

# You Planned For This Day, Now What?

## **A Primer for Aging Parents**

This primer is designed to provide you with some how-to's and how/where to get started as you age, your parents age or maybe even assist with other aging relatives from my own personal perspective.



By Jennifer N. Sawday, Esq.  
Partner, TLD Law  
3900 Kilroy Airport Way, Suite 240  
Long Beach, Ca 90806  
(562) 923-0971  
**JSawday@TLDlaw.com**  
Emails are welcome!



## Do you know what Estate Planning is?

If the answer is YES... GREAT! Let's move on.

If the answer is NO... Let's review super quick.

There are four key legal documents that complete your estate planning portfolio. The infographic below is a good reminder of what the documents are and how they work. Every one who owns a home should have all four.

Aging parents definitely need to have a durable power of attorney and an advance health care directive at minimum!

### 4 KEY LEGAL DOCUMENTS

REVOCABLE  
LIVING TRUST

1

A Revocable Living Trust avoids probate when your home and other assets are vested in your Trust. You select who will be in charge and set the rules for distribution of your assets.

POUR OVER  
WILL

2

A Will is the preferred document to nominate guardians for your children. A Will does not avoid probate, so a Trust is also executed at the same time. The Will functions to “pour over” assets to your Trust.

DURABLE  
POWER OF  
ATTORNEY

3

A Durable Power of Attorney and Advance Health Care Directive allow you nominate loved ones to make financial and medical decisions on your behalf in the event you are alive, but not well (i.e., car accident, medical incapacity or not aging well).

ADVANCE  
HEALTHCARE  
DIRECTIVE

4

You select your agents instead of the court making the choices for you.

## Do You Or Your Loved One Already Have An Estate Plan In Place?

### If the answer is **NO...**

- ◆ If this is for YOU, please hire an attorney to get these documents in place ASAP. You likely need a trust, will, durable power of attorney and advance health care directive.
- ◆ If this is for YOUR LOVED ONE, do not proceed with getting your loved one declared incapacitated by a medical doctor UNTIL you have had a chance to consult with an attorney.
- ◆ A good attorney will refuse to help that loved one with any legal papers. Sometimes someone may be aging - alive, frail, but still has their mental faculties - they can still do an estate plan, draw up power of attorney, sign an advance health care directive or set up a trust. The standard for testamentary capacity to draw up estate planning documents is not the same standard as to enter into a contract. Just do not make your own call about what needs to be done and in what order until you have fully assessed the situation and understand all ramifications of your potential actions.
- ◆ **If the answer is YES... still obtain legal advice but you may have options and read on.**



*TLD Law's Female Partners,  
Monica Goel, Shannon  
Jenkins, Jennifer Lumsdaine,  
Brooke Pollard, and Jennifer  
Sawday*

## Understand that Getting Proper Legal Advice is Priceless

### **A trust is in place (along with a durable power of attorney and advance health care directive) so now what?**

If your loved one already has an existing estate plan in place... meaning a revocable trust, pour-over will, durable power of attorney and advance health care directive, then a review is in order of these existing documents.

“

A major crisis  
can be avoided  
with a little  
advanced  
planning.

”

### **Time to review. Here is what to look for.**

1. Make sure that all real properties (houses, rental properties and other real estate assets) are properly vested in the trust. You have title reports or last vesting deeds that clearly show the ownership of these assets to reflect the trust name. The property tax bills for these assets indicate TR or TRUST in the name line as a secondary indicator that the real property is in fact vested in the trust.
2. Make sure that all financial assets are connected to the trust as appropriate for the type of financial asset. A checking account statement should show that the asset is owned by the trust. The statement uses the words TR or TRUST in the name line as a secondary indicator to checking with the financial institution that the account is held in the name of the trust. Each financial asset needs to have a place to go. Needs to be owned by the trust or have a designated payable on death beneficiary. Different accounts have different rules and each bank or financial institution may have varying preferences but you have to call each with your loved one and ask – does this account have a place to go when he or she dies? Figure out where and if they say nowhere – then you need to work to connect that asset to the trust or place a payable on death beneficiary accordingly.



*TLD Law's Long Beach office*

**Time to review. Here is what to look for (continued).**

3. Make sure the estate planning documents have a **Schedule A** or a **Schedule of Trust Assets** that indicates the name of the trust on the title page and listing of all assets including real estate and banking assets and signed by the loved one as the creator/settlor/trustor of the trust.

4. **Review the trust itself** to identify the successor trustees and make sure they are correct. Also review the trust to identify the beneficiaries and make sure they are also correct.

5. **Review the durable power of attorney** to see who is in charge and how. Are they in charge immediately or upon incapacity?

6. **Review the advance health care directive** to make sure it contains updated health information privacy/HIPAA language/release/waiver and that the decision makers are correct.

If everything looks up to date, then consider if you want to **RESIGN** as trustee now or add in a co-trustee alongside you and execute a new durable power of attorney effective now.



*TLD Law Attorneys*

These are changes that you can make to your existing documents to allow your next person to come in to help you. This is in lieu of being declared incapacitated especially if you are aging, getting tired of managing your affairs but wish to have a trusted child or individual start to help you with your affairs during your lifetime. If you are aging and not doing well with handing your own affairs, this may be a good option. This is essentially carrying out your estate plan sooner and while you are alive, but slowing down or having some difficulty with your day to day financial management. It's a nice option to say I need help and activate your existing estate plan for this day. It shows others you have planned for this and now it is time to put it to work.

