

**Life Planning Newsletter**  
**The Law Offices of James A. Busse Jr.**  
**Long Beach CA, Carson City NV.**  
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Monkeys in Costa Rica



The Raccoon like Coati has razor sharp claws

Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests the effectiveness of your Estate Plan with actual California and Nevada Cases. We are particularly involved in Medicaid and Medi-Cal Estate planning.

We create Special Needs Trusts and Estate Plans to ensure our clients meet the eligibility requirements, lower their share the cost expense, and reduce or eliminate the potential recovery by the State.

Our law firm integrates Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

#### **CALIFORNIA INTESTATE LAW**

If one does not have a will the State will write one for you. The code sections for those of you with time on your hands are California Probate Code Sections 6401 - 6413. The distribution of the person's estate depends on many things. (1) When did the person die? (2) Was the person married at the time of

death? (3) Did his or her spouse predeceased the person? (4) How long before the person died did the "pre-deceased spouse" die? (5) How many children did the person have? (6) Was the person or the predeceased spouse prevented from adopting a minor child because of a legal barrier? (7) Is the person or spouse a citizen of the United States? (8) Are there living parents, siblings, half-siblings that might have been adopted but for a legal barrier, or any other living or deceased relatives? (9) Did the person have separate property such as property acquired before or after marriage, inheritance, rental unit income, etc? and (10) Was any real or separate property owned outside of California?

In yesteryear when men wore hats and women dresses, it was pretty easy to distribute an estate from an "average person." There just wasn't much to distribute and usually the total estate was acquired during a marriage. Even today, this is pretty easy as under the law, the surviving spouse gets all the community property. But, today with the many blended families including registered domestic partners of same or opposite sex, the SEPARATE PROPERTY (SP) component of one's estate might far exceed the COMMUNITY PROPERTY (CP) part. SP generally includes all that acquired before marriage or after

separation, plus uncomingled inheritance, gifts, and rents. CP includes all that non SP acquired from the date of a marriage to the date of separation (which is usually months before a divorce is final) or death of one of the spouses. In the example no one has wills.

For example, Joe, who never has children of his own, buys a condo while he is in college. He rents out two of the rooms and lives rent free while in college. Ten years after he graduates he marries Melba who has two kids from a prior marriage to Ralph Running Bear (an Apache) who was killed in Iraq. Joe tried to adopt the kids but the tribe, which must approve under law, said "no way, Jose." The condo is half paid for when Joe and Melba marry. Joe pays for the condo with money he gets from the rent (which he puts in a joint account) AND money he earns as a custodian. He is able to pay off the condo in five years. Five years after they marry, Melba is killed in an auto accident. Joe receives \$100,000 insurance from that, which he places in a 0% savings account and forgets. Because of their heritage the kids are removed from Joe and delivered to the Apache reservation somewhere in lower New Mexico. Joe remarries four years later but dies four years after that. The condo is now worth \$300,000. It is hard to say what Joe wanted but here is what could happen under California law:

Joe's new wife gets all of the CP she and Joe acquired during the 4 year marriage. She is also entitled to 1/3 of the SP because Joe tried to adopt the kids but was prevented from doing so. The kids will get 2/3 of Joe's plus all of Melba's interest (see below) SP. The SP here is the \$100K (if there were only 1 child the SP would be split evenly: the rule is 1/2 for one child or 2/3 for more than one child split evenly between them). Also the condo was paid for before marriage two, so it is also all SP as are one year's rents received from that condo. Total is \$150K from Joe's Condo interest + Melba's 75K interest plus \$67K from account plus eight-months rent (\$1,000/mo) or around \$300K to kids \$112K to wife 2, and \$0 to other relatives. **Now**, if the kids could **not** prove Joe tried to adopt them they would get only Melba's share, which is defined as her CP interest in Real property owned if she died within fifteen years of Joe and her CP interest in the non real property owned if she died within five years of Joe. Here, 1/2 the condo was paid for with CP so she would get 1/2 of that (\$75K) because she died eight years before Joe. She would get none of the \$100K because she did not die within five years of Joe. In addition, Joe's Surviving Spouse is also entitled to a share of his Separate Property so

the remaining Condo share and the \$100,000 would be split between the surviving spouse and Joe's heirs that could include parents, siblings, and the children of siblings (nieces and nephews). Results are Kids \$78K, Spouse \$167K and Relatives \$167K, instead of Kids \$300K, Spouse \$112K, Relatives \$0.

There is also equitable adoption but that is way beyond the scope of this article. Can you see the legal battle turning on whether there was a provable legal barrier to adoption?

So you see even the Joe's simple case shows how the lack of a will can greatly complicate and delay the process of distributing assets. If you are aware of anyone who is recently married, separated, divorced or widowed encourage them to see a competent attorney to review or create their estate plan.

#### **MEDI-CAL LAW:**

California has implemented the Deficit Reduction Act of 2005 just in time to see the Deficit increase by a factor of four since 2005. This law will affect US citizens and green card holders but not illegals. The major changes are: (1) Only the first \$750,000 in equity (Lower of Prop 13 basis or FMV price basis) of the family home is not counted toward qualification for Medi-Cal-Nursing home (2) If you are a citizen you must show proof of citizenship. If you are not a citizen you need not do so. (a typical SNAFU that allows one to qualify for Medi-Cal-Nursing home if you can get \$1 of SSI, which doesn't require US Citizenship) (3) There is a 60 month look back that is being phased in over the next three years. So if you give money away you will be disqualified for a longer period than before. (4) The period of disqualification starts from the date you qualify for Medi-Cal-Nursing home rather from the date you gave the money away. (5) Fancy gifting is now more difficult because all gifts during a month are aggregated to the worst possible date for the applicant. (6) Payback provisions are strengthened so that it is more difficult to reduce or eliminate paying back Medi-Cal from your estate. and, (7) Cost sharing will take a bigger portion of the institutionalized spouse's income leaving the non-institutionalized spouse with less; Sometimes far less than enough to live on.

Now, that it appears our government is leveraging its ability to bankrupt the Medicare Medicaid system into a general health care plan for all, Estate Planning for long term care is more important than ever.

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