

# MarketWatch

## Opinion: 7 common estate planning disasters and how to avoid them

Published: Apr 26, 2018 12:34 p.m. ET

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An approximately \$30 trillion transfer of wealth is currently under way in the U.S. as aging baby boomers pass their assets to successive generations. This transfer, together with the recent increase to the lifetime federal estate and gift tax exemption (to \$11.18 million in 2018), has created a favorable situation for U.S. citizens and residents seeking to transfer wealth to their loved ones during lifetime and at death. Despite the encouraging estate planning horizon, we still see many who make common mistakes which can thwart their intentions.

### Dying without a will

Many fewer adults have a will than should. For individuals who are unfortunate enough to die intestate (without a will or living trust), the price can be high. State and local laws determine who manages and inherits a deceased person's property that is not transferred by a beneficiary designation or by law. Family members who are entitled to inherit an intestate decedent's estate often have to spend significant amounts of additional funds proving their relationship to the decedent or setting up guardianships or trusts for minors or disabled beneficiaries. Moreover, relatives whom a client may not wish to benefit may inherit their assets, and disabled heirs receiving government benefits such as Medicaid or Supplemental Security Income could have their benefits terminated or disrupted.

### Neglecting to plan for incapacity or disability

It is equally important to establish documents appointing agents to manage one's health care and business affairs in the event of incapacity as it is to have a valid will. Health care proxies and durable powers of attorney are typically the primary means of appointing agents to make health care and business decisions in the event of incapacity, whether temporary or permanent. Without these documents, state and local law will determine who can make health care decisions and a guardian may have to be appointed to permit financial and health care decisions to be made for an incapacitated person.

### Trying to 'DIY' important documents

Documents or plans made by clients who think they can accomplish their planning on their own or from self-help websites are frequent sources of estate planning mistakes. Often clients ask whether their printed form or handwritten document can constitute a will, durable power of attorney or other estate planning document. Even if the document form itself is valid, very often the client will not know how to correctly execute the document. An improperly performed will execution ceremony, for example, invalidates the instrument. There is generally no substitute for hiring a qualified attorney to ensure that one's documents are properly drafted and executed.

### Improper beneficiary designations and joint accounts

Bank and brokerage accounts with beneficiary designations (such as transfer-on-death or in-trust-for accounts) or accounts that are jointly owned are often attractive because they will automatically transfer to the beneficiary or joint owner at death. Clients who are unaware that their wills do not control the transfer of these accounts at death often title their accounts without paying attention to how the transfer fits into their entire estate plan. For retirement accounts such as IRAs or 401(k) plans, properly designating beneficiaries is essential to avoid the loss of further income tax deferral at death. Clients engaged in estate planning should consult their attorney about all of their account titling and beneficiary designations to ensure that such designations reflect their plan's design and do not circumvent it.

### Not re-examining an estate plan

People should not create and forget about their estate plan, as changes in the law or family structure can invalidate prior planning. For instance, the birth of a child, marriage, death or divorce will normally change the emphasis of a plan, whereas an increase in the amount that can pass free of estate and gift taxes may change the type of documents needed. To avoid obsolescence, families should typically re-examine their estate plan with an estate planning professional every five to seven years or after a major life event such as a death or a marriage.

### Forgetting that multiple marriages need planning

Entering into another marriage and blended family situations can be stressful, so couples getting remarried often do not create agreements to determine how their assets will be divided at their deaths. Without proper planning, a surviving spouse or children and grandchildren from a prior marriage can be left penniless or without proper resources upon the death of the first spouse. Creating trusts, buying additional life insurance and titling joint accounts can be an important means for second spouses to provide assets for each other as well as their descendants at death. Planning ahead can help ensure family harmony and reduce costly litigation.

## Keeping secrets from your estate planner

Sometimes people are reluctant to provide complete information regarding their family or finances and only provide incomplete or vague details. An accomplished estate planner may be able to make suggestions that will avoid future family conflict, increase the value of an estate and minimize taxes. These objectives are not possible, however, if the planner doesn't have accurate financial information or a complete picture of the family dynamics. Often involving other professionals (like a financial adviser) and developing the relationship with the attorney will provide the necessary background to formulate the proper strategy.

The key to avoiding costly estate planning mistakes is generally a willingness to spend the time and the resources to ensure the family is protected in the event of their death or incapacity. Often, a little time and money spent planning can prevent spending a lot of time and money later correcting planning errors.

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