TOP 12
Estate Planning
MISTAKES

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TRUST LAW COUNSEL™

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1. Having no estate plan at all.

MISTAKE: "I'll get to it later." or "I do not have enough assets to do an estate plan." Those are commonly heard excuses, but if you fail to plan, the fact is the government has a plan for your estate. It is called intestacy. It is a court ordered distribution scheme that may or may not reflect your wishes and could end up costing you—and really your loved ones—more.

SOLUTION: An estate plan is more than a Will and is personalized based on your needs, assets, and wishes. Even with the most modest of means, there are some essential elements of an estate plan you should have in place. Having a plan in place today will ensure a more cost-efficient and timely process later that ensures all your valuables will go to those you wish.

In many cases, we recommend a Revocable Living Trust being part of your estate plan because it efficiently transfers your assets to your heirs, can easily be changed and updated, and you retain total control while you are living. A Revocable Trust plan will avoid probate and as a result of transitioning without court involvement, the disability planning and planning for your beneficiaries is all kept private. Through your consultation, Trust Law Counsel will help determine if a Revocable Living Trust fits your estate planning needs.

2. Failure to address health care decisions.

MISTAKE: A study by the Centers for Disease Control shows that nearly 70% of Americans die in a nursing home, long-term care facility, or hospital. This means that there is a high probability that you will have a period in your life where you are no longer able to effectively make your health care decisions. Besides possibly creating conflict between family, lack of planning creates delay and higher costs because there are no decision makers and no instructions for loved ones to follow.

SOLUTION: You need to have a comprehensive Health Care Power of Attorney that identifies who will make health care decisions on your behalf in the event you are unable to do so. Also, there needs to be an end of life directive, often called a Living Will that clearly defines the type of end of life care you want in the event your death is imminent. Without these important documents, your family may struggle to care for you in the way you would want.

3. No plan to control property and finances when incapacitated or disabled.

MISTAKE: Similar to the Health Care Power of Attorney, failure to direct who can make financial decisions for you when you are not able to could create havoc and additional costs.

SOLUTION: A Durable General (or Financial) Power of Attorney allows you to delegate to an agent the power to make financial transactions on your behalf. In addition, the best option for planning for finances during incapacity is establishing a Revocable Living Trust. A fully funded Revocable Living Trust allows an individual to appoint a Trustee to manage his or her financial affairs when they are mentally incapacitated and can avoid the need for an appointment of a conservator.

4. Failure to provide your loved ones access to your Medical Records (due to HIPAA law).

MISTAKE: HIPAA regulations restrict private health care information being shared with anyone other than the patient. Due to this law, medical personnel face stiff penalties if they violate it. This can be a problem for many individuals who would like to give family members the ability to get health updates if they are sick or injured.

SOLUTION: A HIPAA Authorization included in your estate plan can ensure access to medical information for those members of your family you determine you want to know. A HIPPA Authorization does not replace a Health Care Power of Attorney, and it does not give the persons listed in this document the ability to make health care decisions. It only allows the noted persons to get access to your health care information.

5. Believing that creating an estate plan is a one-time event.

MISTAKE: Estate planning is not a one-time event. It is a process. This is true because with every individual, there are personal, financial, and legal changes that occur and affect the estate plan. Families are constantly changing through marriages, divorces, and births. Sadly we lose loved ones to death. Our finances are constantly changing, and the laws that impact estate planning, including estate taxes, income taxes, and asset protection also change.

SOLUTION: It is best to maintain a long-term relationship with a counseling-based estate planning attorney so that you can keep your plan updated.

6. Failure to understand and plan for digital assets.

MISTAKE: Individuals have so much of their lives online. Unless you include planning for digital assets (online accounts, online payment systems, etc) and social media as a part of your comprehensive estate planning, you may lose critical documents, photos and family records.

SOLUTION: We recommend creating a list of all of your digital assets, including online accounts and social media. Include in this list your login/usernames as well as passwords and then, most importantly, keep the list in a secure location. This may mean encrypting the file on your computer or storing the list in a safe.

As part of its comprehensive estate planning services, Trust Law Counsel also provides a secure online vault for clients to store a digital copy of their estate planning documents, as well as any additional information a client wishes to upload. Access to this vault can then be provided to anyone you determine that needs to obtain a copy of a stored document. You are thus ensured that when the time comes, your agents and nominees can obtain copies of your Revocable Living Trust and Financial Power of Attorney, giving them the authority to manage your assets, digital, and otherwise.

7. Not preserving tax deferral benefit of retirement plans.

MISTAKE: Most of your retirement accounts could be subject to immediate taxation on death. The reason for this is that when retirement assets are not planned for, your beneficiaries may trigger taxation of the assets during the year of your death instead of making use of the income tax deferral available in the plans. The longer your beneficiaries can keep funds in an IRA after death, the more wealth they can create.

SOLUTION: An IRA Trust is a way to protect and increase wealth by keeping funds in a tax-protected IRA as long as possible. The IRA Trust is a Revocable Trust, separate from your Living Trust. You would then name the IRA Trust as the beneficiary of your retirement plans. At your death, the IRA Trust works like this: The IRA pours into the IRA Trust at death and the required minimum distribution is then "withdrawn" from the IRA each year. The distributions are deposited into the IRA Trust and are either given to the beneficiary or left in the Trust to accumulate - depending on your planning goals. This ensures that the IRA assets are not withdrawn early, triggering all of the income tax due on the plan at once. Also, because the Trust is not owned by the beneficiary, the Trust principal is asset protected.

