

COMMON ESTATE PLANNING BLUNDERS NOT TO MAKE

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When it comes to checking tasks off your financial to do list, estate planning is probably the last item you'll get to--if you get around to it at all. We don't necessarily blame you. After all, it can be morbid to think about preparing for death or disability, and people often don't know where to start, so they simply don't get started. Case in point: 64% of Americans don't have a basic Will! Unfortunately, the term 'better late than never" doesn't apply to estate planning. So, for your own peace of mind, consider starting the process as soon as possible. It's not surprising that many common mistakes and misconceptions abound in the area of estate planning. The following are some classic estate planning blunders that people tend to make:

Common Mistake #1: Assuming Estate Plans are Only Meant for the Wealthy.

Somehow many of us have adopted the stereotype that estate planning is reserved for rich people. Truth is, it's for anyone who wants to know what's going to happen to their end-of-life medical care, assets, children or general private affairs if they become incapacitated or die. So in other words, that's pretty much all of us. Estate planning is for anyone who wants to have 'control' over their life. In addition to determining what will happen to your assets when you die, estate planning also includes preparing 'advance directives' such as Medical Power of Attorney, HIPAA Release and Authorization, Durable General Power of Attorney, Self- Declaration of Guardian, Directive to Physician (aka Living Will), Designation of Guardian for Minors, Durable General Power of Attorney, Designation of Agent for Disposition of Remains, Authorization and Consent to Access Digital Assets, Out of Hospital-Do Not Resuscitate, and others.

Common Mistake #2: I'm Too Young for Estate Planning.

We never know when we might need estate planning! History is replete with the stories of celebrities who unfortunately died before creating a Will....many of them at a relatively young age.

Common Mistake #3: If I Pass Away Without a Will, my State of Domicile will Dispose of my Assets.

If you pass without a Will, each state will apply its "laws of intestacy" to determine who will get what. You can check out a site called mystatewill.com to see what that outcome may look like. If you don't like it, get a Will drafted! If you're find with it and have minor children, get a Will anyway! That's because the Will also allows you to determine who would be the guardian of your children if that need should arise, which is probably not a decision you want a court to make.



Common Mistake #4: If I have a Will, I don't have to worry about Probate.

This may be wishful thinking! While a Will provide the court with guidance on your wishes and can 'streamline' the process under the concept of independent administration (assuming you have affirmatively made that election), it does not necessarily avoid the process altogether. Since a Will is public information, it can be easily contested in court, adding more time and cost. In addition, if you have real estate in more than one state, each property may have to go through probate in its respective state.

Common Mistake #5: Neglecting your Digital Assets.

Remember that your property isn't just confined to what you physically own. You've got a whole online life to think about too. You need to make arrangements to transfer passwords for cloud-based bank accounts, as well as any digital copies of important documents you maybe storing on your computer or online. Going green is a noble task, but don't let it put your estate plan at risk! What's going to happen to your social media accounts, such as Facebook, Twitter and LinkedIn accounts after you die. Do you want them deleted? Check out whether any social sites you belong to have policies on accounts for deceased people---Facebook, for example, can delete a deceased person's account or memorialize their timeline. Your social media, emails and digital world are real assets and in most states, the agent under your Power of Attorney, a Trustee or Executor must have specific authority to manage those assets. So make sure these are incorporated into your estate plan.

Common Mistake #6: Not Preparing for "What If" Scenarios.

Take a lesson from the Boy Scout motto: Be Prepared. While it would be nice to believe that marriages last forever, and everyone stays healthy into old age, we all know that, in reality, not every story has a happy ending. Marriages end in divorce, loved ones suffer addictions or are challenged by health problems, businesses fail, and children move away. Your estate plan can protect for life's contingencies—both good and bad. If you are in a second marriage, your estate plan can protect your children if you die first, so your second spouse doesn't leave them with nothing. You can also protect your spouse from challenges by your children from a prior marriage. In the case of addiction, you should design the estate plan to protect the beneficiary who has a history of drug or alcohol abuse. These types of circumstances are also a good reminder that your estate plan is a living, breathing document, which means you can't just set it aside and forget about it. Deaths, births, divorce, changes in financial situation and changes in estate planning laws all may warrant rethinking your estate plan.

Common Mistake #7: Failure to Coordinate Beneficiary Designations.

It is critical that you update beneficiaries for all of your life insurance policies and retirement accounts because those assets are not administered through your Will or Living Trust. Those assets pass by



“contract” to the designated beneficiaries thereof outright and not under a trust that may have been created for asset protection, divorce insulation and/or estate sheltering! Outright transfers may be inconsistent with your estate plan. Often, the largest assets in the estate are your life insurance and retirement plans and failure to coordinate their disposition results in a disconnect.

