

Review Estate Planning Needs To Avoid Common Mistakes

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During the recent economic downturn and credit crisis, many people are trying to spend less, save more and make better financial decisions. But one area many people don't spend enough time thinking about is how those assets will be distributed if they were to die.

Unfortunately, most people don't understand the estate planning process and as a result, are putting their hard-earned savings and assets in jeopardy.

Statistics show that more than 50% of people don't even have a will, which is the most basic part of an estate plan. But even if someone has a will, it may not be sufficient to protect their assets and ensure those assets are passed on to their heirs in an efficient manner when they die.

An estate plan's goal is to ensure that assets are distributed to their beneficiaries properly with the least delay and without incurring unnecessary legal fees, costs or taxes. However, in my years of experience in estate planning, I have seen some common mistakes people make:

1. Assuming Estate Planning is Only For the Wealthy – Many people think estate planning is something only the wealthy need to consider. In reality, everyone who owns personal and real property should have an estate plan. No matter what your assets are worth, you should want to ensure that those assets are distributed to your children or other heirs as smoothly and cost effectively as possible. Having a proper estate plan is the only way to ensure your wishes will be carried out.

2. Not Staying Up-to-Date on Federal Tax Laws Change – Currently, there is no estate tax and although that may appear to be good news, it actually can cause more complications for estate planning. Due to provisions of the Bush tax cuts passed by Congress in 2001, the repeal of the estate tax for this year will re-emerge in 2011 with a much lower estate exemption and higher tax rates. In addition, next year the amount of an individual's estate that will be exempt from the estate tax will be only \$1 million per person, a drastic change from the \$3.5 million exemption we had in 2009. Further complicating matters is the anticipation that Congress will take action sometime this year to reinstate the estate tax with a retroactive effective date.

With all the uncertainty surrounding the estate taxes, it is vital to stay up-to-date on this issue and make sure your estate planning will help you limit the tax liability for you and your heirs.

3. Assuming a Will Helps You Avoid Probate—A will assures that your assets are transferred to the beneficiaries you select, however a will *does not* avoid the probate process. Probate is a court proceeding through which your assets will be distributed to the beneficiaries you name. The only way to avoid probate is by having a revocable trust as

part of your estate plan. A revocable trust will help you avoid probate and makes distribution of your assets simple and according to your wishes, not left up to the court.

4. Not Updating Beneficiary Designations – While some assets with a beneficiary designation, such as IRAs, 401(k)'s or life insurance policies, are not subject to probate as long as the beneficiary is alive at the time of death, it is still important to review your beneficiary designations annually to ensure they are up-to-date with your wishes. One of the most common mistakes is not updating the beneficiary designations on life insurance policies or retirement plans (IRA, 401(k), etc.) following divorce or death of the primary beneficiary.

5. Not Updating an Estate Plan After the Death of a Spouse- When a spouse dies, the surviving spouse needs to update an estate plan to change distribution to other heirs. Likewise, you should always ensure that the estate plan has a clause that determines how assets would be distributed in the event that both you and your spouse die at the same time. While these may be unpleasant things to plan for, it's better to do it now than to have your children deal with your lack of planning in the event of such a tragedy.

6. Assuming There Won't be Any Family Squabbles Regarding an Estate - Even families that seem perfect on the surface can and do challenge the distribution of assets after the death of a spouse or parent. A properly drafted estate plan will increase the likelihood that there will not be any legal challenges to your estate.

7. Ignoring Children's Ages, Maturity, Special Needs – If your children are minors, or if you have a child with special needs, it is vital to set up an estate plan to ensure that the distribution of your assets to these children is done in an appropriate manner. This usually requires setting up a trust for the benefit of your children. Without a trust upon your death any assets that you own will be paid outright to your children at age 18 with no restrictions or limitations. Often times this will result in the inheritance being wasted or otherwise misused. If your children are not mature or sophisticated enough to handle their inheritance, a trust can restrict their ability to use it for purposes you would not approve.

If you have a child that has a disability or illness that requires special care, this must be taken into account when setting up an estate plan. A trust can be used to protect the assets and to assure that one's estate will be properly used for the benefit of the child.

8. Procrastinating – For many people, even thinking about dying is something they prefer to avoid. But when it comes to someone's assets, they can't afford to wait to develop an estate plan. The only people who stand to gain from your procrastination are the attorneys and courts.

Developing a proper and well thought-out estate plan is the best way to guarantee that a person's assets will transfer to their spouse, children or other heirs efficiently and according to their wishes. Without one, chances are that the money and other assets a person worked hard for may be at the discretion of probate court.