



The Ten Most Gruesome **ESTATE PLANNING** Mistakes

1. DYING INTESTATE

If you die without a Will or some other form of estate planning, the state in which you reside and the IRS will simply make one for you. Of course, they have no interest in avoiding or reducing estate taxes, minimizing estate administration costs or protecting your family and legacy. The distribution of your assets will just be turned over to the Probate Court. The probate process is needlessly time consuming, frustrating and expensive. It is also open to the public, meaning creditors, predators or anyone else will have complete access to all information about your estate. For the vast majority of people, the benefits of a Will or other estate planning tools far outweigh any initial costs.

2. HAVING AN “I LOVE YOU” WILL

An “I love you” Will is one in which all the decedent’s assets have been left to the spouse. On paper, it might seem to be a caring, thoughtful gesture, but the reality is quite different. That’s because such a Will simply passes the complex issues and problems associated with transferring and protecting wealth onto the spouse or other loved ones. An “I love you” Will

creates more problems than it solves, particularly for future generations.

3. GIVING PROPERTY OUTRIGHT TO YOUR CHILDREN

Here is another “solution” that might sound good at first, but ignores several important realities. For instance, what if the child in question is too immature to handle the responsibility of a large sum of money on his or her own? What if the child suffers a severe financial setback that puts the inheritance at risk to creditors? What if the child marries a fortune-hunter, is addicted to drugs or alcohol, gets divorced or remarried? In short, you may need to protect your children and heirs from their own poor decisions.

4. OWNING PROPERTY JOINTLY

There are two types of joint ownership, Joint Tenancy with Right of Survivorship (JTWROS) and Tenants in Common (TIC). Problems with JTWROS include postponement of probate until last tenancy, loss of the double step-up in tax basis, and outright distribution. With TIC, you also lose the double step-up in tax

basis, and your property is subject to the estate plan of each tenant as well as probate for each tenant.

5. NOT HAVING A TRUST

A trust is the single most effective estate planning tool available. There are many different types of trusts. Among the better known and more commonly used are revocable trusts, irrevocable trusts and testamentary trusts. In addition to protecting your privacy, a trust will help you leave what you want, to whom you want, in the way you want—at the lowest possible cost.

6. NOT FUNDING YOUR TRUST

A trust can be thought of as a safe. It can do a great job of protecting your hard earned wealth, but if there’s nothing in the trust—i.e. nothing in the safe—what good does it do you? None whatsoever. Which begs another question, why would someone go to the trouble of creating a trust and then not fund it? The answer is quite often that the person in question simply never gets around to it. He or she procrastinates, resulting in an unfunded trust—which is worse than no trust at all.



7. NOT HAVING YOUR DOCUMENTS REVIEWED AND UPDATED

Once they have their estate planning and other documents created, many people simply file them away and never look at them again. Big mistake. An outdated plan can be as bad or even worse than having no plan at all. Your documents should be reviewed, at the very least, every two years. Why? In a word, change. Your needs and goals change; your financial situation changes; your children grow older and their needs change. The law itself is constantly changing. And even if you've specified a trustee or executor, the named person's ability to follow through on your wishes may change as well. Updating your plan allows you to take these changes into account and avoid unintended consequences.

8. DYING IN THE WRONG YEAR

We may say this tongue in cheek but, given the current status of the laws governing estate taxes and how they continue to change every several years depending who controls Congress, there is nothing funny about how much of your estate will be lost to estate taxes should you pass away in any given year. When the

Bush administration's 2001 estate tax modifications expired in 2010, the exemption amount was set to return to the 2002 level of \$1,000,000 and the maximum rate was to increase from 45% to 55%. Now Congress has amended that again at the last minute and increased the exemption to \$5,000,000 for 2011 for just two years when it is again set to return to the 2002 level for those who die in 2013. Talk about confusion in planning for the future! But this is not even unusual if you consider that laws governing estate taxes have changed more than 20 times since 1986. Which only underscores the importance of getting expert legal advice to prepare for and cope with continuous change.

9. THINKING A LIVING TRUST ALONE IS ENOUGH

The Living Trust is a powerful estate planning tool, but to truly ensure your wishes are carried out should you become incapacitated and incapable of making decisions for yourself, addendums can be extremely helpful. For example, an Advanced Healthcare Directive can dictate how you wish to be cared for and what steps you authorize medical

personnel to take to prolong your life. A HIPAA Authorization can ensure your privacy while still making crucial medical information available to the people you want to have it. A Power of Attorney for financial affairs determines in advance who will be able to make financial decisions for you. Other commonly used addendums include Pour-over Wills, Assignment of Personal Property, and Appointments of Guardianship, to name a few.

10. NOT UNDERSTANDING THAT THE BIGGEST PROBLEM IS NOT THE IRS

If the biggest threat to preserving your wealth is not the IRS, who or what is? Frankly, it is human nature. None of us wants to think about our own deaths or the possibility of becoming incapacitated. Consequently, we tend to put off taking the steps necessary to prepare for what the future may hold. We procrastinate. And our loved ones often suffer the painful financial consequences.

Perhaps Walt Kelly put it best: "We have met the enemy and he is us."



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