

8 Estate Planning Mistakes*

Mistake #1: Having No Plan at All

It may seem obvious, but the biggest estate planning mistake you can make is not starting one at all ... yet it is extremely common for folks to just ignore this crucial step.

While it does take a commitment to get started, this is a decision that will pay dividends for you and your family for generations to come. It will also save you money and heartache down the road. Why *wouldn't* you want to protect your assets and loved ones this way?

Mistake #2: Thinking Estate Planning is for the Wealthy

Completely untrue these days. You don't have to have a sprawling estate with maids and a gardener to warrant needing protection. Besides, have you added up how much you're really worth (home, pension assets, etc.)? We're all a little less wealthy than we were a year ago, but you still may be worth *more* than you think!

Mistake #3: Leaving Everything to Your Spouse

It seems natural to pass everything on to your spouse. By keeping all of your assets in both names, your spouse may take full ownership — tax-free — of your assets upon your death. But when your spouse dies, there is a limit on how much he/she can leave of your assets to heirs. Currently through 2010 there is no limit. However, in 2011, because of the “sunset law,” it will revert to \$1 million unless Congress acts before then.

Mistake #4: Having Life Insurance in the Name of the Insured

It may surprise you to learn that life insurance proceeds are normally included in the assets of the deceased. Many people don't realize this. Keeping the plan in your name may result in a **big** chunk of the policy's proceeds going to the state/IRS in taxes. And didn't you buy the policy with your heirs in mind in the first place?!

A relatively simple life insurance trust may avoid the taxation of the proceeds and will control the distribution of the policy's proceeds.

Mistake #5: Not Taking Advantage of Annual Gift Exclusions

Giving money gifts can be confusing, because of the tax implications. You can give gifts of up to \$13,000 (up from \$12,000 in 2008) to anyone you choose without any tax liability to you or the recipient. This reduces the value of your estate, and therefore the tax liability, when you die. It also helps your loved ones right now!

Mistake #6: Not Utilizing Trusts When Appropriate

Writing a will is the *bare minimum* for estate planning. Beyond the will, talk with your estate design strategist or attorney about the judicious use of trusts, which are often more detailed than wills. This will lead to less fighting among your heirs and will give the executor of your assets the ability to take care of you if you become mentally/physically incapacitated. A trust also avoids probate.

Do You Need a Living Trust?

A living trust is the only way to guarantee that your assets are distributed as you wish and still avoid probate, which is the legal process of proving that your will is valid. Trusts are generally cheaper, which is why we like them. Legal fees for the probate process could be 3% of your estate, but that number could fall down to 1% for distributing trust assets.

We should point out here that many states have simplified the probate process to the point where a living trust may be unnecessary. In some instances, your executor can validate your wishes for your estate simply by mailing a certified copy of your death certificate to the county probate court. Be sure to check with an estate planning attorney or your county probate court to determine the laws in your state.

There are two types of living trusts: **revocable** (which means you can change it while you're alive) and **nonrevocable** (which means you can't change it). For many individuals, we like revocable living trusts because they offer flexibility (taking care of you while you're alive), privacy and speedy asset distribution. But they're not for everyone.

A revocable living trust may be more beneficial to you than a will alone. Here are the facts:

- **FACT 1:** A revocable living trust lets you avoid the costly probate process. This is very important if you crave privacy and want to speed assets to your heirs. However, if the bulk of your estate consists of assets held jointly with the right of survivorship, insurance proceeds that are left to a named beneficiary, and/or retirement proceeds left to a named beneficiary, a living trust may be unnecessary since all of these assets generally automatically bypass probate.
- **FACT 2:** A living trust keeps the court out of your affairs while you are alive. You can name yourself as a trustee, and your successor trustee (a family member or trusted professional) can care for you with your own assets if you become incapacitated or incompetent. Without a living trust, the court would have to be petitioned to allow your assets to be used for your care.

- **FACT 3:** A revocable living trust lets you change investments, terms or beneficiaries anytime during your lifetime and use the trust income for your needs. You then leave the trust assets to whomever you want.
- **FACT 4:** Your trust instructions are generally written in greater detail than instructions in your will, so it's much harder for a disgruntled relative to contest your trust than your will. During the probate process with a will, on the other hand, a malcontent can slow down the asset distribution process to a slow walk...or a crawl.

Do You Need a Living Trust?

So is a revocable living trust for you? Well, if you own a business, own out-of-state property, are concerned that someone will challenge your estate, or are worried about who will take care of your assets and you if you become incapacitated, a living trust may be especially helpful and beneficial.

If a living trust is right for you, consult an estate planning attorney. Don't try to create a trust yourself using a kit—use an estate planning attorney and do it right!

Dolan Smart Money Move: Your trust is only useful if you title all your assets in the name of the trust. You'll also need a "pour-over" will in addition to your trust so all assets outside the trust when you die will be put in the name of the trust and distributed according to your wishes.

Mistake #7: Doing it Yourself

Forget it. This is too important to be done incorrectly. Would you risk many, many thousands of dollars of assets not being distributed as you would wish just to save a few hundred or thousand dollars in attorneys' fees? We hope not!

A "do-it-yourself" will kit can be helpful to gather the kind of information that you'll need when you sit down with a trust and estates attorney, but you should not try to do it entirely yourself!

Mistake #8: Not Reviewing and Updating Your Will

Have you moved to another state? Had another child or grandchild? Become incapacitated in any way? Been divorced? All of these life changes (and many others) are reasons to review and likely amend your will and trusts.

Once you've drawn up a will, don't just stick it in a drawer and forget about it. Make a point to review your will at least every five years, but also when there is a major event such as a death in the family, loss of a job, an inheritance, etc. In some cases, a change of beneficiary and/or changes in asset distribution may be in order.

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