Seven Common Mistakes in Estate Planning and How To Avoid Them

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"You must learn from the mistakes of others. You can't possibly live long enough to make them all yourself." – Samuel Levenson

Learning from the mistakes of others can help us avoid those same mistakes and save a great deal of money and heartache. The same is true in estate planning. It pays to learn from those who have gone before us.

To help you in your estate planning journey, let's look at some common mistakes people make and how you can avoid them.

#1. Failing to Plan

Doing nothing is probably the most common mistake people make in estate planning. Doing nothing is easy and cheap; that is, until you are gone and your heirs are left to sort out the mess.

Everyone should have a plan, not just the old or wealthy. If a person dies without a will, the law provides a court-supervised process to distribute assets, administer the estate, and appoint guardians for minor children.

But what a judge chooses is not always what the deceased would have chosen.

Consider the following scenario. A middle-aged man dies, leaving a wife and three young children. He did not leave a will, but he had always told his wife that upon his death she can sell his business and live off the proceeds. The business eventually sells for a liquidation price of $400,000, but the widow discovers she is entitled to only $215,000 under the laws of Pennsylvania. The children will equally split the remaining $185,000 (subject to inheritance tax) and a guardianship will be established to manage the children's inheritance until they turn 18.

Also, the wife's name had never been added to the deed for the family home the husband purchased before their marriage. This means the children are entitled to a portion of the home (which will also incur inheritance tax) rather than the widow owning it outright and free of tax. A simple estate plan could have avoided this complicated result and ensured the husband's wishes are carried out.

Even if a married couple jointly owns all assets and the surviving spouse can receive everything, some simple planning is still important. If both parents would pass away, a plan ensures the children will be cared for by trusted caregivers, not whomever a judge decides to appoint as guardian. A plan can also reduce the chance of siblings, children, or in-laws fighting in court about what should happen to children or assets. Furthermore, a plan usually means less work and less cost in administering an estate after death.

A trusted estate planning attorney can help you think through the unique challenges of your situation and adopt a plan that will bless your heirs and your peace of mind. Don't forget to periodically review and update your plan as necessary. Remember, failing to plan is planning to fail.

#2. Not Communicating About Plans While Living

Adopting an estate plan early in life and then updating it as life circumstances change is a great first step. But don't forget to communicate your plan to your heirs, executors, and guardians. This can avoid surprises and hurt feelings later on.

Prior to naming someone guardian of your minor children, discuss with them whether they are able and willing to serve. Also, talk to your executors to ensure they feel comfortable in that role and know where to get help if needed. If the people you name are not able or willing to serve, then naming them in your will is useless.

Have a family meeting with all your heirs to discuss your plans for your estate. You may not be comfortable sharing all the details, but be as open and detailed as you can. Discussing your plans with your heirs can avoid unpleasant surprises and conflict down the road. It can help reduce misunderstandings after you are gone. And, as you discuss, you may discover things you missed putting in your plans. You can then go back and address these issues in your estate plan before you pass away.

Many people grow up in a setting where estate plans and money matters are not freely discussed, and even take on an air of secrecy. This can be harmful to relationships if it results in disagreements or unmet expectations later on. Make the effort to communicate.

#3. Not Organizing Records Prior to Passing Away

Some people can live quite happily in a disorganized state. They can mostly remember what is stored where and find a bank statement or deed without too much paper shuffling. The problem arises when a new person suddenly has to manage all the affairs of the disorganized person. This often happens for executors.

A disorganized estate can be a major headache and significantly increase legal fees if an attorney has to assist with extra administration. Even if organizing your records does not seem worth it to you personally, consider those who are coming after you.

One way to organize your affairs is to consolidate your financial accounts as you get older. You may have multiple bank accounts, investment accounts, or IRA accounts with different companies. Consolidating them will simplify the estate. If there is a possibility of adverse tax or management issues, consult with tax or legal counsel prior to consolidating accounts. Leave written instructions for your executor that explain where all your financial accounts are held and where your important records are located.

If you have financial records on a password-protected computer, make sure your executor has the authority and ability to access those records, including online accounts. Your executor should also know about any safe deposit box and how to access it. If you have made private loans to individuals, leave adequate documentation for each loan, including current balances. If you want any of those loans to be forgiven upon your death, ensure the loan documentation or your will specifies this. Don't rely on verbal agreements alone!

Taking a few hours to organize your records can save your executor many hours and save hundreds or thousands of dollars in legal fees.

#4. Not Coordinating Non-Probate Assets with the Overall Estate Plan

Many people believe a will is to be carried out exactly as written, but wills have limitations. For example, a will can only direct who gets assets that go through the probate process. Examples of assets that typically do not go through the probate process include the following.

1. Real estate that is held in joint tenancy with a right of survivorship[1] (with anyone), or as tenants by the entirety[2] (with a spouse).
2. Assets that have a valid "transfer on death" designation.
3. Financial accounts such as IRAs, 401(k)s, or life insurance policies that have a valid beneficiary designation.
4. Jointly owned bank accounts.
5. Property held in a revocable living trust.

If a will tries to direct one of the above assets to a certain person, that attempted gift usually fails. Instead, the asset goes to the joint owner or designated beneficiary. An example would be a married man who owns a rental property jointly with his brother. If the man dies, and his brother has right of survivorship, he will automatically become the sole owner of the rental property even if the man's will directs that his share of the rental property go to his wife.

