FROM THE SHORE *Everyone can see the same passage. Whether they agree on how to get through it is a different question.*

ESTATE PLANNING

Nine Tips to Keep Your *Family Together*

Unwitting mistakes can wreck careful planning and lead to family fighting and estrangement. Most of them are avoidable — and most of the fixes cost nothing but a conversation.

TAMARA L. HARPER, J.D., AEP® • 7 MIN READ • ESTATE PLANNING · TRUSTS

All good wealth management includes estate planning as a component. Changes in the tax laws, modern trust conventions, and family changes make periodic review a real necessity.

While the contemplation of your demise is never at the top of your list, there is satisfaction in the feeling that you have taken care of the issues and provided for the people you love. What undoes that feeling is rarely the plan itself. It is the small omission — an outdated definition, a trustee with divided loyalties, a beneficiary designation nobody checked — that turns a careful document into a family argument. The nine tips that follow are the ones I return to most often with clients, and they are ordered the way an estate plan is actually built: what you tell your family, who you put in charge, and what happens when circumstances change.

AT A GLANCE **What this issue covers**

01 **What your family knows**
Sharing the plan while you can still explain it, and dividing heirlooms that carry more weight than cash.

02 **Who inherits, defined**
Why traditional definitions of issue and descendants no longer describe modern families.

03 **Who you put in charge**
Conflicts of interest, co-fiduciaries, trustee discretion, and the role of a trust protector.

04 **Keeping it current**
Beneficiary designations, annual review, changed circumstances, and resolving disputes privately.

— CONTINUED ON PAGE 2 —

TIPS ONE THROUGH THREE

What your family knows, and who you name

The first three tips cost nothing to implement. They are about candor, language, and the quiet conflicts that come with naming the wrong person.

01

TIP ONE

Don’t keep your estate plan a secret

There is no need to involve your family in planning how your estate will be distributed, but there is great utility in telling them exactly what they can expect before you pass away. It allows them to ask questions, understand your reasoning, and avoids unpleasant surprises. Sharing the plan may cause animosity now — but now is when you can address it and make changes, if needed. Your plan should also include a mechanism for dividing **family heirlooms**, which frequently carry a bigger emotional component than cash.

02

TIP TWO

Use modern, inclusive definitions of issue and descendants

Wills traditionally use the words **issue** and **descendants** to identify who inherits. Those definitions may not cover modern concepts of children — those conceived through in-vitro fertilization or a surrogate, adopted children, the non-biological children of same-sex couples, and the biological children of unmarried couples. Because you cannot know what methods your offspring will use in the future, consider an expanded definition in your documents. You may also want to draw a line for children adopted after a certain age, such as 21.

03

TIP THREE

Avoid conflicts of interest when selecting executors and trustees

The attorney who drafts your will or trust instrument may have a conflict of interest serving as your executor or trustee, particularly if they also serve as a fiduciary for other family members who are beneficiaries. A business partner serving as trustee may have the same problem. Consider appointing **co-executors and co-trustees** who act as a check and balance, or a **corporate trustee** alongside an individual whose judgment your beneficiaries have reason to respect.

THE PRACTICAL VERSION

Say it out loud, write it down, and name someone with nothing to gain

Nearly every contested estate I see involves at least one of these three: a beneficiary who learned the terms after the funeral, language that failed to include someone the client plainly intended to include, or a fiduciary whose own interest sat on the other side of the decision.

— CONTINUED ON PAGE 3 —

TIPS FOUR THROUGH SIX

Trustees, protectors, and transparency

A trust is only as good as the discretion you give the people running it — and the accountability you attach to that discretion.

TIP FOUR

04 Don’t constrain your trustees, but ensure accountability

The instrument should not try to dictate the timing and purpose of every distribution. Provide general guidelines of what is acceptable, choose the right trustees, and give them **broad discretion and authority** — including, where appropriate, the authority to terminate the trust under circumstances you set out. Consider specific provisions for how trustees are paid. Where a named trustee is also a beneficiary, there is a danger of severe conflict of interest, and it can expose trust assets to that beneficiary’s personal creditors or bankruptcy claims. Discuss an **independent fiduciary** with your estate planning attorney.

TIP FIVE

05 Consider a trust protector for irrevocable trusts

A trust protector is a fiduciary, separate from the trustee, whose role is to ensure the trust’s purposes are being satisfied. They can be given the power to remove and replace a trustee, to amend the agreement if its terms no longer carry out your intent or to achieve tax objectives, and to change the **situs** of the trust. Consider designating one for longer-term trusts, such as those that may continue for more than one generation. If you do, spell out the role and its powers carefully — and be aware that fiduciary liability complications can arise.

TIP SIX

06 Don’t leave beneficiaries in the dark

Notwithstanding a grantor’s wishes, all beneficiaries are entitled to a copy of the trust agreement as a matter of law. Consider spelling out in the instrument how often the trustee reports to current income beneficiaries and what information they receive. In California, **remainder beneficiaries** are entitled to be kept reasonably informed about the administration of the trust and of the material facts necessary to protect their interests.