8. Failing to organize and consolidate assets.

MISTAKE: The biggest factors causing estate administration delays and increased costs are lack of communication between the client and their advisors, an inability for heirs to locate assets, having multiple, redundant accounts, and having no central repository. You can make your wealth transfer process much smoother for your loved ones by organizing your estate plan.

SOLUTION: Trust Law Counsel will assist you in organizing your estate plan. We will not only put all your planning documents into one portfolio, but also walk you through instructions on where to keep the documents, who needs what, and other next steps that should be taken following the signing of your estate plan. We also provide the online client document vault for access to legal documents. In addition, we work with your other planning professionals to make sure that all accounts and assets are accounted for and get funded to your Trust, if needed.

9. Failing to plan for tangible personal property.

MISTAKE: Tangible property includes: family heirlooms, photos, jewelry, collectibles, etc. Many families struggle over distributing these personal items and it can be the cause for conflict after the death of a loved one. This is because of the emotions attached to many of the items, and the sentimental value many of the items have.

SOLUTION: We work with you to create a Personal Property Memorandum, which spells out who will receive your personal property. This document is referenced in your Revocable Living Trust so that it will be honored. We also encourage you through family meetings to communicate your wishes with relevant members of your family. We have found that a clearly articulated plan avoids disputes.

10. Failure to protect your spouse, or your children, in second marriages.

MISTAKE: There can be a lot of problems leaving assets outright to a surviving spouse. If a surviving spouse is involved in a lawsuit, a judgment against the spouse could drain the estate and effectively leave nothing for your children. Your surviving spouse could remarry and without the protection of a Trust be victimized by a bad second marriage, decimating your estate. Lastly, in the case of a second marriage, leaving money outright to a surviving spouse may disinherit your children should your spouse pass away first and name the second spouse as the beneficiary. Once that happens, the second spouse could leave your money to his/her children in their estate plan, meaning your children are excluded from receiving anything.

SOLUTION: You can protect your spouse and children with a Trust. You can provide for your spouse while also protecting him or her from misfortune once you have passed away. A Spousal Trust is valuable because it passes inheritance to your spouse (and your children) instead of your spouse's new partner or your son-in-law or daughter-in-law. It provides income and principal to your spouse for life in accordance with his/her needs and then the income and principal can be passed onto your children.

11. Thinking that children both minor and adult do not need inheritance protection.

MISTAKE: Even good children need protection when it comes to transferring wealth to them in your estate plan. Consider what would happen if your child becomes instantly "rich" at 18, 21 or 25. That is the age most estate plans give the inheritance outright to children. Would they be able to effectively manage the inheritance? Also, what would happen to your inheritance if a child gets divorced? Would you want your ex-son-in-law to receive your family's inheritance? What would happen to your inheritance if a child experiences creditor problems or gets sued? Would you want your inheritance going to creditors or to pay judgments? With traditional planning, this is what is likely to happen.

SOLUTION: A way to protect a child's inheritance is through the use of a Children's Trust. Instead of leaving assets outright to a child, a Trust is created for the benefit of the child. When the child becomes an adult, the child becomes Co-Trustee or eventually Trustee of his/her Trust. As the Trustee, the child follows the instructions you designed for the Trust. You can create the Trust to be restrictive, only to be used for Health, Education, Maintenance, and Support (HEMS), or you can design it with very few restrictions. Through your consultation session with Trust Law Counsel, we work with you to design the best plan for your assets and children.

The benefits of a Children's Trust over outright planning is that the Trust protects your children's inheritance from potential divorces. Children's Trusts also protect an inheritance from lawsuits, bankruptcy, personal injury claims, and other creditors. This is because the assets are not owned by your child, are not part of their assets, but are under the control of a Trustee, and therefore not subject to creditors' claims.

12. Failing to transfer your personal values when planning your estate.

MISTAKE: Traditional estate plans focus almost exclusively on transferring assets, reducing taxes, and administration costs. While these are important aspects, it should not be the sole focus of estate planning. There are ways to transfer your personal, business, and family values through customizing the distribution to beneficiaries or communicating the reasons behind certain aspects of the estate plan.

SOLUTION: Comprehensive client-centered estate planning means focusing on each client individually. You are the not the exact same as our next client, therefore your estate plan will not be exactly the same as theirs. Some options include creating a family mission statement as part of your estate plan, or customizing distributions to help build the values you want to instill in your children. For example, hard work and saving money can be encouraged by limiting the distributions from your Trust. Values such as marriage and family can be supported by providing distributions for weddings and family vacations. No two children are alike, and by thinking through how to plan for each child, a parent can build their values into each child's Trust. Lastly, a family meeting is a great way for you to convey your values and the planning that went into your estate plan.

Based on what you have just learned, are you (or your current estate plan) at risk in any of these common mistakes?
Goosmann Trust Law Counsel can help provide you solutions and peace of mind.
Contact us today to create a personalized estate plan that meets your needs.

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