

Top Ten Estate Planning Mistakes that Families Make

By Barbara W. Reynolds

In our firm, we meet with more than 500 people a year to discuss estate planning and long term care planning. We have also dealt with many estates where a decedent could have made things much easier for loved ones if he had planned ahead and situations where a family member is unable to take the necessary steps to assist a loved one who is quite ill. Here are some of the most common mistakes we see:

Mistake #1: Believing All Powers of Attorney are the Same and Last Forever

Once you have done estate planning documents, you often feel like you're all set. You put them in the drawer and don't look at them for ten years. A Durable Power of Attorney which allows someone to take care of your financial affairs if you are incapacitated should be updated every four to five years. If you have previously done estate planning, but it was more than five years ago, you should make sure you update this. Some Power of Attorney documents are more comprehensive than others. If you used a stationary store form or if your attorney used a Statutory Short Form, it is quite possible that yours may lack some very important provisions.

Mistake #2: Not signing a Health Care Directive

A Health Care Directive includes a Living Will and it names someone to make health care decisions for you if you are incapacitated. A Living Will alone will not ensure that your wishes are carried out. You must name an advocate for yourself. If you want someone to "pull the plug" if you are permanently unconscious or terminally ill, spell it out in writing and don't assume people will "know what you want."

Mistake #3: Believing You Can Wait Until You are "OLD" to have a Will.

How "Old" will you be when you die? If you cannot answer that question, you need a Will now. For some people, not having a will can be a costly mistake. For example, if you own a home and have no will, a court appointee, often an attorney, will have to get probate court approval to sell the home which will take several weeks and cost more money. Furthermore, if you have no Will, the State decides who receives your assets – and it may not be the people you would choose!

Mistake #4: Thinking You Have No Assets, But You do Have Young Children.

It is especially important that parents with children under the age of 18 do a will and designate someone to be their children's guardian. If you have not designated a guardian for your children, the probate court will choose among your family members and may select someone ill-suited to your children. Furthermore, it is also important to provide a trust for children so that someone can manage the money for them and dole it out, as necessary, for braces, college, living expenses, healthcare, etc.

Mistake #5 Failing to Update Your Will or Beneficiary Designations on Other Documents.

Once you've done a will, the natural tendency is to put it away and forget it. As time passes, you may change your mind on who you wish to inherit your assets or your family situation may change. Perhaps you signed your Will when your children were young, but now you have several grandchildren you would like to mention. Similarly, it is important to look at beneficiary designations on retirement accounts and life insurance to make sure that they reflect your wishes and that the beneficiary named is not deceased!

Mistake #6 Naming a Trust to Receive Retirement Benefits

Tax planning for someone with retirement benefits can be very complicated. Pre-tax retirement accounts are subject to income tax when withdrawals are made. Someone who leaves retirement assets to a trust under his will may trigger all of the retirement assets being distributed one year. Such a distribution makes all the assets taxable income in one year which can be very costly.

Mistake #7 Failure to Shelter Assets from Estate Taxes if you have a Sizable Estate.

The IRS collects a sizable sum if you have a taxable estate. Often that scenario could have easily been avoided through proper estate planning. For a married couple with assets in excess of \$3.5 million, it is important to have documents which shield assets from estate tax. Failure to plan for estate tax can be very costly – approximately *half* of each dollar above \$3.5 million is currently subject to tax. Even if you don't feel wealthy, remember to include all of your assets – even life insurance and retirement accounts- as well as your home equity when adding up your total net worth.

Mistake #8 Leaving Assets Outright to Someone on Governmental Benefits

If a loved one receives governmental benefits such as Medicaid, the State can claim up to one-half of an outright inheritance. Therefore, for older loved ones who may need nursing home care and younger family members who are disabled, it is important to consider a trust which will preserve governmental benefits and allow the assets to be spent on "extras" that the person might need.

Mistake #9 Forgetting to Plan for the Succession of Your Business.

When you have your own business, you are often so focused on day-to-day concerns that you fail to plan for what would happen to the business if you had an untimely death. Do you have a family member who might take over the business? Is there a key employee or a partner who will buy it? How will that person afford it? Having a plan for the smooth transition of your business can ensure that your beneficiaries will get top dollar for the business that you built.

Mistake #10 Underinsuring Your Life or Your Spouse's Life.

For those with debt, minor children, or other dependents, life insurance can be a lifesaver. Imagine how devastating it is for a husband to die leaving a stay-at-home wife

with minor children and a big mortgage. Term life insurance can help pay off debt as well as financing child care and college.

The best way to avoid these mistakes is to plan by working with an estate planning attorney and a financial planner who can give advice on the best documents and plan for your situation. Once your documents are done, make sure that you review them every five years to make sure that they are up to date and reflect your wishes. A little planning now can prevent major problems later!

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