comes with knowing that your loved ones and their standard of living are largely protected through the purchase of life insurance.

Long-Term Care Insurance

Long-term care insurance is designed to help people pay the costs of long-term care. Though this insurance does help with the expenses associated with long-term care, you are likely ineligible if you have a pre-existing condition or wait to purchase it until you need it. Also, these policies generally have high deductibles, do not cover all of the costs of long-term care, and only insure you from long-term care costs for a finite period (three years is fairly common).

Critical Illness/Catastrophic Illness Insurance

Critical illness/catastrophic illness insurance helps pay for costs not covered by traditional health insurance in the event of a serious medical emergency, such as a stroke or cancer. Generally, the insured will be paid a lump sum to cover these costs, and the lump sum can be used for nonmedical costs related to the illness, such as help with transportation, childcare, and other tasks made impossible due to the illness. This insurance affords you the peace of mind to focus on getting better, rather than worrying about large health care bills.

Income Protection Insurance

Income Protection Insurance can provide short-term and long-term disability coverage that helps protect your income. This insurance, in the event you become disabled and can't work due to a medical illness, injury, or other condition specified in the contract, will pay you a percentage of your income.

Mortgage Protection Insurance

Mortgage Protection Insurance is designed to protect your family by paying off the mortgage on your home in the event of your untimely passing.

We have featured professionals who are familiar with these insurance products on the next page for your convenience.





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State Farm Agent Jerry Rojas and his team of experienced, licensed, Life Insurance professionals will help you to customize a plan and price to protect the ones you love, as well as providing cash-value options that can be used during your lifetime.

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STATE FARM® INSURANCE AGENT,
Jerry Rojas



MEDICARE

What is Medicare?

Medicare is a federal health insurance program that is generally for persons who are 65 or older, or for certain younger persons with disabilities.

What are the different parts of Medicare?

Most people familiar with Medicare are aware that there are a variety of Medicare Parts that, when combined with Medicare plans, seemingly cover every letter of the alphabet. There are four Medicare Parts covering different services:

(1) Medicare Part A — Hospital insurance that covers hospital stays, home health care, and some care in a skilled nursing facility. You generally don't pay a premium for Part A if you or your spouse worked and paid Medicare taxes for a specified amount of time while working (you can pay for it if you don't qualify);

(2) Medicare Part B — Medical insurance that covers doctor visits, outpatient care, medical supplies, preventative care, x-rays, and lab tests. Everyone pays the standard Part B premium amount of \$164.90, but the premium amount can be higher if your income from two years ago was high enough (as of 2023);

(3) Medicare Part C — Medicare Advantage that covers, at a minimum, everything the federal government has always provided in Medicare (Parts A and B, sometimes referred to as "Original Medicare"), but is instead provided by private health insurance companies (that are approved by Medicare). The Medicare Advantage Plans typically bundle Parts A, B, and D, and sometimes include extra benefits that Original Medicare doesn't cover, such as vision, hearing, and dental. Medicare Advantage Plans charge different out-of-pocket costs, must follow Medicare's coverage rules, and must notify you of any changes before the start of the next enrollment year; and

(4) Medicare Part D — Prescription drug coverage that covers, well, prescription drugs. This is provided by private health insurance companies as well, and can be purchased on its own, or is generally included if you purchase a Medicare Advantage Plan (Medicare Part C). These plans vary in what prescription drugs they cover and in cost, but all plans must provide at least a standard level of coverage set by Medicare. Medicare drug coverage includes both generic and brand-name drugs. The amount that you pay for each drug depends on the plan that you choose.

How does Medicare work with my other insurance?

Medicare enrollment allows you to decide what Medicare coverage you want, but you will generally select either Original Medicare (Parts A and B), or Medicare Advantage (Part C, which includes Parts A, B, and D). Original Medicare provides Medicare Part A and Medicare Part B (you can add Medicare Part D separately for prescription drugs if you would like). When you obtain services, you will pay a deductible at the beginning of each year, and you will also typically pay 20% of the cost of the Medicare-approved service (coinsurance). You can purchase a Medigap policy to cover the health care costs not covered by Original Medicare.

Medicare Advantage is Medicare Part C, and provides Medicare Part A, Medicare Part B, and usually Medicare Part D. As mentioned previously, these plans can provide extra benefits, such as vision, hearing, and dental. The cost of a Medicare Advantage Plan varies depending on what the Plan offers.

How does Medicare Work with my Other Insurance?

When you have Medicare and other insurance, each insurance provider is called a "payer" for your health insurance. The "primary payer" would pay first, and then the remainder would be sent to the "secondary payer" to pay.

We have featured professionals who are familiar with Medicare on the next page for your convenience.

All your **Medicare** questions
answered in one place.



You deserve the health plan that fits your needs.

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circumstances: turning 65,
leaving your employer, or
specific special needs



Evaluate your current
medical and prescription
needs



Understand the many
Medicare plan options
available in your area



Gain the knowledge to
make your own
informative choice

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INSURANCE AGENT**



Ryan Dorigan

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TRUST ADMINISTRATION

Trusts are divided into two basic categories — testamentary trusts and living trusts, with the difference being that the former doesn't become effective until the death of the trust creator while the latter takes effect when the legalities of creation are satisfied and sufficient funds are transferred in to fund the trust. Regardless of the type of trust chosen, a trustee must be named when the trust is created. The trustee is responsible for administering the trust once it becomes active.

The duties and responsibilities of a trustee, include at incapacity:

- Oversees care of ill person
- Understands insurance benefits and limitations
- Looks after care of any minors and dependents
- Applies for disability benefits
- Puts together team of advisors
- Notifies bank and others
- Transacts necessary business
- Keeps accurate records and accounting

The duties and responsibilities of a trustee, include at death:

- Contacts attorney to review trust and process
- Keeps beneficiaries informed
- Puts together team of advisors
- Inventories assets, determines current values
- Makes partial distributions if needed
- Collects benefits, keeps records, files tax returns
- Pays bills, does final accounting
- Distributes assets to beneficiaries as trust directs

If the responsibilities become too much, people often choose to appoint an attorney as trustee or retain the services of an attorney to assist the trustee in the administration of the trust.

The trust administration attorneys at [Sowards Law Firm](#) can help navigate the often complex probate system and/or assist with the administration of a trust. Sowards Law firm is honored to represent clients in [Santa Rosa, Pleasanton](#), and throughout the State of California. To schedule an appointment to discuss your probate and trust needs, contact the firm today by calling [\(408\) 371-6000](#).

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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 TELEPHONE CONSULTATION:**



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