Five Common Estate Planning Mistakes -and How to Avoid Them

Find out how to recognize and avoid some common estate planning mistakes.

Estate planning is intricate. Here are the most common pitfalls to avoid and tips on how to avoid them.

CHOOSING THE WRONG PEOPLE TO FULFILL YOUR ESTATE PLAN

Choosing your fiduciaries is important as creating the plan itself, since your plan won't work as you intended if your fiduciaries aren't capable or unwilling to carry out the tasks required from them. Being the oldest or the smartest child does not necessarily make that child the best choice for executor, trustee, guardian or health care agent; each of these roles has specific expectations that the person appointed must be able and willing to fulfill. Care must also be given to choosing appropriate successors, because the person you name may not be able or willing to fulfill those duties. Avoid this mistake by working with your estate planning attorney to assign the right people or institutions for these different roles.

NOT FACTORING IN PROBATE

Probate is a legal process that takes place after a person dies. It involves the general administration of his or her estate, including the appointment of an executor, validation of the will, collection and liquidation of assets, payment of debts and taxes, and distribution of the estate’s net assets to beneficiaries. The probate process necessarily involves costs, and can take months, or even years. It is open to public record and overseen by state courts.

Although a simple will must pass through probate, there are several ways to structure your estate plan to avoid probate. One way is by establishing joint tenancy, whereby all property ownership and title is shared between you and your spouse, child or other party so that, upon the death of the first person, all the property passes directly to the surviving owner without probate. A second way is to establish a living trust, into which ownership of all assets is placed. Upon death, assets are distributed by the trustee to named beneficiaries without going through probate.

NOT KEEPING BENEFICIARY DESIGNATIONS CURRENT

Accounts, such as IRAs, employer-sponsored retirement savings plans, or insurance policies offer you the opportunity to name beneficiaries. Typically you will name the beneficiaries when you first open the account. However, you need to periodically review your beneficiary designations to make sure that it still reflects your wishes. It is possible to have beneficiaries who are deceased, or whom you may no longer wish to leave assets to. It is important to remember that any account with a designated beneficiary will not be distributed according to the terms of your Will, but will be distributed pursuant to the beneficiary designations. To insure that the assets are paid to those you wish, keep your beneficiary designations current and coordinated with beneficiaries named in your Will or trust.

NOT HAVING A HEALTH CARE DIRECTIVE

Unless your wishes are spelled out in a health care directive—otherwise known as a living will or health care proxy—you risk having your health care decisions handled in a manner that is not in accordance with your wishes, which may create strife among your loved ones. Establishing a health care directive and naming a health care agent authorizes someone to make health care decisions for you and will help assure that your wishes are carried out.

PROCRASTINATING

Perhaps the most common estate planning mistake is simply putting off your estate planning. You take a significant risk in not having an estate plan in place, regardless of your age or the value of your assets. If you die intestate, your state's succession...
guidelines determine your heirs who will receive your property. In many cases, following the state intestacy guidelines will result in a distribution that is not in accordance with your wishes. In the event that you have a dependent child, the state may end up selecting the guardian for your minor child. Begin your estate planning now, then regularly review and update your estate plan to ensure that it continues to reflect your wishes.

Planning ahead and working with qualified legal and financial professionals will help you avoid these and other estate planning mistakes.

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