Common Mistake #8: Failure to Coordinate Retitling of Assets/Fund Living Trust.

Are you aware that your bank/brokerage accounts that are styled ‘joint tenants with rights of survivorship”, “tenancy by entirety”, “payable on death” and/or “transfer on death” pass by operation of law automatically to the designated recipient thereof outright and free of any trust that might have been designed within your estate plan for their protection! Again, we have a disconnect!

Common Mistake #9: Forgetting About Man’s Best Friend.

How could you forget Fido? Legally, your pets are personal property so you should take the time to spell out who will be responsible for them. Pet trusts can help you set aside money to outline how you’ll pay for Fido’s (or Fluffy’s) care. When the time comes, your Trustee can dole out money to the designated caretaker, along with detailed instructions on how you want your pet’s medical or other needs to be handled. Failure to address your pets can result in your pet dumped at a shelter or euthanized.

Common Mistake #10: Stale Estate Plan.

There is an old adage you are familiar with: “There is only two things certain in life---death and taxes”. Well, I suggest that there is a third certainty...that being the laws will change! In fact, the only thing constant is change ---especially in the area of estate planning. If you have not updated or at a minimum reviewed your estate plan after the American Taxpayer Relief Act of 2013 and the Tax Cuts and Jobs Act of 2017, then your plan may be out of date. We currently have a concept referred to as “portability” that allows married couples to shelter up to \$22.4 million in the aggregate from future estate tax. It is important for your documentation to reference the “deceased spousal unused exemption amount” to ensure you maximize the exemptions you are entitled to.

As you can see, there are lots of misconceptions out there about estate planning and understandably so as it can be complex, constantly changing, and removed from our everyday lives. Knowing the truth about these myths can help you avoid numerous mistakes. **Not meeting with an estate planning attorney is probably the most common mistake a person might do!** An experienced attorney can provide you with tax-planning strategies based on the particular needs and demands of your estate and help you minimize (or even avoid) paying large estate taxes. Remember, estate tax is a voluntary tax....you don’t need to be exposed to it if you are proactive and take steps to avoid it!



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Sol is a Director in the Dallas office, with over 30 years' experience in trusts and estate planning law. He counsels clients on estate planning, with a philosophy that estate planning is a process of planning for the accumulation, conservation and distribution of wealth between the generations. He is admitted to the U.S. Tax Court.

Sol has received the designation as an Accredited Estate Planner from the National Association of Estate Planners, 1995, and was selected to "5-Star" Wealth Manager in 2010-2017 and to the Texas Super Lawyers list in 2011-2017.

Admitted

- Texas, 1980
- U.S. Tax Court

Education

- LL.M. Estate Planning, 1982, University of Miami in Miami, Florida
- J.D., 1980, Southwestern University
- B.A., *cum laude*, 1974, The University of Texas

Affiliations

- Dallas Bar Association
- American Bar Association
- Dallas Estate Planning Council
- National Association of Estate Planners

Honors and Awards

- Accredited Estate Planner
- Named to the Texas Super Lawyer list in the area of Trusts and Estates, 2011-2017
- Selected as a "5 Star" Wealth Manager, 2010-2017



Publications and Presentations

- “Auld Lang Syne for Professional Personal Service Corporations,” State Bar of Texas, Texas Bar Journal (May 1983)
- “Section 401(k) Plans-An Alternative to an IRA,” Warren, Gorham & Lamont, The Review of Taxation of Individuals (Spring 1985)
- “The Foreign Sales Corporation-An Analysis of Its Impact, Attributes and Planning Opportunities after the 1984 Tax Reform Act,” Prentice-Hall, Tax Ideas (Fall 1985)
- “Choosing a FSC Jurisdiction,” Prentice-Hall, U.S. Taxation of International Operations (September 25, 1985)
- “Structural Considerations for a FSC,” Prentice-Hall, U.S. Taxation of International Operations (October 9, 1985)
- “Are Living Trusts for You,” T.A.L.S. Docket (March 1991)

Activities

- Adjunct Professor in Estate Planning, School of Business, University of Texas-Dallas (2015-present)
- Estate Planning Instructor, SMU Certificate Program for Financial Planning, 2010-present
- Estate Planning Instructor, Graduate School of Business at the University of Dallas, 1995-2010
- Professional Development Institute at the University of North Texas (May 1993-June 2010)
- Southeastern Paralegal Institute (June 1992 – May 1998).
- Judicial Law Clerk for Judge Jack Swink in the Probate Court of Los Angeles (1979)