

TEN MOST COMMON ESTATE PLANNING MISTAKES

The people we work with come from all walks of life and have varied needs and desires. However, universally it can be said that the *failure to plan* on how to deal with issues surrounding death or incapacity is in effect *planning to fail*.

Following are ten of the most common estate planning mistakes we have seen people make. Perhaps by being cognizant of these correctable errors, you can avoid (or help your loved ones avoid) significant inconvenience, stress, expense and disappointment. So, in descending order, here are the ten most common estate planning mistakes we have seen people make:

10. **Failure to coordinate non-probate assets with the overall plan.** The distribution of life insurance, annuity and retirement proceeds simply must be coordinated with the entire estate plan to avoid unintended results and provide estate liquidity, where necessary.
9. **Failure to have a properly executed and witnessed Texas will.** State laws govern what makes a will valid and how probate costs can be minimized. These laws vary by state. Each Texas resident should have a specialized Texas will.
8. **Failure to deal with blended family issues and potential contests.** “I won’t have any trouble with my husband’s kids when he dies-- I get along great with his kids.” Please, don't count on it! Plan for the worst and then hope for the best.
7. **Failure to plan for contingencies, such as people dying “out of order”.** All governing documents (including the will and all beneficiary designations on retirement assets, annuities and life insurance policies) should cover contingent situations such as a predeceasing spouse or children. If minors or incapacitated persons could conceivably inherit, a trustee or custodian should be named.
6. **Failure to preserve the tax free amount of the first spouse to die.** Overuse of the simple “I Love You” plan which leaves all assets to the surviving spouse may increase the taxes ultimately paid by the family by hundreds of thousands of dollars. On the contrary, leaving the assets to a trust could preserve the tax free amount and result in significant tax savings.
5. **Misuse of “canned” documents.** Beware of documents prepared by “trust mills” or other non-lawyers. Beware of any document you download from the internet or purchase at the office supply store. Only a licensed Texas lawyer can give you proper counseling regarding your estate plan to assure your wishes are carried out with minimal expense and inconvenience.
4. **Overuse of living trust planning when no real need for a trust exists.** Living Trusts are very helpful in limited circumstances, but can be expensive to prepare. Proper funding of the Living Trust is vital and often overlooked. Most Texans do not need Living Trusts, especially if probate avoidance is the primary motivation. Texas laws allowing for independent estate administration minimize probate expenses for most Texans who utilize this procedure.
3. **Failure to consider impact of community property laws.** Unless the property on hand at the termination of a marriage in Texas can be proven to be the separate property of one of the spouses, it is presumed community property. This is true even if the property is held in the name of only one spouse. This can dramatically impact the dispositive plan and should be adequately considered.
2. **Failure to plan for potential incapacity.** A durable power of attorney will allow you to select in advance who will handle your financial affairs in the event of your later incapacity. Likewise, a medical power of attorney will allow your selected person to arrange for medical care if you become incapacitated. Failure to have these two documents could mean a guardianship would be necessary. If you do not want to be kept alive on life support if your condition is terminal or irreversible, a directive to physicians should be considered.
1. **And the number one mistake? Overuse of survivorship and “pay on death” accounts.** In a medium or large size estate, holding significant assets “...with rights of survivorship” or “pay on death”, potentially thwarts the overall plan and increases taxes. This should only be done where the particular circumstances have been analyzed and there is specific legal advice to do so. This mistake is exacerbated if the surviving spouse accidentally waives the right to disclaim these assets by exercising ownership over them prior to consulting his or her tax advisors. Consult with an attorney about how to hold your accounts and again immediately after a death.