



Alison Monahan: Welcome back to the Law School Toolbox podcast. Today, we're excited to have Marina Modlin, founder of [Modlin Legal](#), here to talk with us about some real-life estate planning issues. Your Law School Toolbox host today is Alison Monahan, and typically, I'm with Lee Burges. We're here to demystify the law school and early legal career experience, so that you'll be the best law student and lawyer you can be. Together, we're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can always reach us via the [contact form](#) on LawSchoolToolBox.com, and we would love to hear from you. With that, let's get started.

Welcome back to the Law School Toolbox podcast. Today, we're excited to have Marina Modlin, founder of Modlin Legal, here with us to talk about some real-life estate planning. Welcome, Marina.

Marina Modlin: Thank you, Alison.

Alison Monahan: Oh, it's so much my pleasure to have you. Well, if you would, could you just tell us a little bit about your background and your practice, so people have some context here?

Marina Modlin: Sure. Well, I have been practicing for about 15 years now. In the first couple of years, I had a freelance law practice, and then I guess about 13 years ago, I started doing pretty much nothing but estate planning. And, well, half of my practice is planning for dying, and half of my practice is helping people whose relatives have just died deal with settling their estate.

Alison Monahan: Wow, that sounds like it could get a little bleak. Well, we'll talk about this some. How can people get in touch with you if they want to find out more about you?

Marina Modlin: Sure. Well, I have a website – [modlinlegal.com](#), and I have an email address, which Alison can stick somewhere and you can email me. If you are interested in learning about actual estate planning, my website has buttons to schedule free consultations pretty much plastered on every single possible page.

Alison Monahan: Alright, very easy.

Marina Modlin: So, that's the way to go.

Alison Monahan: We will put that in the show notes.

Marina Modlin: Thank you.



- Alison Monahan: Alright. Well, before we move on, just so we're being clear, nothing we're going to talk about today is actual legal advice. We are simply giving you some information, and anyone listening should definitely consult a lawyer and talk about their personal situation before making any decisions or doing anything. Alright, we have that out of the way. So, when we talk about estate planning, what are we really talking about? What type of stuff can this actually entail?
- Marina Modlin: Well, first things first. What is an estate? I feel like the "estate" word has a connotation of kind of a castle overlooking a lake.
- Alison Monahan: Right. It's very medieval.
- Marina Modlin: Yeah. And so, whenever you think of that, you're like, "Oh well, I don't have a castle, so I'm good."
- Alison Monahan: Yeah, "I don't have an estate, I'm not like a king. I'm not landed gentry."
- Marina Modlin: But in reality, in California law, an estate is really literally anything you own. So, it's everything from your pots and pans to your real property and your bank accounts. So, when we're talking about estate planning, we're basically talking about what will happen to all of your stuff should you become incapacitated or pass away.
- Alison Monahan: Yeah. If you really think about it, I think I saw recently, the average house has something like 300,000 things in it. It's crazy, the stuff that we actually own, if we really sit and think about it.
- Marina Modlin: That's true. But in my practice, we actually don't worry so much about the 3,000 things, but we worry about post-death transfer of assets that have legal title, because that legal title is controlled by somebody else, and we need to be able to enable your family, your surviving family, to convince those third parties to transfer title to your heirs.
- Alison Monahan: Right, that makes sense.
- Marina Modlin: So we kind of really focus on real estate and accounts.
- Alison Monahan: And sometimes you hear about people dying intestate. What does that mean? Does that mean the state just kind of decides what happens?
- Marina Modlin: Well, that's actually kind of still connected to the question of, what is estate planning? So, the California legislature has pretty much already written an estate plan for all of its residents. Basically, it says that for those people who don't bother doing their estate planning, the estate planning is already done for them. So that's kind of like the default plan. And part of the default plan



includes laws of intestate succession, which basically lists all of your relatives in order of preference, in order.

Alison Monahan: The state's preference, not your favorites.

Marina Modlin: The state's preference, yes, not your preference. It's basically what blood relation the state considers to be most important, in order of the state's importance. I don't know if that makes sense.

Alison Monahan: Yeah.

Marina Modlin: So, your spouse, your children, your parents, your siblings. So basically, if a person dies with no estate plan, we look for the highest available relative on that list of laws of intestate succession. And then all of your stuff will go to that nearest living relative.