This also happens with IRA or other retirement accounts. The will might try to divide the account equally among certain heirs, but a beneficiary designation on the account leaves it all to one person, such as the oldest child or a sibling who is the executor. This beneficiary designation defeats the intent of the will, causing the named beneficiary to end up with an unintended share of the inheritance. Some IRA accounts contain hundreds of thousands, even millions, of dollars. Even if the beneficiary decided to "do the right thing" and voluntarily share the account with the intended heirs as stated in the will, there could be unpleasant tax consequences.

To avoid this problem, review your estate plan to ensure that your property ownership and beneficiary designations are consistent with your overall estate plan and that your non-probate property will end up where you want it upon your death.

#5. Buying an Unneeded Revocable Living Trust or Failing to Properly Fund a Trust

Revocable living trusts are popular in estate planning, especially in states where probate is more difficult and expensive. Potential benefits of a living trust include (1) simplifying the probate process, especially for a personwho owns real estate in several states; (2) saving money on legal fees and probate costs; (3) allowing easier property management if the grantors of the trust become incapacitated; and (4) avoiding the details of the grantors' estate being filed as a public record.

However, living trusts are not appropriate or necessary for everyone. Before deciding to use a living trust for your estate plan, seek good counsel. Be very wary of anyone that makes a business of selling living trusts, and who tells you that you need a trust before they really understand your situation. Laws differ between states, and the stories that are told to scare you into buying a living trust could be completely irrelevant to you based on the laws of your state. For example, Pennsylvania has relatively simple probate procedures, making living trusts unnecessary for many PA residents. On the other hand, states like California and Florida have more difficult and expensive probate procedures. A qualified attorney in your state can explain the laws applicable to you and help you make an informed decision.

Living trusts are generally more costly to prepare than wills, and they require extra steps to properly implement. After an attorney prepares a living trust, a commonly missed but essential step is transferring assets into theliving trust. This is called "funding" the trust. For example, to transfer a home or business property into a trust, a deed must be executed. Failure to fund a living trust means the trust will not function like it was supposed to and will likely increase the cost of administering the estate.

If you have created a living trust or plan to create one, it is very important that all assets meant to be in the trustare actually transferred into the trust. Some attorneys do a good job of ensuring this is done. Others seem content to collect a fee for drafting the trust without following up to make sure the trust is properly funded. Confirm with your attorney that all assets have been appropriately transferred, and if you purchase a major asset such as real estate in the future, consider putting it directly into the trust.

#6. Not Considering How an Inheritance May Affect Those Who Receive It

Professionals working in the estate planning field generally assume people want to leave all their assets to their children, with perhaps a small amount left to charitable purposes. Great emphasis is given to preserving and passing along family wealth. This might seem normal, but is it right? The answer is not going to be the same for everyone. Many people would agree that winning millions in the lottery can be harmful to a person's work ethic and spiritual wellbeing. But those same people may not think twice about leaving a multi-million dollar estate to their adult children who are already financially self-sufficient.

For Christians who seek to follow the teachings of the Bible, failing to give any thought to "how much is too much" can be the biggest financial mistake of their lives. Leaving behind a sizeable estate can have eternal significance. The Bible does not encourage heaping up wealth, but instead warns of the dangers of riches.[3] While a reasonable amount of inheritance may be a blessing to children, too much can cause serious harm.

Take the time for careful thought and prayer about who should receive your assets when you are gone. Consider getting counsel from people such as trusted friends or church leaders, not just your attorney or financial advisor.

#7. Not Obtaining Good Legal and Tax Counsel

Many of the above mistakes can be avoided by seeking trusted, competent legal and tax counsel. Unfortunately, with the availability of low-cost or free templates, "doing it myself" becomes a tempting option in drafting wills and legal documents. Some people with small, simple estates have successfully drafted and signed their own wills. But many others ended up costing their family much more in money and headaches than if they had done it right the first time.

Unfortunately, going to an attorney for assistance does not always mean everything will be done right. Some attorneys offer estate planning services but know little more than the basics. Others are so busy they fail to work with clients before and after the estate plan is signed, which may result in substandard work. When hiring an attorney, be sure a significant part of that attorney's legal practice involves estate planning. This increases the likelihood that the attorney has more than a basic understanding of the estate planning process.

Also, make sure the attorney takes time to understand your goals and values. This ensures the plan your attorney drafts is consistent with those goals and values, and the attorney's advice does not lead you astray.

Finally, consider involving your tax adviser in the estate planning process to avoid unpleasant tax surprises. While the best estate planning attorneys have a strong understanding of relevant tax issues, many attorneys do not. Having both your trusted legal advisor and your tax advisor work together can add an extra layer of protection and quality for your plan.

Conclusion

Good stewardship and love for people is the foundation to estate planning. It is being responsible and caring for those we leave behind. It is also, for many of us, a lifelong process. Take time to plan. Update your plan as your life changes. Communicate. Organize your affairs. Seek counsel. Learn from the mistakes of others. And may God bless you in your journey.

1 "Joint tenancy with right of survivorship" is where two or more persons own property jointly, and upon death, the deceased person's share is automatically owned by the surviving owner(s). This is different from "tenants in common" ownership, where each owner owns a share of the property and their share of ownership can be passed to their heirs instead of automatically to the other owners.

2 "Tenancy by the entirety" is only available is certain states. This is where husband and wife own property jointly, with each spouse owning an equal and undivided interest in the entire property. It is similar in some ways to joint tenancy with right of survivorship, but has slightly different legal characteristics.

3 Matt. 6:19-20; Mark 10:23-25; Luke 16:13; 1 Tim. 6:9-10