

How to Avoid the Top 5 Mistakes in Estate Planning

Mistake #1. *All of my assets will go to my family automatically if I die without an estate plan.*

Fact: Without an estate plan, probate is required to transfer legal title of your assets to your family. Probate is costly and time-consuming. Thus, even if your family receives your assets, the assets will be frozen during an approximate 2-year period while the probate matter is being reviewed and resolved by a judge.

Mistake #2. *Probate is not something which applies to me.*

Fact: Probate applies to anyone who dies without an estate plan. Probate usually costs a family 4-7% of the deceased's assets. Furthermore, the probate costs are based on the value of **gross** assets. Thus, the value of any debt will not be deducted.

Mistake #3. *Creating a living trust will automatically avoid probate.*

Fact: If you have a living trust, make sure your trust is funded. Many high-pressure seminars offer to create a trust for a low-price, but among other issues, the trust is empty. An empty trust will not automatically take effect and your assets may not pass to your beneficiaries as you had intended.

Mistake #4. *Holding assets with family members in joint tenancy eliminates the need for an estate plan.*

Fact: Holding ownership in joint tenancy is problematic for several reasons. First, married couples will lose a full step-up in cost basis upon the death of the first spouse. Second, joint tenancy creates an exposure to lose that property to creditors, bankruptcies and lawsuits of the other tenant. Third, there is a loss of control. Once the joint tenancy is created and the relationship sours, the tenant's name cannot be removed without the other person's consent. Finally, joint tenancy can create unintended gift tax consequences.

Mistake #5. *A non-U.S. citizen spouse is treated equally as a U.S. citizen spouse.*

Fact: Only U.S. citizen spouses may transfer an unlimited amount of assets to each other. If the surviving spouse is not a U.S. citizen, estate tax would be due immediately upon the death of the U.S. citizen spouse.

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