Alison Monahan: Yeah. And just to be clear, this can also vary by state.

Marina Modlin: Oh, absolutely.

Alison Monahan: If anyone's ever studied for the bar in different places, some people like kids best, some people like spouses. It just really depends.

Marina Modlin: Right, yeah. Everything that I'm talking about is first of all, not legal advice. And secondly, I'm speaking strictly about California laws.

Alison Monahan: Yeah. Alright, well, I guess one kind of question before we really jump into this is, why is this even important to talk about? What can go wrong here? I know I've got some examples, and I'm sure you've seen plenty.

Marina Modlin: Well, as I said, the state has already written an estate plan for all of its residents. Most of the time, this estate plan is not what people want. So, doing estate planning is important if you actually want to know what happens to your assets and want to direct what happens to your assets. But also the default legal system, which is the default estate plan that the state has provided for you, is exceptionally lengthy, inconvenient, painful, and expensive.

Alison Monahan: Sounds great.

Marina Modlin: Yeah, it's basically as bad as it gets. Basically as bad as it gets. But the one good thing that I do have to say about the California probate system is that it has given us an option to opt into a much better system, which the way you opt in is through doing your estate planning. So, if you do your estate planning, then you're taken out of the default system and you're put into the optional system, and that system is much more pleasant, it's much faster, and exponentially



cheaper than the default one.

Alison Monahan: Yeah, this idea occurred to us partly because I recently went through a situation of trying to purchase real estate, where we signed the documents and then the seller died and it turned out their estate planning hadn't been done properly. So, that was six plus months in the other system, or a system, I don't even know. But suffice it to say it was a total nightmare for everyone involved. Lee just had a friend whose parent, unfortunately, died in a car accident – their estate planning has not been done properly. It's one of those things that I think people don't want to think about, but when you don't think about it, you just leave a really big mess behind for other people to clean up.

Marina Modlin: I have a situation right now, where a child called me to the home of a parent on their deathbed.

Alison Monahan: Oh, gosh.

Marina Modlin: Literally on their deathbed, to put their real property into a trust. And when I was 10 minutes away... By the way, estate planning is not something that I can technically do in an hour; it's usually something that takes a while. As I was 15 minutes away, I was actually already driving to this deathbed person's home, I got a call from the child saying that it's basically to wait and I no longer need to come. And so I said, "Sure. Well, let's next talk about probate." Basically what happened is, the child tried to get the parent to opt into the optional better system that I had mentioned, but it was too late and the parent was no longer able to do anything. The parent actually ended up dying literally five hours later, and now there's a real property that's left behind that's not in a trust, which basically puts it into the default estate planning system of the state of California. Had they called me three days earlier, versus when they called me now, the attorney executor fees are going to be about at least six times more than had they called me earlier and we were able to do some planning. Actually the saddest part of all of this is that this now deceased parent has a special needs child.

Alison Monahan: Oh, no.

Marina Modlin: That is receiving every single government benefit that basically exists for special needs people in the state of California. The problem is that these benefits are conditional on the special needs person not having any assets whatsoever.

Alison Monahan: That's not going to end well.

Marina Modlin: And now, because there was no estate plan and because under laws of intestate succession, the deceased parent's estate is going to go through probate to the two children, one of whom being special needs. That means that



that child may lose basically a lifetime of government benefits over \$200,000 inheritance.

Alison Monahan: That's a nightmare.

Marina Modlin: Yeah. So, that's literally what I'm dealing with right now, and I can't think of a better example for that.

Alison Monahan: Yeah. Well, this brings up a good point because I think a lot of people do, obviously, first encounter estate planning in the context of what their parents or their grandparents or family members are doing. What if you are concerned they're not doing anything? Are there good ways to start this conversation that no one wants to have?

Marina Modlin: Well, I don't know if there are good ways to start this conversation – not really a good conversation. And also, I joke that in my practice, I'm kind of a 70% psychologist and 30% lawyer, and people have all sorts of fascinating and unexpected hang-ups when it comes to estate planning – kind of mental, psychological, emotional ones. The reason I say that is to say that everyone is different. However, if you are a child of some parents who have an estate, and you would like your parents to take care of their estate planning, because obviously, that will make their, as well as your life more pleasant and manageable and predictable – I think just starting the conversation is a great place to start. Obviously, I've worked with a lot of parents of younger people, and there're a lot of emotions, and frequently the parents are afraid to bring it up to their children because it's a scary and depressing and morbid thing to talk about. So, perhaps indicating to your parents the fact that you are willing and able and open to have this conversation would be a great start. How your parents will handle it – that is obviously up to them.

