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Estate Planning Essentials

What are the differences between Wills, Powers of Attorney, and Trusts?

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Estate Planning & Business Law Attorneys

- Estate Planning
- Probate & Estate Administration
- Business Succession Planning
- Asset Protection
- Charitable Planning
- Business Law
- Entity Formation
- Employment Law
- Mergers & Acquisitions
- Commercial Real Estate

Presenters

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Paula Clarkson Chamberlain manages Merhab Robinson & Clarkson's Estate Planning practice and has more than 27 years of Estate Planning experience. She is a Certified Specialist in Estate Planning, Probate, and Trust Law as designated by the State Bar of California Board of Legal Specialization and has an LL.M. in Taxation.

Webinar Topics Overview

- Last Will and Testament
- Power of Attorney
- Trust
- Examples
- Q&A

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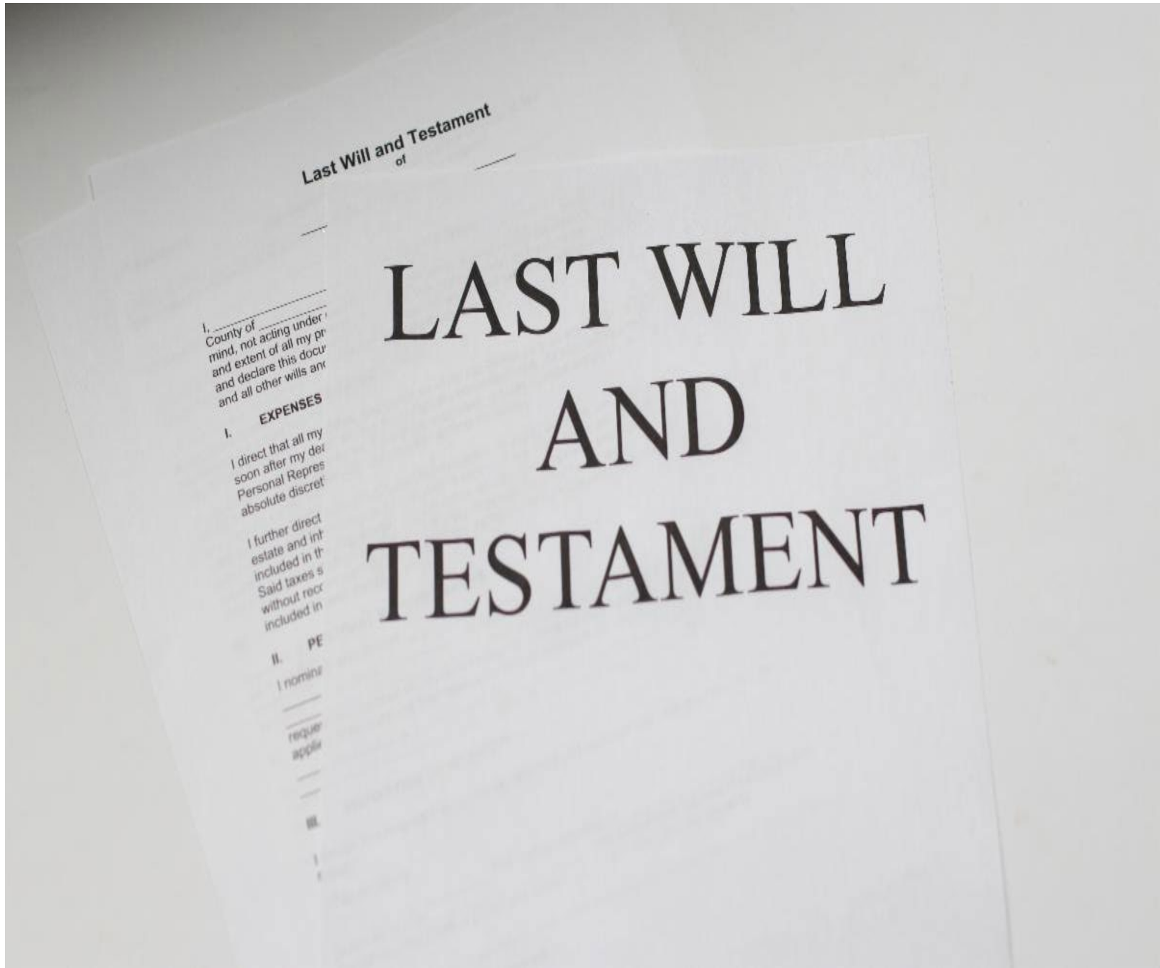
Last Will and Testament

What is a Will?

