

## Avoid Common Estate Planning Mistakes

Whether your estate plan is simple or complex, there are many details, which are often overlooked, that can undermine your plan's effectiveness. Are you aware of these common estate planning mistakes?

**\* Titling property jointly with your children as a substitute for a will.** Unlike a will, a transfer of an interest in your property is *irrevocable*, which may prevent you from changing the disposition if circumstances change before your death. Also, titling your personal residence jointly can result in partial loss of the capital gain exclusion if the property is sold before your death.

**\* Failing to plan for the possibility of children getting divorced or having problems with creditors.** Parents often have cause to regret having made outright gifts to their children when they subsequently divorce and an ex-son- or daughter-in-law is awarded an interest in the gifted property by a court. In another situation, gifted property is taken pursuant to a legal judgment against the child. Such problems can be minimized through proper use of trusts or a business entity, such as a limited liability company (LLC).

**\* Failing to make sure that all your assets pass in accordance with your wishes upon your death.** Many types of assets, including life insurance, IRAs, and brokerage accounts, can pass to your heirs or others based upon beneficiary designations. The provisions of your will cannot change a beneficiary designation. Remember to account for things you've already designated. You should review your will, as well as all other beneficiary designations, when formulating your estate plan.

**\* Underestimating the true value of your estate for federal estate tax purposes.** Many people are unaware that the proceeds of life insurance on their lives are includable in their taxable estates if they own the policies. This could bring the total value of their estates to more than the amount sheltered from estate tax by the applicable exclusion amount (currently \$2 million in 2008).

**\* Failing to consider state death taxes in light of recent changes in the law.** Many states have "decoupled" their death taxes from the federal estate tax, which means your estate could be subject to death tax in a state even if no federal estate tax is due. This could result in an unpleasant surprise to your heirs upon your death, one that might be avoidable with proper planning. The laws of each state where you own property should be carefully reviewed in order to determine the potential exposure to state death taxes and how to minimize them.

**\* Not recognizing the difference between the amount that can be transferred free from gift tax during your lifetime and the amount that can pass free from estate tax upon death.** The maximum amount that can be given away during life without incurring gift tax is \$1 million, whereas the amount sheltered at death is currently \$3.5 million in 2009. This estate exclusion amount is scheduled for repeal in 2010 (Note: Repeal does not apply to the gift tax). Without further legislation, the estate tax will be reinstated in 2011 at levels in effect prior to passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). You can make

yearly gifts up to the annual exclusion amount (\$13,000 per person and \$26,000 for gifts made jointly by husband and wife in 2009) that don't count against your \$1 million gift tax exemption.

**\* Failing to maximize the benefits of the income tax basis “step-up” at death.** Low-basis/high-value assets should generally not be given away during your lifetime: the basis for capital gain computation purposes will be increased to fair market value at death, but the basis remains at the property's original cost if the asset is given away.

Some of these common mistakes can be avoided with a few, simple actions. Early and thorough planning can help you reach your financial goals and leave a lasting legacy.



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