Alison Monahan: One possible in could be, "Hey, Mom, I was listening to this podcast the other day and they were talking about estate planning. Have you guys done anything about that?"

Marina Modlin: That would be a great way, yes.

Alison Monahan: Yeah. Obviously, it's not something people want to talk about. I will say one thing – if your parents answer that question, "Yes, we've sorted everything out" – don't just end it there. Make sure you actually know where things are. We ran into this with my father when he suddenly passed away, and the only will that was ever located was very, very, very old and probably not current. So, that would just be a pro tip from me – make sure that you actually know if there's a safe deposit box, what bank is it at, who has the key, how do you access it? All of these kinds of things are actually, it turns out, really critical in this context.



- Marina Modlin: And from the opposite side of the table – that was Alison's example as a beneficiary – but from the opposite side of the table, from me as an estate planning attorney, I'm actually quite guarded about letting my client's children get actually involved in my client's estate planning, because there are all sorts of issues of confidentiality, of privilege, as well as potential elder abuse situations.
- Alison Monahan: Definitely.
- Marina Modlin: So, that's kind of a fine line. So, if you are talking to your parents, inquire to kind of make sure that things are in order, but probably don't get too, too involved.
- Alison Monahan: Yeah. I think you just want to kind of make sure if something happens, that this process is hopefully self-executing in a way, like, "You know what? Everything is locked up in this box. Okay, great."
- Marina Modlin: Yes, finding out... I always tell my clients once we are done with their estate plan, everybody always asks, "What do I do with this now?" And I'm like, "Well, put it in a box and have a key and make sure that the people that you have appointed to act if and when the time comes, know that this box exists and how to get into it."
- Alison Monahan: Right. They don't need to know what it contains.
- Marina Modlin: Exactly, exactly.
- Alison Monahan: Anyway, I think, start that conversation, just bring it up, make it clear that you are open, and hopefully things can kind of flow from there. Alright, well, let's switch back to what's probably a little bit more directly relevant to people who are listening to this. So, most people in their 20s and 30s don't really think about estate planning. I had purchased a property and I think I'd had it for five or six years before you were like, "What do you mean you don't have a trust?" And I was like, "Why would I have a trust? No one ever brought this up to me." And you were like, "Oh my gosh, you should probably do that." Is it ever too soon to consider this topic?
- Marina Modlin: Well, I have clients that came to me at the age of 21 with their first paycheck in hand, the first big girl paycheck in hand, saying, "I need a trust." And I've had clients that were 85 and owned multiple investment properties all over the state of California, who also came to me for a first trust. So, the big picture answer is that it really depends on the person's risk tolerance.
- Alison Monahan: Yeah.
- Marina Modlin: But that said, when we are talking about California law specifically, and when we reference back to that concept of what I refer to as the "default legal



system" and the "better opt-in legal system", the real triggers for doing estate planning are when one has children and/or when one purchases California real estate.

Alison Monahan: Alright, so those are the big life events that really are to trigger you to sit down and deal with this.

Marina Modlin: Yeah. Those are the life events that if you pass those milestones and you don't have a trust and something happens to you, your estate is going to be in a very messy state and your family will have to pay a lot of money and spend a lot of energy dealing with it. Anything short of that – so, if you don't own any real estate and if you don't have children – that is not to say that you don't need to do your estate planning. It's just the consequences of not doing it may be not as dire as if you do have real estate and children.

Alison Monahan: Right, because with children you're also talking about things like who's going to be their guardian and all these things.

Marina Modlin: Exactly. As soon as children are involved, if we're talking about in the default "no estate plan" legal system, we're talking about two additional court processes, in addition to the main one that we've been talking about, which is probate.

Alison Monahan: That sounds really fun.

Marina Modlin: Yeah. No, no, it's awful. And also I should really mention the fact that California courts are kind of no longer functioning.

Alison Monahan: Yeah. They're definitely really backed up as I learned, with this real estate deal.

