

What Is In a Name? Estate Planning and Protecting Assets

When asked what they want most when they call a lawyer, most people would say something like “I want an answer to my question” or “I want my problem taken care of.” At the same time, it is clear that not all questions or problems are the same. A “question” about taxes is very different from the “problem” of being hauled off to jail at 3 a.m. A lawyer who could answer the tax question probably would not be much help with a criminal matter and you would not expect a criminal defense attorney to be a tax law expert.

The difference between tax law and criminal law is obvious. However, what about less obvious differences between areas of the law? Someone may want to talk to an attorney to ask a question “about a trust,” or to “talk about a Will.” On the surface these are both simple issues and the kind of things you would obviously discuss with an estate planning attorney about.

Unfortunately, just below the surface of many questions about Wills and trusts hides a large divide that is just as deep and wide as the gap between tax law and criminal law. “Estate planning” is what lawyers call the work involved with the transfer of assets at death. This includes documenting how assets should be divided, who will be in charge of the process and whether there will be a probate after death or not.

On the other hand, “protecting assets” involves financial and legal arrangements to prevent someone’s assets from being depleted by a nursing home, assisted living and other long-term care bills during their lifetime. Protecting assets includes long-term care insurance, asset transfers, financial planning to pay bills and qualification under the Medicaid rules and laws.

From a legal perspective, almost everything about estate planning and protecting assets is different. While estate planning focuses on what happens to your assets at death, protecting assets addresses what happens to your assets before death. Even for the same person, different laws apply to each area and the biggest risks and dangers to the client are unique and separate. Lumping these two areas together does not make things simple. It actually makes things more confusing and complicated. Generally, confusion and complexity leads quickly to frustration and aggravation for the person who just wants a lawyer to answer a question or solve a problem.

There are two things that you can do to avoid that confusion, complexity and frustration. First, you can determine whether protecting assets is your primary goal. Simply test to see whether your question would be more accurately stated if you add “to distribute assets at my death” or “to protect my assets from nursing home bills” to the end of it. For example:

- “I want to ask a question about trusts to distribute assets at my death” tells you that you are focused on estate planning.

- “I want to ask a question about trusts to protect my assets from nursing home bills” tells you that you are focused on protecting assets.

You can do this with any of your most important questions for the attorney. Once you see which best describes what you want to accomplish, then you can clearly communicate with the attorney and tell them which type of conversation you want to have.

Second, resist the urge to say “I want both.” If it is a toss- up and you cannot decide which is more important, err on the side of saying that protecting assets is the more important of the two ideas and ask for a meeting to discuss protecting assets. In practice the steps taken to protect assets are more drastic and can have a huge impact upon any estate plan that is in place. If you cannot rule out your emphasis on protecting assets in the near future, it is best to hold off setting up an estate plan until your questions about protecting assets are put to rest.

If you keep protecting assets and estate planning separate, your worst case scenario is that you may need a second meeting to talk about estate planning if you ultimately decide not to take any legal steps to protect assets. However, the time and cost involved will be more than worth it. You will feel much more in control of the legal and financial issues involved for your family. You will also avoid the kind of long, complicated, confusing and frustrating meeting that always happens when we try to cover two very different issues at the same time.