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## WHAT HAPPENS TO MY ESTATE PLAN IF I MOVE TO ANOTHER STATE?

We get this question a lot – from younger clients who know their job might get transferred someday. Also, it seems that more and more Californians are choosing to move to another state when they retire, including some of our clients. The answer is, of course, it depends.

Most of the time a will that is a valid will in one state will be a valid will in any other state. The same is true of a trust. The other components of your complete estate plan, however, are a different story. Both the Health Care Directive and the Durable Power of Attorney contain language that is very specific to the state statutes upon which they are based. If you move to another state I recommend meeting with an attorney there to discuss your estate plan. Chances are the attorney's recommendation will be to create new health care directives and powers of attorney based on the laws of your new state.

If your estate plan also includes a HIPAA-compliant release for your private medical information, this will also have to be revisited, most likely. Our private medical information is protected under both federal and state law. You will probably be advised to

create a new HIPAA release under the laws of the new state.

Although your will and trust will most likely be valid in your new state, certain issues having to do with community and separate property should be discussed with an attorney. Remember, separate property is anything you had before marriage. Community property is anything you acquired during marriage. If you are moving from one community property state to another, you won't have any problems.

If you are moving from a community property state to a common-law state, where community property is not recognized, your trust and will should be fine. The assets that you used to call community property before your move will be considered to be owned one-half by each spouse. It's worth getting an attorney's opinion on this, however.

If you are moving from a common-law state to a community property state, though, legal advice is a must. Some community property states treat assets acquired during marriage while living in a common-law state just the same as community property. However, not all community property states treat your assets this way. Upon moving from a

(CONT.)



“ Stop being afraid of what can go wrong and start being excited for what can go right! ”  
— Unknown Author



Dear Clients and Other Friends,

For our upcoming newsletters we are borrowing an idea from our new podcast. In every issue, we will be answering readers' questions – about estate planning and administration, of course. We know you have questions, and often lots of other people have the same questions. On our podcast we have found the feature, which we call “Ask Kirsten,” to be very helpful and informative (and fun for ME!).

If you have a question you'd like to see answered in an upcoming newsletter, send it to [info@absolutetrustcounsel.com](mailto:info@absolutetrustcounsel.com).

Best wishes,



Kirsten Howe, Absolute Trust Counsel

## PAST EVENTS

**April 25, 2018**  
Pleasanton, CA

*Special Needs Estate and Financial Planning Essentials:*  
This presentation covered the basics of special needs planning and some key elements of plans that aim to cover your child's personal care needs, financial and legal needs, as well as the various resources available.

**June 18, 2018**  
Boston, MA

*Estate Planning and Charitable Giving with Company Stock:*

An overview of various estate planning, trusts, gifting and charitable giving strategies for high net worth individuals, particularly those that may hold specific valuable assets such as company stock.



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## WHAT HAPPENS TO MY ESTATE PLAN IF I MOVE TO ANOTHER STATE? (CONT.)

common-law state to a community property state you definitely need advice from an attorney.

Finally, it is important to have an attorney in your new state review your will and trust to make sure they will work the way you want them to on your death. In

some states, for example, a spouse or a child cannot be disinherited, or can only be disinherited if certain specific language is used. An experienced estate planning attorney will be able to spot ineffective provisions and suggest alternatives.

## INTRODUCING...ABSOLUTE TRUST TALK

We've been hard at work brainstorming on how to educate our clients, colleagues and community on estate planning, trust administration, probate, special needs trusts, Medi-Cal planning and much more and we've decided to bring you ABSOLUTE TRUST TALK, a bi-monthly podcast. Our podcasts are informative interviews with legal and financial professionals to help educate you on a wide variety of topics. Below is a list of episodes that are available now for your listening pleasure, but before you can do that, here's simple instructions on where to find them.

### ON YOUR COMPUTER

1. Open iTunes on your computer.
2. Choose Podcasts from the drop down box in the top left of your screen.
3. Click "Store"
4. Type "Absolute Trust Talk" in the search box in the top right corner of your screen, click on this image, then click "subscribe" directly underneath it.