- Legal document expressing your wishes for asset distribution after death.
- Only effective upon death.
- Distribution is through the probate court.
- Appoints Executor to manage probate estate.
- Names guardians for minor children.



What is a Will?

- Covers assets in your name alone at death.
- Must go through Probate Court in California unless estate is below probate filing threshold - $208,500.
- Public record once filed.
- Can be contested.

When to use a Will?

- Everyone should have one as a baseline planning tool.
- Pours over into Trust when a Trust is part of estate plan.
- When you want court supervision of asset distribution.
- To name guardians for minor children.

Limitations

- **Time**
  - California probate typically takes 9-18 months, sometimes longer
- **Cost**
  - Court fees, attorney fees (often 5% of estate value)
- **Privacy**
  - Becomes public record
- **Control**
  - Limited ability to protect beneficiaries from creditors or poor decisions

Probate Fee Schedule

First $100,000	4%
Next $100,000	3%
Next $800,000	2%
Next $9,000,000	1%
Next $15,000,000	0.5%
> $15,000,000	The court will determine a reasonable compensation amount.

Example

- Joe dies owning:
  - Real Property worth $900,000
  - Financial Accounts (Checking, Savings, Investment) totaling $400,000
  - IRA totaling $250,000
- What pass automatically?
  - If IRA has a beneficiary, it is not part of probate.
  - If Joe is married and property held as joint tenant or community property with right of survivorship then it goes automatically to spouse. Otherwise, assets are subject to probate.
- Cost of Probate for Joe:
  - House and Financial Accounts ($1,300,000) = $52,000 plus approx. $3,000 in costs. $57,000 if IRA is included.
- If Joe has a Will, he directs where the assets go. If Joe has no Will, the state of CA has a plan.

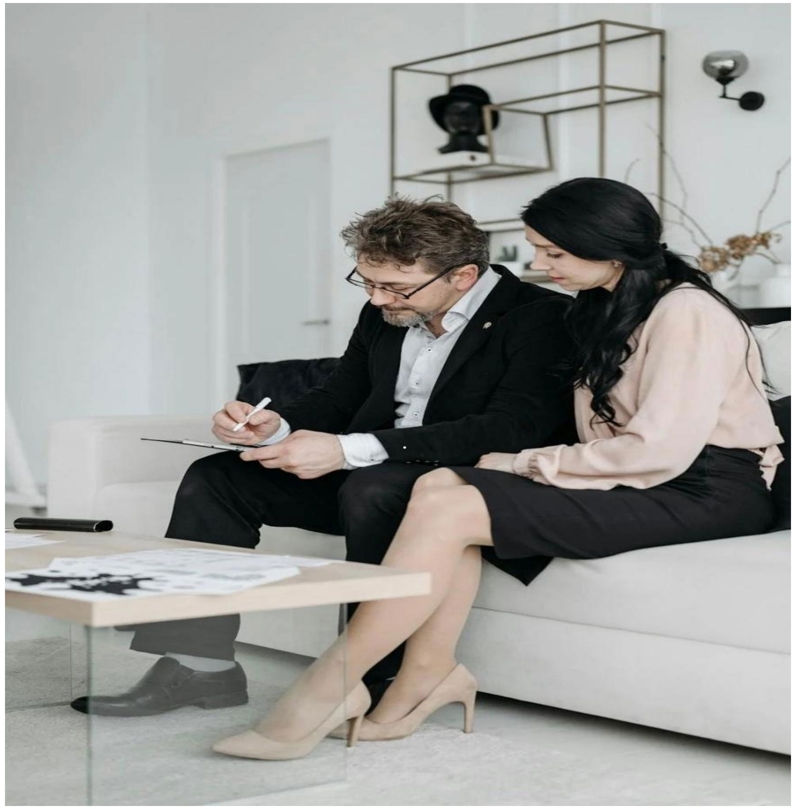
CA Intestate Succession

What is the order of heirs according to California intestate laws? The order is as follows:

- Surviving spouse
- Children
- Grandchildren
- Parents
- Siblings
- Nieces and Nephews
- Grandparents
- Aunts and Uncles
- Cousins

Power of Attorney

What is a Financial Power of Attorney?