This option allows you to still change or update your documents later should your desires change. This option meaning you decide to update your documents to allow someone to act alongside you or for you, but you are not medically declared incapacitated.

Once you are declared incapacitated, however, you would not be able to change your documents. Like add in a grandchild to receive a cash gift, remove a beneficiary even if you were having a good day and wanted to make this update. Once someone is incapacitated, there's usually no going back. An aging person up in their years rarely regains capacity. A younger person ill with a disease or other medical condition could get better and regain capacity and regain control in that manner. I do not see this very often.

## Time to Activate your Existing Estate Plan?

An existing estate plan can be activated during your lifetime... If you or a loved one are alive but not doing well or have been declared incapacitated, here's what an activation of your existing estate plan (remember this day was planned for) looks like:

1

A trust notification to beneficiaries may be required if the trust becomes irrevocable meaning the person who created it can no longer make changes to it as that person is now incapacitated.

2

An affidavit of change of trustee is recorded against the home and all other real properties to put others on notice that there's a new trustee. This protects the properties from identity theft, unwanted transfers to others and financial elder abuse.

3

A certification of trust is drafted and signed by the newly appointed and now acting trustees. They give this document to banks so they can help with the banking needs as a newly activated trustee.

4

A new durable power of attorney may be drawn up effective immediately or certificates of incapacity are stapled to existing durable powers of attorney. Either way depending on your mental state will work to activate the power of attorney to handle financial matters that are not part of the trust. Matters like handling a medical insurance billing, social security issues/problems, a parking ticket, a retirement account withdrawal like an annual RMD, filing taxes and things not tied to the trust.

Jennifer Sawday was named in the 2021 "Leader in Law" Awards by the *Los Angeles Business Journal*

In 2021 Ms. Sawday was named in the "Inspirational Women Forum and Awards" by the *Los Angeles Times*

Ms. Sawday has been named a SuperLawyer and Rising Star, as featured in *Southern California SuperLawyers®*

Ms. Sawday has received the Martindale-Hubbell® AV Preeminent® "Superb" Rating of 10.0

## HAVE YOU SHARED ABOUT YOUR WISHES FOR YOUR FUNERAL, BURIAL OR CREMATION?

This comes up often. Your loved ones just want to do what you want. It's helpful to include separate instructions for these end of life and disposition of remains. It can be incorporated into an advance health care directive or provided in a stand-alone document, like the one on the next page.

## HAVE YOU PROVIDED OR OBTAINED VITAL STATISTICS FOR THE EVENTUAL DEATH CERTIFICATE?

This is a scramble during the worst of times. Someone has passed, you or a loved one and next questions being asked are what is that deceased's social security number, their proper name, their date of birth, city and state of birth, their mother's full name, their father's full name... you get the idea.. the information that's gathered and delivered to the mortuary or funeral home for the death certificate processing. Providing this information among your papers or asking your loved ones ahead of time and making a note will make this data gathering a bit less painful.





## Funeral Service Wishes

**I would like the following to take place after my passing:**

1. Type of Disposition (i.e., burial, cremated, ashes scattered or interred):

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2. Gathering, Service, Ceremony or Memorial you'd like to have:

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Casket with Pall \_\_\_\_\_ No Casket (Memorial) \_\_\_\_\_ Cremation Urn

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3. Any options you would like to personalize your funeral:

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Scripture Passages:

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Special Religious Readings:

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Hymns/Special Music:

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Prayer Requests: \_\_\_\_\_

Holy Communion: \_\_\_\_\_ Yes \_\_\_\_\_ No

4. Place of Final Rest:

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Did you pre pay or have insurance?

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These are my final wishes. Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

## Meet Jennifer

### Partner

Jennifer Sawday is a partner at TLD Law, LLP. She serves a wide range of clients in all matters related to probate, trusts, estate planning — and related litigation. She also handles pre- and post-death administration for clients who serve as personal representatives, executors, and trustees for trusts and estates.

Ms. Sawday has more than eighteen years of legal practice experience. She drafts about three estate plans a week, and her court practice includes about thirty active probates at any given time. Her expertise and tenacity have allowed clients to see their court matters resolved as quickly as possible. Ms. Sawday also works with clients to handle trust administration and contested matters involving wills and trusts with the firm's trial lawyers.

Ms. Sawday completed two terms as President of Women Lawyers of Long Beach as she served from 2008 to 2009 and again from 2013 to 2014. Following that, she was the President of the Estate Planning and Trust Council of Long Beach from 2014 to 2016. Ms. Sawday volunteers quarterly as a cook at the Long Beach Ronald McDonald House, is on the board for the Long Beach Community College Foundation, and also is very active in the Executives Association of Long Beach, an organization that has been in existence since 1922.

JSawday@TLDlaw.com  
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Ms. Sawday was selected as the "Best Wills and Trusts Attorney in Long Beach" by the *Beachcomber* from 2014 through 2020

Ms. Sawday was named a "Top Lawyer in Southern California" by the *LA Magazine*