ESTATE PLANNING TIPS

PREVENTION STARTS WITH HIRING QUALIFIED PLANNERS SUCH AS STATE BAR-LICENSED ATTORNEYS

* One size does not fit all and you need to spend sufficient time to carefully consider your estate plan before you make your final decision. Don’t allow yourself to be rushed by a pushy non-attorney salesperson.
* Beware of non-attorneys peddling do-it-yourself documents and one size fits all inexpensive trust packages that may not meet your goals, comply with California law, or satisfy government benefits eligibility regulations. Some common mistakes in the estate plans prepared by the unqualified planners can result in more taxes being paid, increased post-death legal expenses, ineligibility or loss of government benefits, legal battles between your beneficiaries or heirs following your death, or worse.
* Individuals or companies that offer annuities, financial services, or financial investments to seniors should be carefully researched and scrutinized. Seniors should understand that these “senior financial advisors” make their living off of fees and commissions. They want to sell you something you may not need and they may put their interests ahead of yours in order to earn those fees and commissions. They have an inherent conflict of interest. Attorneys owe their clients a fiduciary duty and should never try to sell you investment products.
* These self-proclaimed “experts” often fail to disclose adverse tax consequences or early withdrawal penalties that may be incurred when exchanging stocks, bonds, certificates of deposit, or other investments into annuities. Before you commit, speak to a qualified estate planning attorney or your current financial or investment advisor. Any “expert” who discourages you from seeking such advice, or exerts pressure on you to make a decision without a chance for contemplation, should be avoided.
* Every financial product that offers a return on investment carries risks. Promises of no or low risk/high return investments are warning signs for scams.
* Eligibility for certain types of needs-based government benefits, including Medi-Cal, SSI, IHSS and various veterans’ benefits may be limited to individuals who are truly needy, with personal income and assets below basic poverty levels. A senior’s decision to give away assets or income in hopes of qualifying for the government benefits may have the reverse effect, triggering a long period of ineligibility for government benefits under the “look-back rules” of the specific program that are designed to prevent fraud or abuse. When that happens, the senior may have no assets or income to live on during the ineligibility period, making the senior’s situation even worse.
* When it comes to your estate planning, work only with a licensed California attorney experienced in estate planning, tax or elder law matters. The California State Bar certifies specialists in (1) estate planning, trust and probate law, (2) tax law and (3) elder law. The certified specialist website can be found at: <https://members.calbar.ca.gov/search/ls_search.aspx>
* Consider reading the CLA Pamphlet “How I Can Find and Hire the Right Lawyer” accessible on this website at [Need to be Able to Upload this CLA Pamphlet to ESP Website]

THE LAW IS DESIGNED SPECIFICALLY TO PROTECT SENIORS

California has enacted a variety of laws intended to protect seniors from widespread financial abuse. The protections of the elder abuse laws apply to any individual who is age 65 or older, or who is under age 65 but disabled.

Some of these laws can be used by law enforcement and prosecuting agencies to compel the predator to return money taken from the senior or cancel the unsuitable transaction. Other laws may be used by private attorneys representing senior victims to recover money or property wrongfully taken by the financial predator. In fact, the laws are designed to incentivize private lawyers to prosecute these cases in civil courts.

IF AN ELDER HAS BEEN THE VICTIM OF FINANCIAL ABUSE, A QUALIFIED ATTORNEY MAY BE ABLE TO HELP

If you are concerned that financial elder abuse has occurred, contact a qualified attorney immediately. The attorney can advise the senior, or communicate on behalf of the senior. If necessary, the attorney can initiate legal action for the following:

* Damages. Recover money damages for assets taken, secure the return of the senior’s assets, recover attorney’s fees and other out-of-pocket expenses, recover additional money for emotional distress, pain and suffering, punitive damages, and other enhanced remedies;
* Injunctive relief. Obtain elder abuse protective orders, civil harassment or domestic violence orders, probate court freeze orders or a civil temporary restraining order or injunction;
* Attachment. Freeze bank accounts and prevent other assets from being sold before the money disappears;
* Rescission and restitution. Undo or cancel contracts and recover amounts paid; and
* Accountings. Obtain a court order compelling the wrongdoer to account to the senior concerning the whereabouts of the senior’s funds or other assets.