MOST IMPORTANT

Verify every beneficiary designation, in writing

- → **Retirement accounts**
  401(k)s and IRAs
- → **Life insurance & annuities**
  Every policy, every carrier
- → **Pay-on-death bank accounts**
  Checking, savings, CDs
- → **Transfer-on-death accounts**
  Brokerage and investment

Each one needs a **primary** named beneficiary and a **contingent** named beneficiary. Failure to designate a beneficiary will result in a probate.

— CONTINUED ON PAGE 4 —

TIPS SEVEN THROUGH NINE

Keeping the plan alive

A plan written once and filed away is a plan drafted for a family that no longer exists. The last three tips are about the years after signing.

07

TIP SEVEN

Edit your estate plan along the way

Your circumstances and those of your family members will change over time, and changes in federal and state tax law may necessitate changes to your plan. Schedule **annual meetings** with your attorney and financial advisor to review it and confirm it is both current and complete. The cost of keeping an estate plan current is minuscule compared with the potential estate tax savings — and with the cost of litigating a document that no longer fits.

08

TIP EIGHT

Consider possible changes in family circumstances

"Shirtsleeves to shirtless in three generations" is a common occurrence. When making bequests, consider which family members will realistically be able to **maintain a real estate asset**, taxes included, in future generations — and build in mechanisms, such as a trust, that enable them to do so. Consider as well a dispute resolution mechanism governing the decision to sell if the asset is no longer wanted, or can no longer be maintained.

09

TIP NINE

Build in dispute resolution mechanisms

You can avoid potential disputes by having candid up-front discussions with your family. Litigation is very expensive, and it exposes family matters in a public forum. Consider alternative methods, **mediation** in particular, to resolve disagreements among family members — keeping in mind that minor, incapacitated, unborn, and unascertained beneficiaries must be appropriately represented by their own counsel. Even where an instrument contains no mediation provision, and most do not, family members may voluntarily agree to mediate rather than litigate.

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> *Litigation is very expensive, and it exposes family matters in a public forum. Mediation keeps the disagreement inside the family.*
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> TAMARA L. HARPER, J.D., AEP®

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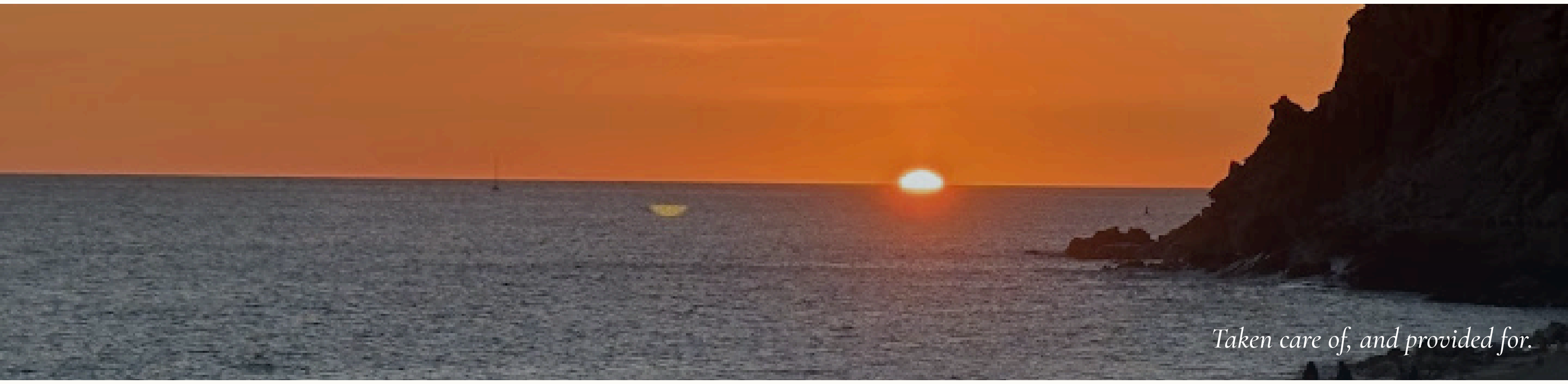
IN CLOSING

The plan is the easy part

The documents can be drafted in weeks. What takes longer — and matters more — is the conversation that surrounds them.

Every item in this issue traces back to the same idea: an estate plan is read by people, and people read it in the worst week of their lives. Language that was clear to you may not be clear to them. A fiduciary you trusted may be someone they distrust. A designation you set up twenty years ago may name someone who is no longer in the family. None of that is a drafting failure — it is simply what happens when a document outlives the circumstances that produced it. Review it, tell your family what is in it, and give the people you put in charge both room to act and a duty to report.



Taken care of, and provided for.

LET'S TALK

Let's review your plan before the family has to.

I appreciate your referrals and your business, and look forward to working with you and showing you ways to protect and maximize your wealth and assets.

BOOK A MEETING →

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Kind regards

Navigating and charting a map of the waters and currents you need to sail to bring you safely home to your particular harbor — that is what this work is. If any of the nine tips in this issue raised a question about your own documents, that is exactly the kind of question worth an hour of our time.

This article is provided for general informational purposes and does not constitute legal advice. Estate planning strategies vary by state and carry tax consequences that should be reviewed with your attorney, financial advisor, and CPA. Fiduciary liability complications relating to trust protectors are beyond the scope of this article. For guidance specific to your situation, please contact our office in Westlake Village, California.