### ON YOUR MOBILE DEVICE

1. Click the App store icon on your home screen.
2. Type "podcast" in the search box.
3. Click "GET" adjacent to the purple icon with two circles.
4. Click "OPEN" then click "Search" at the bottom, right corner of your screen.
5. Type "Absolute Trust Talk" in the search box at the top of your screen, click on this image, then click "subscribe" directly underneath it.

Once you have subscribed, all of the podcasts produced will be listed. Just click on one, turn up the volume and enjoy. Also, as a bonus, every episode includes an "Ask Kirsten" segment, where we answer one question sent to us from our listeners. If you have a question that you'd like answered, please email it to [info@absolutetrustcounsel.com](mailto:info@absolutetrustcounsel.com) and listen to an upcoming podcast for the answer. Here are just some of our recent podcasts:

- **Episode 001: The Ultimate GPS to Money in Your Relationship**
- **Episode 007: Divorce: Prenup, Postnup and Everything in Between**
- **Episode 005: How to Help Your Children Own a Home the Right Way**

If you have any questions or need assistance finding us, please call our office and we will gladly walk you through the process, 925-943-2740. If you have a question for "Ask Kirsten" or a topic or idea for an upcoming podcast, please email us at [info@absolutetrustcounsel.com](mailto:info@absolutetrustcounsel.com). We hope you enjoy these podcasts as much as we have enjoyed producing them. Feel free to send us your comments or feedback.



“

Wherever your relationship is going it will get there faster on a tandem.

– David M.

”

## DON'T USE THE WRONG ASSETS TO PAY FOR CARE

All attorneys will agree with me that if there's one thing we wish our clients would do it would be to talk to us before they act. It's much better for the client, and less expensive in the long run, to have your attorney review that lease or contract before you sign it than to be surprised later.

We find this to be painfully true at times for our Medi-Cal planning clients. Many times, when we meet with a new client for the first time we discover that they have been paying for care, whether in-home, assisted living or nursing home, with what I will call the "wrong" assets.



So how can an asset possibly be the wrong asset? I'll explain. When we do planning for our clients who need assistance from Medi-Cal to pay for nursing home care, we are trying to make sure that they own only exempt assets or unavailable assets. These two words, exempt and unavailable, have very specific meanings in the Medi-Cal world.

Exempt assets are those assets that we are expressly allowed to own and still qualify for Medi-Cal. There are a number of such assets, but the ones that most of our clients have are as follows: their home, the contents of their home, one car and \$2,000 worth of other assets. If the Medi-Cal applicant is married, the other spouse is also allowed to own up to \$123,600 worth of other assets. PLUS retirement assets in his or her name.

Unavailable assets are not considered exempt by Medi-Cal, but because of their nature, they are categorized as unavailable and as such they do not count against you as a resource when applying for Medi-Cal. For most of our clients, the unavailable assets they own are their retirement accounts. For the Medi-Cal applicant, the retirement accounts are unavailable as long as the

applicant is taking distributions according to their IRS life expectancy. It is important to note that Medi-Cal counts these distributions as income in determining eligibility and share of costs.

Now, if the goal of our planning is to make sure that the Medi-Cal applicant has only exempt and unavailable assets, the better strategy in paying for care prior to Medi-Cal eligibility is to spend the assets that do not fall into those two categories. This is not a blanket proclamation, but most often it is better to spend down a brokerage account or a bank account than to take distributions from an IRA in order to pay for care. By the same token, it is better to spend down the brokerage account or the bank account than to take cash out of the home by refinancing with a new or second mortgage. Taking home equity out as cash actually does the exact opposite of what we are usually trying to do, which is spend down the countable assets, because it creates additional countable assets in the form of the cash that is received on refinancing.

The best thing you can do when it starts to look like you or your spouse will need to start paying for assistance is make an appointment with an attorney who specializes in Medi-Cal planning and come up with a plan.

## WE HAVE EXCITING NEWS!

Denette, our resource manager, gave birth to a beautiful, healthy baby girl on May 1, 2018, weighing in at 6 pounds, 10 ounces.

Her name is Shakaia Tanesh. We wish her and her family many years of good health, love, and happiness.