- Legal document granting someone authority to act on your behalf regarding financial assts WHILE YOU ARE ALIVE!
- Only effective while you're alive, terminates upon death then assets pass via Probate or Beneficiary Designation

Types of Financial Powers of Attorney in California

- **Durable**
  - Continues if you become incapacitated
- **Springing**
  - Only becomes effective upon incapacitation
- **Limited**
  - Restricted to specific tasks or time periods

When to use Power of Attorney?

- Planning for incapacity
- Convenience during travel or illness
- Business management needs
- Essential for everyone over 18

Critical Limitations with Trusts

- **Important**: A Power of Attorney CANNOT:
  - Access or manage assets already transferred to a trust – only for assets held outside of a trust (retirement plans, government benefits, life insurance, collecting mail, etc.)
  - Make changes to trust terms
  - Act as successor trustee unless specifically named in the trust document

Example

- Joe has a living trust holding his $900,000 home and investment accounts. He gives his daughter Sarah financial power of attorney. When John becomes incapacitated, Sarah discovers she cannot access the trust assets to pay for his care because her POA authority doesn't extend to trust property. Only the successor trustee (named in the trust document) can manage those assets.
- As POA, Sarah can filed taxes for Joe, collect his social security, manage his 401(k) and retirement plans

* The POA works with the Trust!

Trust

What is a Trust?

- Legal **entity** that holds assets for beneficiaries
- **Grantor/Settlor**
  - Creates and funds the trust
- **Trustee**
  - Manages trust assets
- **Beneficiaries**
  - Receive trust benefits

Types of Trusts

Revocable Living Trust

- Can be changed or revoked during your lifetime
- You typically serve as initial trustee
- Becomes irrevocable upon death or incapacity

Irrevocable Trust

- Cannot be easily changed once created
- Offers tax benefits and asset protection
- Grantor gives up control

When to use Trusts?

- Avoid probate
- Maintain privacy
- Provide ongoing management after death
- Protect beneficiaries from creditors or poor judgment
- Tax planning for larger estates
- Care for disabled beneficiaries

Trust vs. Will: Different Execution Paths

Will Execution

- Must go through probate court
- Court validates the will
- Executor appointed by court
- Public supervision and reporting
- Timeline
  - 9-18+ months in California

Trust Execution

- No court involvement needed
- Successor trustee steps in immediately
- Private administration
- No court supervision required
- Timeline
  - Can begin distributing assets immediately
  - Final distributions may take months depending on complexity

Examples

- Maria dies with a $2 million estate. Her will-based plan requires probate, taking 15 months and costing $70,000 in fees.
- Her neighbor Carlos dies with similar assets in a living trust. His successor trustee begins managing and distributing assets within weeks, with minimal costs and complete privacy.

Time Limits for Money Management After Death

With a Will (Probate)

- Initial court filing: 30 days after death
- Creditor claims period: 4 months minimum
- Final distribution: 9-18+ months typical
- Court retains jurisdiction until final decree

With a Trust

- Immediate access by successor trustee
- Creditor claims period: 4 months if proper notice given
- Distributions can begin immediately for ongoing needs
- Final distributions typically within 6-12 months
- No court supervision required

The Complete Estate Plan

Most people need all three documents working together

Example: The Johnson Family

- **Living Trust**
  - Holds their home, investments, and business interests
- **Pour-over Will**
  - Catches any assets not in the trust, names guardians for minor children
- **Powers of Attorney**
  - Handle decisions if incapacitated
  - But cannot access trust assets unless also named as successor trustees

Common Mistakes to Avoid

- Having a power of attorney/trustee/executor but no successor agent/trustee/executor named
- Creating a trust but not funding it (transferring assets into it)
- Assuming a POA can handle everything during incapacity
- Not coordinating beneficiary designations with estate plan
- Not naming beneficiaries on assets to avoid probate
- Naming minors as beneficiaries

Why Estate Planning Remains Essential

- Every adult needs these basic documents
- Consider your family situation, asset levels, and privacy preferences
- Regular review and updates are essential
- Importance of working with qualified California estate planning attorney

Questions?

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