FREE

ESTATE PLANNING

Are you making mistakes that could jeopardize your retirement?

Topics Covered:

- How to avoid common estate planning mistakes
- Simple, yet effective, ways to avoid the probate process
- Important things to consider when creating your estate plan

HOW TO AVOID COMMON ESTATE PLANNING MISTAKES

When most people think of estate planning, they usually think about wills, trusts, and where your money goes after you die, but it's actually much broader than that. It includes other things of which you might not be aware, and this report will go over those things.

Before we begin, I would like to clarify that I am not an attorney. This is an educational report and is not intended to provide specific legal advice. Any legal work should be conducted by a licensed attorney, and tax considerations should be handled by a licensed tax accountant.

If you need help selecting a qualified estate planning attorney to provide legal advice and write the required documents, we can help with that. And, they'll often give you a discount because of my relationship with them. More on that later.

Make Unthinkable Situations Easier for You and Your Loved Ones

I could probably write a book and fill it with the sad stories I've heard over the years about the estate planning mistakes and situations clients have had to deal with. For example, I had a client years ago who owned a business. He had three children but only one of them was helping him run the business. His highest valued asset was his business. So, what should he do?

When he passes on, should he divide the ownership of the business equally among his three children, even though only one of them was helping him run the business? He wondered if this was fair. Well, there is no one right answer. What's fair for you and your family might be different from what's fair for another, but these are the types of difficult decisions you need to consider ahead of time.

In this gentleman's case, estate planning was the key to helping him solve his dilemma. What he didn't want to happen was for his kids to become resentful and not talk to each other after he passed on, simply because he failed to decide how he wanted things handled.

I've seen situations where two daughters didn't speak to each other for years over claims on different pieces of mom's jewelry. These are the kinds of problems a well-thought-out estate plan can help you avoid.

SIMPLE, YET EFFECTIVE WAYS TO AVOID THE PROBATE PROCESS

1. How to Avoid the Probate Process Altogether

Now, let's cover the other reasons why estate planning is so important, such as avoiding unnecessary legal processes and costs. It's very important to have a "clear disposition of assets" that spells out where you want everything to go. Again, if there's any doubt at all, the court will have to get involved.

The point of the probate process is to prove the legitimacy of the will that's being presented. How do the courts do this? Well, they make a listing of all your assets available to the public. Since your assets are public information, anybody who feels they have a claim to your estate could go to probate court and contest your will.

Now, in the "real world," if your will is structured properly, it most likely won't be contested. One way it could be contested is if you have four children and decide to "disown" one of them. If you leave your assets to the other three children, the fourth child could contest your will. Other reasons your will could be contested are if you fail to pay an outstanding debt or have an outstanding judgment against you.

2. Naming Beneficiaries Could Eliminate the Need for Probate Court

One of the simplest and most cost-effective ways to avoid the probate process is to make sure you have identified your primary and secondary beneficiaries on all your financial accounts. This is important because the beneficiaries you name on your financial accounts can overrule what is spelled out in your will.

If your beneficiary designations on your IRA state that everything should go to your daughter, but your will says it should go 50/50 to your son and daughter, where would your IRA go? It would go to your daughter. So, check to make sure that the beneficiaries named on your retirement accounts match what your will says.

For non-retirement accounts, the equivalent to naming beneficiaries is called TOD, which stands for transfer on death, or POD, payable on death. As far as life insurance and annuities are concerned, again, you have primary and contingent beneficiaries. All these have one thing in common: by naming your beneficiaries, you could avoid the probate process altogether.

IMPORTANT THINGS TO CONSIDER WHEN CREATING YOUR ESTATE PLAN

3. Do You Need a Trust?

There are two basic types of trusts: living trusts and testamentary trusts. A testamentary trust is set up in a will and is established only after your death. The more common type is a living trust. The first thing I want to stress is that not everyone needs a living trust. Some estate attorneys will tell you everyone needs a living trust. This is not true. So, why would you need a living trust?

Well, the primary reasons are so you'll be able to manage your assets from the grave and avoid unnecessary taxes. Other benefits are that you could avoid having your assets become public knowledge, and the distribution of assets is typically a little quicker. It is also more difficult for someone to contest your wishes when they're spelled out in a living trust. In fact, you could make it almost impossible to contest by including a "no-contest" clause in your living trust.

4. Revocable and Irrevocable Trusts

The two primary types of living trusts are revocable and irrevocable. So, what is a revocable trust? It's called revocable because you remain in control. You can put assets in and you can take them out. You are the 'trustee' of your own trust. What you do in this case is name a successor to take over after your death as the trustee. This successor can then make decisions as to how those assets are distributed.

