

12 Common Estate Planning Mistakes

Mistake No. 1: Incapacity Planning - Ignoring Powers of Attorney (for finances) and Health Care Directives (for health care decisions) until disease or disability hits. Don't wait until a hospital visit to get this done.

Mistake No. 2: Believing that a Will avoids probate. A will does not avoid probate. It's the instructions to the probate court and the executor or PR. If people want to avoid probate (and in many cases that really doesn't need to be a high priority), a Will doesn't cut it. Note: probate is the court process by which a dead person's property gets where it's supposed to go if there isn't another way to get it there.

Mistake No. 3: Believing that a Will is the centerpiece of an estate plan and controls the disposition of all assets. In many cases the Will is not the most important estate planning document. Wills only deal with probate assets, and many assets are non-probate (such as life insurance and IRAs with valid beneficiary designations in force, assets held in trust, and jointly held assets).

Mistake No. 4: Taking actions in order to avoid probate that make things worse (letting the tail wag the dog). Example: giving everything away to the six fighting children – that avoids probate, but at a big cost.

Mistake No. 5: Treating beneficiary designations as a poor cousin to the Will or Trust. Although people often do not coordinate beneficiary designations with the rest of their estate plan, beneficiary designations in fact should be treated with the same seriousness as a will or a trust to make sure dispositive wishes are put into effect. They are like “mini-wills” with respect to the accounts or policies that they govern. And, beneficiary designations can be an unusually cost effective way to make post-death **charitable** gifts from tax qualified retirement accounts – the charity gets 100%, unlike persons who have to pay income tax on withdrawals.

Mistake No. 6: Setting up a Trust without properly funding the Trust. Simply setting up a Trust, without more, does not avoid probate; rather, the Trust needs to be funded during life and/or after death.

Mistake No. 7: Assuming that intestacy will “take care of everything”. The intestacy scheme usually works well for Ozzie and Harriet, but can be problematic for unmarried couples, singles, or people in 2nd marriages.

Mistake No. 8: Treating the homestead casually: Many people view their house as one of their largest assets, yet it is amazing how casually some people treat it from a legal standpoint (e.g. home made deeds that don't have a proper legal description, or that vest title as tenants in common when joint tenancy would be far more appropriate).

Mistake No. 9: Not having a plan for long term care: It's about more than dollars and cents and asset protection. For example, often the long term care stay is preceded by declining health at home, and families should discuss strategies to try and make sure that the care giver (often the other spouse) doesn't end up dying or getting sick first due to the strain of trying to do everything by himself or herself. Respite care can be important.

Mistake No. 10: Taking actions in order to “avoid the nursing home” that make things worse (letting the tail wag the dog, part II): People know that nursing home care is expensive and there is fear of impoverishment. But people sometimes take actions that are ill-advised, particularly with respect to their homes.

Mistake No. 11: Ignoring the Minnesota estate tax: The federal estate tax now is a non-issue for most people, but the Minnesota estate tax remains relevant for those with estates approaching \$3 million.

Mistake No. 12: Doing nothing because the plan is not yet perfect. The pursuit of perfection often prevents people from doing what's good enough. The fact is that our job is not to build a perfect edifice to last one thousand years. Our goal is to improve the current plan – and then revise the plan later as circumstances may warrant.

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