

## Howard's California Estate Planning Checklist

A typical estate plan has several moving parts that should all work together to implement your vision. Otherwise, one document can negate others and lead to bizarre results. People have accidentally disinherited their children. After you die or become incapacitated, there may be no way to fix your mistakes.

To implement your vision, all your relevant legal documents should be reviewed holistically in the context of that vision – what you want to happen to you and your property in the event of your disability or death. This checklist is a helpful starting point but is not a substitute for specific legal advice regarding your situation.

1. **Health Care Directive:** When you can't speak for yourself, this document speaks for you regarding your health care and the disposition of your organs. Standard forms are available from health care providers or an attorney can draft a custom form. I often recommend a standard form because medical staff tends to respond better to forms they have been trained to understand. This form should be completed, executed and retained by you and at least your primary care provider.
2. **Durable Power of Attorney for Financial Matters.** When you can't act for yourself, this document empowers someone to act for you. That person can pay your bills, wrap up financial transactions, and otherwise keep your finances in order. California provides a free form at Probate Code § 4401 but that form should be discussed with an attorney because it doesn't cover some important issues. Your power of attorney should reference any living trust. All powers granted by this document evaporate at the instant of death. This document should be current, notarized, and stored in a safe place.
3. **Beneficiary Designations:** Beneficiary designations for pension plans, life insurance, and other accounts can override and defeat other estate planning documents including wills and trusts. Unlike most devises in wills, beneficiary designations can help avoid probate. However, community property rights can override beneficiary designations. Retirement account designations affect income taxes. Inappropriate designations can cut off health care benefits. Beneficiary designations should be appropriate to marital status, taxation, and the intended recipients.
4. **Property Titling.** Like beneficiary designations, property titling can defeat other estate documents but cannot defeat community property interests. Property titling can avoid probate. Check titles at DMV for vehicles, HCD for mobile homes, and the county recorder for real property.
5. **Will (If no living trust):** If you don't have a living trust, your will nominates an executor, nominates guardians for minor children, and publically distributes your estate after death. Wills don't avoid probate and may be defeated by beneficiary designations, property titling, and community property rights. Wills are not valid unless they are properly signed and witnessed. Beneficiary language and executor information should be current. California provides a simple will form and instructions at Probate Code § 6240 but that form may be inappropriate in many

## Howard's California Estate Planning Checklist

situations including typical middle class families and families with special needs or potential disputes.

6. **Pour-over Will (If living trust):** If you have a living trust, your pour-over will nominates your executor, nominates guardians for minor children, and publically distributes your estate after death in coordination with your living trust. Your executor should be compatible with the trustee of the living trust. The pour-over will should incorporate trust terms and be executed after or with the last trust amendment. Drafting a pour-over will is fairly technical. Your will is amendable and revocable while you are living.
7. **Living Trust.** A living trust is the core estate planning document for most estates because it privately empowers a trusted person to seamlessly manage assets through disability, death, and into the future – sometimes for generations. Because a trust only controls property it owns, check the trust property list, beneficiary designations, and asset titling for conflicts. Check distribution language for conformance with your intentions and the status of beneficiaries – births, deaths, marriages, health, etc. Check availability and appropriateness of successor trustees. Review sub-trust structure in light of survivor needs, tax issues, and cost of administration. Review special needs of dependents including those with disabilities and animal companions. Drafting is highly technical and fact driven. Provisions often become irrevocable upon death or incapacity. Trusts should be drafted or modified only by a licensed attorney.
8. **Regarding do-it-yourselfers.** If you carefully read and precisely follow instructions, you may complete a health care directive, California's statutory will form, and California's statutory power of attorney form. You may avoid probate by either devising everything to your spouse or using beneficiary designations and property titling to whittle your remaining estate below \$100,000 per Probate Code § 13000 et seq. However, you need to understand that it's easy to make a mistake and you can't fix it after you are gone.

If your estate is large enough to benefit from a living trust, it is false economy to draft a trust yourself or online – regardless what unqualified talk show personalities may proclaim. The wrong technical word in the wrong place can create a nightmare for your survivors. It happens all the time. If you think you might benefit from a living trust, please call a California licensed attorney. Many of us normally don't charge for an initial consultation regarding your options. Some of us will normally quote a reasonable flat rate for an integrated estate plan including health care directives, powers of attorney, living trust, pour-over wills, property titling, beneficiary designations, and certification of trust.

Howard Thomas practices law in Walnut Creek. His practice is limited to estate planning, estate administration, elder financial abuse, and mediation. Howard brings a deep financial perspective to his practice following experience as a cost engineer, financial advisor, and financial software developer. He earned a JD at John F. Kennedy University, an MBA at CSU Long Beach, and a BSME at UC Santa Barbara.