

ESTATE PLANNING NEWS



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Set for Life: Documents You Should Have in Case of an Emergency

Each year, millions of Americans die without the proper legal documents in place. Their families, doctors, and attorneys must scramble to make medical and financial decisions during an emotional time.

Here is a list of documents you can put in place to protect yourself and ease the burden on your family:

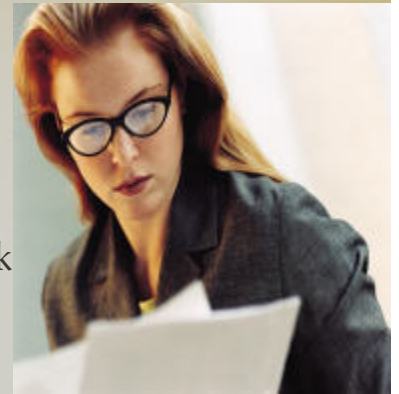
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Law Office of Nicole A. Davidson
1092 Gardenia Ln., Concord, CA 94520-4485
Tel/Fax: 925-689-6890 • Cell: 510-919-8389
E-mail: californiaattorney@hotmail.com

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Announcements

Along with fellow board members of the Contra Costa County Bar Association, Solo Section, I will present "How To Open a Law Office" on November 18, 2005, from 1:15 p.m. to 3:45 p.m., at the Walnut Creek Marriott. The presentation is part of a day long "MCLE Spectacular" where attorneys keep up to date with recent developments.



Tip of the Month

Who is Your Fiduciary?

A fiduciary is someone who stands in a special relation of trust, confidence, or responsibility in obligations to others.

Identifying the fiduciary:

- 1) Of a trust: trustee
- 2) Of an estate:
 - A) With a will:
 - 1) Executor (male)
 - 2) Executrix (female)
 - B) Without a will
 - 1) Administrator (male)
 - 2) Administratrix (female)
 - C) AKA personal representative
- 3) Of a power of attorney:
 - A) Agent
 - B) AKA Attorney-in-fact



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I believe that every right implies a responsibility;
every opportunity, an obligation;
every possession, a duty.

-- JOHN D. ROCKEFELLER, JR.
Speech, 1941

Set for Life

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1. Advance Health Care Directive (AHCD)

This document serves four purposes:

- a) Designates the person you trust to make medical decisions and authorizes your medical provider to share your confidential medical records with that person;
- b) Describes the care you want provided or withheld if you cannot communicate;
- c) Specifies whether you want your life prolonged through artificial means (also known as a "Living Will");
- d) Addresses end of life decisions, including organ donations, funeral or memorial ceremony plans, and disposition of remains (burial vs. cremation, location, etc.).

2. Durable Power of Attorney for Finances (DPAF)

The Durable Power of Attorney for Finances is a document where you appoint a person (your "agent") to make financial decisions for you if you are unable to do so.

If you do not have an Advance Health Care Directive and Durable Power of Attorney for Finances, your family members may need to go to court and request that a conservator be appointed to make medical and financial decisions for you.

3. Will

Most people are familiar with Wills, yet few have written one.

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Entertainment

The Pallbearer (1996)

In this comedy of mistaken identities, Ruth Abernathy (Barbara Hershey) believes that Tom Thompson (David Schwimmer) is her deceased son's former high school classmate. Too embarrassed to decline, or mention the fact that he doesn't even remember his former classmate, Tom becomes the pallbearer. The moral of this story: Be careful when you identify people in your estate plan and related documents!



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What should your Will include?

- a) Selection of an executor who will be responsible for overseeing your estate, paying your last debts and taxes, and distributing any remaining property to your beneficiaries;
- b) Identification of beneficiaries - family, friends and charities you would choose may be different from the state's default provisions for people who die intestate (without a will);
- c) Nomination of a guardian to assume custody of minor children (under age 18);
- d) Designation of a guardian to manage inheritances left to minor children through trusts or custodianships (may be a different person than the custodial guardian).

4. Revocable Living Trust

A revocable living trust is both a document and an entity. It is created in addition to, not in place of, a Will.

Trusts involve three people: the person who makes the trust (called the "trustor" or the

"settlor"), the person who manages the trust (the "trustee"), and the person or people who benefit from the trust (the "beneficiaries"). In many cases, a single person or a married couple will fill all these roles - trustor, trustee, and beneficiary. However, there will also be backup trustees and beneficiaries, similar to the executor and beneficiaries of a Will.

When a trust is established, most property is transferred to the trust by retitling the property in the trust's name. This involves some additional work compared to writing a Will.

The primary reason that people set up trusts is to avoid the delay, cost, and publicity of probate. Probate is a court proceeding that occurs when a person dies, her Will is brought to court (if she has a Will), and the court oversees the payment of debts and distribution of assets to beneficiaries (or heirs predetermined by the state, if there is no Will). In California, probate is only required when the fair market value of certain assets (referred to as the "probate estate") exceeds \$100,000. However, the probate estate often includes real estate. As a result, trusts are quite popular in California.

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