

Top Estate Planning Goof-Ups

After working with families and individuals for over 20 years regarding their Estate Planning, we have seen a pattern of common mistakes made. Which generally can be easily corrected with some simple and relatively inexpensive planning.

Here are some of the common mistakes to watch out for:

▶ **Estate Planning 101 - a proper BENEFICIARY DESIGNATION:** Assets that pass by beneficiary designation are different from your other assets. That is because assets transferred to your heirs by beneficiary designation are not subject to probate and/or creditors' claims. This saves a lot of time, expense and exposure as assets in probate are subject to creditors and any possible legal actions. Also we see many people designate a PRIMARY beneficiary but neglect to elect a CONTINGENT (or back up) beneficiary. We also see MINOR CHILDREN stated as beneficiaries. However, since minors do not have the 'right to enter into contract', they cannot own assets and/or have bank accounts in their own name. Based on this situation, an expensive 'Guardianship' would have to be established by the court, who would then supervise the moneys on the minor's behalf. An accounting would have to be filed with the court on an annual basis and investment options for the funds may be limited. There are many other beneficiary pitfalls, make sure you periodically review your beneficiary designations and keep them 'current'. Beneficiary designations are normally found in Revocable Trusts, life insurance policies, annuity contracts, retirement plans, IRA's, etc.

▶ **Not Knowing "Where is the Stuff" Is:** At your death your Personal Representative needs to know where to find your assets if your heirs are to inherit them. Scattered assets and documents such as Wills and Trusts may cause some assets to be left uncollected, undistributed and even lost. It is best to prepare a list, keep it current and give a copy to your attorney, your Personal Representative, your spouse or a trusted friend; so they know where to find all your stuff. Do NOT leave these documents in a Safety Deposit Box, as it could take a court order to open the box creating further complications. The list should include all your bank and brokerage accounts, retirement plans, life insurance and annuity policies, business interests, real estate and any other pertinent personal property and/or assets. Include the institution the asset is with and the name of any representative or agent you work with and the account or ID number. Also a list of all your creditors is helpful so that they can be notified of your death. Don't forget to list any credit or mortgage life insurance that maybe payable.

▶ **Not Having a Will:** Do we really need to say more? If you don't have a Will the State you reside in has one for you. Property which is entered into Probate of the decedent will pass under the applicable State of residence INTESACY laws, at possible increased costs. Personal wishes whether written or oral will most likely not be followed in the absence of a will.

▶ **Improper Ownership of Life Insurance:** Most policies are owned by the insured, payable to the insured's estate or survivors and therefore are included in the owner's TAXABLE ESTATE. Policy owners should consider ownership by a third party such as

an Irrevocable Trust (ILIT) in order to avoid a large Estate Tax bite out of your life insurance proceeds.

▶ **Not Funding Your Living Trust:** Many individuals have attempted to install a modern Estate Plan and have created a Revocable (or Living) Trust. However until you actually transfer the title of your property and/or assets to the Trust, nothing has occurred other than the purchase of an expensive piece of paper. The way assets titled in the name of a Revocable Trust avoid probate and pass to your heirs is by the beneficiary designation you make in the Trust itself.

▶ **Too Much 'joint-tenancy-with-right-of-survivorship' property (JTWROS):** Titling assets under 'joint-tenancy-with-right-of-survivorship' does avoid probate, yet it does not avoid Estate Taxes. Further, improper titling can go against an Estate Plan because property titled JTWROS goes to the 'surviving joint tenant' regardless of what a Will says. Also remember to actually re-title the property inherited by the surviving JTWROS property owner, so at their eventual death the title(s) are correct.

▶ **Leaving Too Many Assets to a Surviving Spouse:** Leaving all your property to your spouse does avoid Estate Taxes at the first death due to the 'Unlimited Marital Deduction'. However, such a plan wastes the first-to-die spouse's 'Individual Lifetime Credit' and the Estate is slammed with taxes at the death of the surviving spouse. This is because all the assets from both spouses are now in the surviving spouse's TAXABLE Estate.

▶ **Not Equalizing Assets Through Gifts Between Spouses:** This is another example of improper titling and a possible waste of some portion of the 'Individual Lifetime Credit'. If the first-to-die spouse does not have enough assets in their name to utilize their full 'Individual Lifetime Credit', then anything NOT used has been wasted.

▶ **Being Donor & Custodian of a UGMA/UTMA Account:** Creating and contributing to a UGMA/UTMA account of which you are the custodian will cause the account to be included in your Estate and possibly subject to painful Estate Taxes.

▶ **Naming the Wrong Executor:** The tasks facing an executor are often formidable and demanding in all but simple Estates. Spouses and close family relatives are under enough burdens, a Professional is often a better choice.

▶ **Not Periodically Updating an Estate Plan:** People don't like to think about dying and therefore want to set up an Estate Plan and be done with it. However, many economic, health, family and tax law changes require reviewing and possibly revising your Estate Plan from time to time.

Understanding and avoiding these 'pitfalls' can make sure that your wishes are fulfilled and minimize the shrinkage of your Estate to your heirs. Kelley Insurance & Financial has an experienced team of Professionals that do Estate Planning on a daily basis, who can make sure you achieve your Estate Planning goals.