Marina Modlin: Yeah. So, things that I could confidently say five years ago that I can wrap up in a year, I can no longer say that. So really, I think we, as California citizens should really do everything we can to not add to court's docket because, well, it will help the court, but more importantly will help us.

Alison Monahan: Yeah. I just think this is one of those things that if you don't deal with it, you just leave such a mess for other people to clean up, and it sucks. I've been there, it's really awful. You're like, "Why is this happening the way it is happening? This did not need to be this bad."

Marina Modlin: Right. Well, generally what I explained to my clients is that everything with estate planning – and this goes back to your last question, when is a good time to do estate plan? – everything with estate planning, the more time passes and the more complicated things get, basically it is guaranteed that the situation will become less pleasant, more time consuming, and exponentially more expensive



to untangle. So, when you're a 19-year-old who works in retail and has one checking account, it will be pretty straightforward with \$3,000 in it. When you are a 27-year-old with \$100,000 brokerage account and a checking account, it will be more complicated, but not the end of the world.

Alison Monahan: Right.

Marina Modlin: If you are married with no prenup and each one of you owns a real property and you have three kids – two in common, and one extra – that's when you're going to make some lawyer's year.

Alison Monahan: Yeah, seriously. And I laugh, but I literally know people who are close to me that are in a very similar situation.

Marina Modlin: In exactly that situation, yes.

Alison Monahan: And it's not like we haven't had that conversation of, "Boy, what are you doing about this? Have you really not dealt with this yet, again?"

Marina Modlin: I have no idea who you're talking about.

Alison Monahan: Yeah, no, I get people don't want to deal with this, but it's important. I'm kind of curious, how did you become interested in this area of law, given that most people probably think it's a little morbid?

Marina Modlin: Well, it is a little morbid and I think people give me funny looks when I tell them. If they ask me how my day was and I'm like, "Well, I was driving to this deathbed meeting and I got called off halfway. Haha, you want to go get some pizza?" No, but I had a roundabout way of getting to it. I had my freelance law practice right out of law school, which is I think when we met. And I tried out, I don't know, 20 areas of law – from business litigation, to bankruptcy, to family, to I don't know what else. And I really didn't like any sort of litigation; I felt like it was very inefficient and wasteful and definitely not the most straightforward path to solve whatever problem they were pretending to be solving. And then I kind of stumbled on estate planning accidentally, and once I got to know it better, I realized that it actually is, I think legitimately, if not the, but one of the areas of law that actually legitimately helps people, and does so in an efficient and productive and constructive manner, whereas nobody really wants to do their estate planning – well, most people don't want to do their estate planning – pretty much 100% of my clients feel much better once it's done, because it's kind of a giant weight off their shoulders. And so, I really feel like my job actually adds value to people, and I think I provide a very valuable service. So that's why I like it.

Alison Monahan: I would agree with that. I definitely remember signing everything and being like,





"Oh great, this is done. I can put it in a box and not think about it for a while."

Marina Modlin: Yeah, exactly.

Alison Monahan: And then obviously, things change, my sister had a kid. I'm like, "Oh, does that impact what I might do with my state? Maybe, let me look at it." But it's so much easier once you've already got the basics done.

Marina Modlin: Yeah.

Alison Monahan: Well, speaking of the basics about estate planning, if somebody is kind of interested in just learning more about this, do you know of any good resources they can take a look at?

Marina Modlin: As a practitioner or as a potential client?

Alison Monahan: Well, either somebody who maybe is interested in getting into the area, if you have anything on that, or just people who are like, "Oh, I'm listening to this and I'm realizing, wow, I really don't know anything about this, and maybe I should."

Marina Modlin: Well, so my website, I've created a lot of content on the basics of estate planning in hopes that my perspective clients do take a look at it and try to learn something on their own before contacting me.

Alison Monahan: Right. That would probably be more efficient for everyone.

Marina Modlin: Yeah, but that's very rare. But I filmed this set of videos where I kind of explain California's basic estate planning concepts, each one a minute or less. So that's literally for people with one-minute attention spans.

Alison Monahan: Which is pretty much everyone these days, I feel like.

Marina Modlin: Which is pretty much everyone these days. So, something like my website is a lot of legal concepts put into completely lay-person friendly format. And then for people who are attorneys aspiring to learn more about the practice of estate planning, I really love all the [CEB books](#) that you can still find in all of our libraries, thank God. I think they do a great job of covering at least the basics of estate planning.

