

10 MOST
GRUESOME

ESTATE
PLANNING

MISTAKES



1

DYING INTESTATE

If you die without a Will or some other form of estate planning, California and the IRS will simply make one for you.

Of course, they have no interest in avoiding or reducing estate taxes, minimizing estate administration costs or protecting your family, loved ones and legacy.

The distribution of your assets will just be turned over to the Probate Court.

Probate is needlessly time consuming, frustrating and expensive. It is also open to the public, meaning creditors, predators or anyone else will have complete access to all information about your estate.

For most people, the benefits of estate planning far outweigh any initial costs.



2

HAVING AN "I LOVE YOU" WILL

An "I Love You" Will is one in which all the decedent's assets have been left to the spouse.

On paper, it might seem to be a caring, thoughtful gesture, but the reality is quite different. That's because such a Will simply passes the complex issues and problems associated with transferring and protecting wealth onto the spouse or other loved ones.

An "I Love You" Will creates more problems than it solves, particularly for future generations.



3

GIVING YOUR PROPERTY OUTRIGHT TO YOUR CHILDREN

Here is another “solution” that might sound good at first, but ignores several important realities. For instance:

What if the child in question is too immature to handle the responsibility of a large sum of money on his or her own?

What if the child suffers a severe financial setback that puts the inheritance at risk to creditors?

What if the child marries a fortune-hunter, is addicted to drugs or alcohol, gets divorced or remarried?

In short, you may need to protect your children and heirs from their own poor decisions.



4

OWNING PROPERTY JOINTLY

There are two types of joint ownership, Joint Tenancy with Right of Survivorship (JTWROS) and Tenants in Common (TIC). ***Joint ownership comes with more problems than you might realize.***

Problems with JTWROS include:

- Postponement of probate until last tenancy
- Loss of the double step-up in tax basis
- Outright distribution

Problems with TIC include:

- Loss of double step-up in tax basis
- Your property is subject to the estate plan of each tenant
- Your property is probate for each tenant



5

NOT HAVING A TRUST

A trust is the single most effective estate planning tool available.

There are many different types of trusts.

Among the better known and more commonly used are:

- Revocable trusts
- Irrevocable trusts
- Testamentary trusts

In addition to protecting your privacy, a trust will help you leave what you want, to whom you want, in the way you want—at the lowest possible cost.



6

NOT FUNDING YOUR TRUST

A trust can be thought of as a safe. It can do a great job of protecting your hard-earned wealth, but if there's nothing in the trust—i.e., nothing in the safe—what good does it do you?

None whatsoever.

Which begs another question: Why would someone go to the trouble of creating a trust and then not fund it?

The answer is quite often that the person simply never gets around to it. He or she procrastinates, resulting in an unfunded trust—which is **worse than no trust at all.**

7

NOT HAVING DOCUMENTS REVIEWED AND UPDATED

Once they create their estate planning and other documents, many people simply file them away and never look at them again. Big mistake.

An outdated plan can be as bad or even worse than no plan at all.

Your documents should be reviewed, at the very least, every three years. Why? In a word: Change.

Your needs and goals change; your financial situation changes; your children grow older and their needs change. The law itself is constantly changing. And even if you've specified a trustee or executor, that person's ability to follow through on your wishes may change as well.

Updating your plan allows you to consider these changes and avoid unintended consequences.



8

WORRYING TOO MUCH ABOUT ESTATE TAXES & NOT ENOUGH ABOUT LONG-TERM CARE

Many people begin estate planning because they're worried about estate taxes. This is understandable, because many years ago even small estates were taxed.

Now, however, ***most people don't have to worry about estate taxes.*** California does not have its own estate tax. As of 2020, under federal law, your estate will only be taxed if it is more than \$11.5 million if you're single, or over \$23 million if you're married.

A bigger issue for most people is long-term care. Nearly 50% of adults 65 or older will be in skilled nursing care at some point. This raises the issue of where will these people live, and how will they pay for their care?

Since the odds are good that you'll need long-term care during your lifetime, it's critical to do long-term care planning as part of your estate plan.

9

THINKING LIVING TRUST ALONE IS ENOUGH


A living trust is a powerful estate planning tool, but to truly ensure your wishes are carried out if you become incapacitated and incapable of making decisions for yourself, ***you will need other documents as well.***

For example:

An Advanced Healthcare Directive can dictate how you wish to be cared for and what steps you authorize medical personnel to take to prolong your life.

A HIPAA Authorization can ensure your privacy while still making crucial medical information available to the people you want to have it.

A Power of Attorney for financial affairs determines in advance who will be able to make financial decisions for you.



**“*...you will need
other documents
as well*”**

Other commonly-used estate planning documents include:

- Pour-Over Wills
- Assignments of Personal Property
- Appointments of Guardians for Minor Children
- and others



10

NOT UNDERSTANDING THAT THE BIGGEST PROBLEM IS NOT THE IRS

If the biggest threat to preserving your wealth is not the IRS, who or what is?

Frankly, it is human nature.

None of us want to or think about our own deaths or the possibility of becoming incapacitated. Consequently, we tend to put off taking the steps necessary to prepare for what the future may hold. We procrastinate. And our loved ones often suffer the painful financial consequences.

Perhaps Walt Kelly put it best: ***"We have met the enemy and he is us."***



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