Top 10
Estate Planning Mistakes

Estate planning is a complex and highly specialized area of law with many potential pitfalls. Often people who have been financially successful and have planned well throughout their entire lives simply drop the ball when it comes to properly distributing their assets to heirs. These are some of the most common mistakes people make when planning their estate.

1. Leaving the Living Trust Unfunded: A living trust is merely a vehicle that allows you to pass your assets outside of probate. However, if there are no assets in the trust, nothing has been accomplished. There is no point in drafting a living trust if the assets are not re-titled into the name of the trust.
2. Leaving Assets as Joint-Tenancy: Titling assets under joint-tenancy / with-right-of-survivorship (JT/WROS) does avoid probate because the assets pass automatically upon the first death. However, those assets will be subject to federal and applicable state estate taxes when the second person passes away.
3. Leaving Assets Outright to Beneficiaries: Assets that are left outright to heirs and beneficiaries are exposed to creditors, predators and divorcing spouses. It is much better to leave assets in trust for their benefit. Assets left in trust are totally asset protected. The beneficiaries still have access to the funds but creditors, lawsuits and divorcing spouses cannot touch the assets inside the trust.
4. Using a Joint Trust: Joint trusts are common and used frequently in community property states. However, they can become very cumbersome and unwieldy upon the death of the first spouse. It is much simpler and cleaner to have a revocable living trust for husband and one for wife.
5. Not Having a Living Will: Some people assume that because they have a living trust they do not need a living will. This assumption is wrong. A living will gives guidelines for your physician to follow in the event you are in a terminal, end-stage, and persistent vegetative state. This is the Terri Schiavo document.
6. Owning Life Insurance in Your Own Name: Many people are not aware that the death benefit of an insurance policy, owned by the insured is included in their taxable estate. This can cause a large portion of the death benefit to be eaten up by estate taxes. A simple way to avoid this is to create an irrevocable life insurance trust or ILIT. The money will pass outside the estate to the named beneficiaries without being subject to estate tax.
7. Not Communicating with Trustees and Beneficiaries: It is important to let the people who are named in your estate plan, either as trustees or beneficiaries, know what role you are asking them to play. Proper communication with these people will go along way to ensure a smooth transition during the settlement of your estate.
8. Not Knowing Where All the "Stuff" Is: A scattered estate plan by a secretive decedent may cause some assets to be left uncollected, undistributed and even lost.
9. Not Putting Your “Stuff” into the Trust: Things like furniture, art and clothes do not have a title to them. Therefore, they must be transferred into the trust using a quit claim bill of sale. Assets left outside the trust will go through probate. There is no point in probating your “stuff” if it can pass through the trust to your heirs.
10. Not Updating Your Estate Plan: Each year Congress passes new laws, the IRS issues new regulations and circumstances in your own life change. All of these things can affect your estate plan. It is imperative that your estate plan is reviewed on an annual basis to avoid unintended results.

Work with an experienced estate planning attorney and other professionals to help you achieve your estate planning goals. Please call 866.230.2206 if you would like a complementary review of your estate plan.