Alison Monahan: Yeah, because some of this is complicated and some of this is not that complicated.

Marina Modlin: The trouble is knowing at which point the not complicated becomes complicated.



- Alison Monahan: Right. And I think your point earlier about doing anything after the fact is just going to make it exponentially more complicated than dealing with it beforehand.
- Marina Modlin: Right, definitely.
- Alison Monahan: Alright, well, I guess one final question, and I probably know the answer to this one. Do you think this is something people should try to do on their own or should they get outside help?
- Marina Modlin: I don't think this is something that people should do on their own.
- Alison Monahan: Not just like LegalZoom a will and call it a day?
- Marina Modlin: Well, to be honest, estate planning is not like, I don't know, building a nuclear bomb.
- Alison Monahan: Right.
- Marina Modlin: It's not that level of complexity. So, I think whether or not they should do it on their own really depends on their risk tolerance, their willingness to try to figure it out on their own, and the cost of failure.
- Alison Monahan: Right.
- Marina Modlin: Because again, if you are a 19-year-old retail employee with one bank account, you can probably figure out what your estate plan should look like. If you are the divorced, married no prenup, three separate children, two real properties in three different states kind of person, then the cost of failure is obviously really high. In that case, you should definitely not try to figure it out on your own. But even in what seems like the most basic of estate plans, especially as soon as children and houses are involved... If you're happily married to your husband that you got married to when you were 19 years old, you both had zero assets to your name when you got married, now you own one house as joint tenants and you have one child in common – that's the most straightforward situation for a person who still really needs an estate plan. Even in that most straightforward situation, there are actually a lot of underwater landmines that can be encountered, and I don't know how good of a job something like LegalZoom would do pointing those out.
- Alison Monahan: Yeah. No, I think your point about who's going to be left in a bad state if this doesn't work out well is really key. If it's no one, then you're like, "Great, your dog will probably be fine."
- Marina Modlin: Right, right.



- Alison Monahan: And actually, that's another point – people do actually do estate planning around their pets, which completely makes sense. I have a friend who basically inherited a dog, and the dog now really has a trust fund because it was the only way he would take it. And he's like, "No, if I'm going to care for this animal, I need money to do it." So that's also something that people should consider, probably.
- Marina Modlin: That's a good idea, yeah. I have lots of clients that do estate planning because they have pets and they don't have kids, and they see their pets as kids basically.
- Alison Monahan: Yeah, it's not the same as a child but just not completely dissimilar – someone is going to have to care for this pet and they're going to need resources to do it.
- Marina Modlin: Yeah.
- Alison Monahan: The responsible thing to do in that scenario is definitely to figure this out in advance and ask around, make sure the person is willing to take the pet.
- Marina Modlin: Basically, Alison, to bring it out to a bigger picture – I think the general kind of advice, not so much about pets, but about everything, is that if you have anything in your life that you care about what happens to it after you pass away, if you pass away, or even if you become incapacitated – then it makes sense to plan for that, because the chances of what you want happening to that thing that's important to you without you planning for it are really, really low.
- Alison Monahan: Right. Yeah, the odds that you're going to decide exactly the same thing that the state is going to decide with their default rule that probably hasn't even considered most of these questions, is really low.
- Marina Modlin: Right, exactly.
- Alison Monahan: Alright, we're about out of time. Any final thoughts you would like to share?
- Marina Modlin: No, I think this is a great thing to bring up to young people and not so young people, and so I appreciate the opportunity to share it with you.
- Alison Monahan: Well, we definitely appreciate you joining us. Remind us again how people can find your website.
- Marina Modlin: [Modlinlegal.com](http://Modlinlegal.com).
- Alison Monahan: Awesome, we will put that in the show notes. Well, thank you for joining us.



Marina Modlin: Thank you, Alison.

Alison Monahan: My pleasure. Well, with that, we are out of time. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, don't hesitate to reach out to Lee or Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto:alison@lawschooltoolbox.com). Or you can always contact us via our website [contact form](https://www.lawschooltoolbox.com/contact-form) at – you guessed it – LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

**RESOURCES:**

[Modlin Legal](#)

[CEB Trusts & Estates Solutions](#)

[Trusts 101](#)