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Top Five Estate Planning Mistakes

Only about 20 percent of the population has a formal estate plan. After reviewing the points below, please take a minute to consider whether it's time for you to create or update your estate plan.

1. Dying without a will or living trust

If you die without a will or trust, the state in which you reside 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 and legacy. The distribution of your assets will just be turned over to the Probate Court. The probate process 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 the vast majority of people, the benefits 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, because such a Will simply passes the complex issues and problems associated with transferring and protecting wealth onto the surviving spouse or other loved ones. It creates more problems than it solves, particularly for future generations.

3. Giving 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 gold-digger, is addicted to drugs or alcohol, gets divorced or remarried? You

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may need to protect your children and heirs from their own poor decisions. These assets are also gifted assets that carry potentially large IRS penalties if not handled properly.

4. Owning property jointly

There are two types of joint ownership, Joint Tenancy with Right of Survivorship (JTWROS) and Tenants in Common (TIC). Problems with JTWROS include postponement of probate only until last tenancy, the loss of the double step-up in tax basis creating more to pay in capital gains taxes, and outright distribution. With TIC, you also lose the double step-up in tax basis where it's available, and your property is subject to the estate plan of each tenant as well as probate for each tenant.

5. Not having a living trust

A living trust is the single most effective estate planning tool available. There are many different types of living trusts. Among the better known and more commonly used are revocable living trusts, irrevocable trusts and testamentary trusts. A Living trust protects your privacy, and will help you leave what you want, to whom you want, in the way you want at the lowest possible cost overall.