

# Common Estate Planning Mistakes

By Kerry R. Peck, Esq.

**While the thought of estate planning can often be overwhelming for many, careful and thoughtful preparation during the estate planning process will provide much-needed peace of mind for both you and your loved ones during times of change and uncertainty. After 30-plus years as an attorney, here are some of the most common mistakes I have observed when preparing an estate plan.**

## **Not Consulting an Estate Planning Attorney**

A common misconception is that your family lawyer or a general practitioner is the most qualified lawyer to prepare your estate plan. All individuals regardless of their degree of wealth should always consult with an attorney who specializes in estate planning when creating a plan for their future. While your family lawyer or a general practitioner may know your family history, estate planning is a complex area of law that trips up even the most seasoned of lawyers.

It is common of an individual's or families' long-standing family attorney to recognize the potential pitfalls and advise that the individual or family speak with an estate planning attorney. Attorneys who specialize in estate planning have a thorough understanding of the consequences and implications of your decisions, and will help you avoid mistakes that can be easy to make and cost you and your loved one's time and money.

## **Thinking That Estate Planning Is Only for the Wealthy**

A second misconception I hear from clients is that estate planning is only for the wealthy. While individuals with a high net-worth may need to consider additional estate-tax implications, having a customized estate plan can help people at all income levels avoid a potentially costly and drawn estate administration or probate process. Probate is the legal process of administering a decedent's or disabled estate through the local Circuit Court system.

There are countless benefits to having a well-drafted estate plan; however, I will note two that are very common. First, a well-drafted estate plan will allow you to bypass the probate process. The benefit of bypassing a probate proceeding saves the individual or family money as well as does not put their situation in the public sphere. As noted above, if a probate proceeding is needed, the process will

be handled in the local Circuit Court and is a public proceeding, allowing your family, friends and the general public access to your estate. Second, by bypassing the probate process, you ease the burden on grieving families, allowing your beneficiaries quicker access to potential inheritances, which ultimately means more money is available to them.

## **Unwilling to Face the Future**

Thinking about your estate plan before suffering from a serious illness or accident occurs is often a scary experience for anyone. While it may be frightening or overwhelming to plan for your own disability or passing, a good estate plan will help ease your fears and prepare you and your family for the unknown.

Creating documents such as a Power of Attorney for Property and Power of Attorney for Healthcare allows you to name an individual (an "agent") to handle your financial affairs and medical decisions for you, if you should become disabled.

Focusing on the Power of Attorney for Healthcare, if you should become mentally or physically incapacitated without a Power of Attorney for Healthcare, the decision on what type of treatment you receive may fall to an individual with whom you never discussed your wishes. If you haven't created advanced directives about the type of medical treatment you'd like to receive or who should make those decisions on your behalf, state law will provide direction as to who the individual will be to make these choices for you. This could result in crucial decisions being placed in the hands of an estranged family member, with whom you have never spoken about your wishes or does not take your personal or spiritual beliefs into consideration.

A second risk and common mistake is that without having a Power of Attorney for Healthcare in place, family members who are authorized to act under state law may not agree on the medical decisions to make on your behalf. This could result in the individual(s) needing to bring the matter before a judge and a hearing being held as to who should make these decisions for you. Again, as noted above, these proceedings would take place in the local Circuit Court and would be in the public sphere for all to view.

## **"My Attorney Doesn't Need to Know That"**

Your estate planning attorney can only advise you based upon the information you have given to him or her. Too often clients forget about assets they have or inheritances they have received, which can result in estate tax liability or headaches for their Executor, Trustee and beneficiaries. While your estate planner will likely have you fill out a detailed questionnaire designed to avoid these oversights, it is best to begin gathering a list of your assets, and how they are titled, so that the estate planning attorney can prepare the best estate plan tailored specifically to you and your situation.

Further, be sure to tell your attorney how your loved ones interact, their financial status, and any future issues you see arising upon your death. For example, do you and your spouse have children from previous relationships? Do your children get along? Are your beneficiaries likely to contest your estate planning documents? Informing your attorney of these matters ahead of time will allow him or her the opportunity to include provisions in your documents to safeguard against fighting family members, or a will or trust contest. Additionally, you should discuss with your estate planning attorney how you want to make gifts to your family or beneficiaries of your estate plan. Improperly transferred gifts to family members and beneficiaries may create the possibility of income tax or future financial obligations, such as property tax or insurance on an inherited home. All gifts during life and upon death should be discussed in detail with your estate planning attorney.

### **Giving Beneficiaries Too Much, Too Soon**

I always encourage my clients to discuss their estate plans with their children and manage expectations from the beginning. Inheritances can be a difficult topic to navigate with your children who may expect more than they're going to receive, especially if you or your spouse are charitably inclined.

In particular, giving your children or other beneficiaries unrestricted access to their inheritances in one lump sum can be more hurtful than helpful. For beneficiaries who inherit assets outright after your death, this often allows them to feel as if they've "won the lottery" and can encourage them to freely spend their inheritances in a number of years.

Alternatively, leaving your estate to your beneficiaries in a trust is an option allowing the Trustee to control how assets are invested, and when and in what amount distributions are made. This may help curtail any beneficiaries' reckless spending or bad investment decisions.

Outright distributions to your beneficiaries may also open the door to creditors. A properly structured trust can provide what's known as "asset protection" in the event of a lawsuit or a creditors attempt to seek payment from your family or beneficiaries upon receiving funds.

### **Thinking Their Decisions Have to Be Final**

A good estate plan should always be reviewed on a regular basis and after a major life event, such as a marriage, new house, new family members, or the death of a loved one. Clients often think that once they sign estate planning documents they are unable to change them. The truth is that most estate planning documents can be amended or revised throughout your life. While your attorney may not recommend any changes or revisions to your documents, a good rule of thumb is to have your estate plan reviewed every three to five years to account for changes in the law or changes in your life.

### **Your Estate Plan is Finished Once You've Signed Your Documents**

Many clients think that once they have consulted with their estate planning attorney and signed their estate planning documents that the



process is over. However, there are often steps that you need to take once you've fully executed your estate plan. First, estate planning attorneys will always instruct you on how to appropriately transfer ownership of your assets to follow your estate plan. Failing to follow their instructions can quickly undo all of the thoughtful and hard work, and money, expended to create your estate plan.

Additionally, be sure to keep all of your original documents in a safe place, such as a safe deposit box or fire-proof box. Some attorneys may offer to keep the original documents for you, such as your Last Will and Testament, so that it can be stored safely and timely filed upon your death.

Remember, every estate plan is and should be uniquely prepared for each individual or couple. Careful consideration should be given to whom you allow to prepare your estate planning documents, and how you plan on distributing your hard-earned assets after your death. Planning for the future now will provide priceless comfort and security for your loved ones after your death.



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