The problem with an irrevocable trust is that it has to be a firm decision. Now, you do have some flexibility with an irrevocable trust. An example would be a real estate irrevocable trust where you can have the property inside the trust but maintain the use of the property. It must stay in the trust, but you can still use it.

You can also put investment accounts inside an irrevocable trust and structure it in a manner that allows you to take the interest, but the principal balance remains in the trust. There are advantages to not having access to the assets. For example, those with high-valued primary residences might not want to take the chance that the value of their home might appreciate over time to exceed the estate tax threshold. Or, they might not want to risk getting sick and losing their estate to the state to cover nursing home fees.

5. Qualified Personal Residence Trust

What some people do is put their residences into a type of irrevocable trust called a qualified personal residence trust. By placing their residence in the trust, they can still use the residence while they're still alive. An attorney can help you figure out the period of time required for your residence to belong to the trust.

For example, let's say it takes 15 years with the current gift tax laws. After 15 years, the trust officially owns it and if you still live there, you might have to pay rent to the trust. Now, you might think this is a bad thing, but not necessarily.

Let's say your children are the beneficiaries of your trust. Because the house is out of your estate, there's no estate tax owed on it when you die, and the rent payments also go into the trust—meaning you can now pass on more money to your children.

6. Protect Your Assets Against Potential Healthcare Catastrophes

I recently spoke to a client whose husband's Alzheimer's had progressed to the point where he only recognized her as the nice lady who takes care of him every day. It won't be long before she has to send him to a nursing home and has to deal with the costs associated with this decision.

This brings up another consideration you'll need to work into your estate planning process—the possibility of long-term healthcare expenses. The idea is to place your estate in a trust so the assets become the property of the trust. So, if something were to happen to you or your spouse and you were forced to file title 19 or Medicaid spend down, the state wouldn't be able to take all your assets.

7. Special Needs Trust

Another type of trust I would like to cover is a special needs trust. A special needs trust would apply if you have a beneficiary who is physically or mentally disabled, and you want to make sure they're taken care of after you're gone. A potential problem could occur if you pass away and your beneficiary, who is receiving government assistance, receives a chunk of money; they could end up losing that government assistance.

What you could do is set up a special needs trust so the money isn't the property of the special needs person. You would name a trustee to disburse the funds from the trust to meet the basic needs of the disabled person. Since the language in this type of trust needs to be very specific, it's a good idea to see an attorney who specializes in this area.

8. Irrevocable Life Insurance Trust

Another situation where an irrevocable trust might be useful is life insurance. The IRS made a change to how much of an inheritance can be excluded from estate tax. Under the *Tax Cut and Jobs Act, Pub. L. No. 115-97,* the basic exclusion amount increased to $11,580,000.[1] This exclusion amount includes life insurance death benefits.

Even if your estate is under the current tax threshold, life insurance proceeds could put your estate over the threshold. In this case, you might want to set up an irrevocable trust and put the life insurance into a trust known as an irrevocable life insurance trust (ILIT). Now, with an ILIT, you can't take out the cash value, but the death benefit will not be included as part of your estate when the thresholds are considered.

9. Durable Power of Attorney

A Durable Power of Attorney is a better alternative to putting your children's names on an asset. The Durable Power of Attorney is a legal document that states who would be able to make financial decisions on your behalf should you become unable to make these decisions on your own. The reason it's durable is that the standard or 'Immediate Power of Attorney' ends if you become incapacitated.

So, you must also have a 'Durable Power of Attorney' in place to empower the person you choose to make decisions on your behalf if you become disabled. Even spouses could be affected without this.

What would happen if your spouse becomes disabled or goes into a coma and you need to get a distribution from their IRA? You would need to have a Durable Power of Attorney as well as a Successor Power of Attorney in place, in the unfortunate event that both you and your spouse become disabled.

10. Make Sure You Have the Basics of Estate Planning in Place

When it comes to estate planning, the basic package consists of having a will, a living trust, and some form of Durable Power of Attorney in place for making financial and/or healthcare decisions. It won't cost you an arm and a leg to get these items in place; however, the peace of mind these estate planning tools can provide is priceless.

As I mentioned earlier, if you need any assistance selecting a qualified estate planning attorney to provide legal advice and write up the required documents, we can help. Give us a call at (304) 564-5267 so we can direct you to a qualified attorney who can help you set up an estate plan to ensure your final wishes are carried out.

1. Tax Cuts and Jobs Act, **https://www.congress.gov/bill/115th-congress/house-bill/1,**