Common Reasons Estate Plans Fail

Individuals and families who, today, enjoy a level a wealth can sometimes credit the hard work and dedication of a prior generation for their good fortune. Today, dedication is still required to ensure that the aspirations associated with accumulated wealth are not diminished or ruined due to simple mistakes and oversights.

In the realm of probate, trust and estate law especially, without proper documentation or structure, the laws can be very unforgiving; leaving family members bewildered and upset. One only need to look at the latest sensationalized headline proclaiming how a talented, hardworking and extremely successful celebrity died without a will --- The epic estate planning fail.

Below are a few tips we've gathered to help you assess whether your estate plans are in order and that everything is being done to ensure that desired intentions continue to be realized.

1. You failed to establish an estate plan (including a will) putting heirs at the mercy of probate.

Probate is a legal process by which the assets of a deceased are properly distributed in accordance to an estate plan (if no estate plan is in place, see sidebar: Intestate - Do Not Pass Go")

Many estate plans employ a revocable trust is to avoid the probate process. For many of your assets, probate can be avoided by the use of non-probate transfer methods such as "pay on death" or "transfer on death" or through beneficiary designations. However, these methods may not be available for all assets or may cause unintended consequences such as disinheriting an heir. An estate plan provides a more comprehensive means to avoid probate.

2. You have an estate plan, but you haven't properly directed the ownership of assets.

The purpose of an estate plan is to avoid probate. However, if your assets are held in your individual name instead of the name of your trust as outlined in your estate plan, it doesn't work as planned. Therefore, make sure that your assets are held in proper name and/or assigned proper transfer methods, in order to achieve the outcome you intend.

Intestate - Do Not Pass Go

Most estate planning strategies assume a will was created by the deceased. If not – you are considered to have died intestate. Therefore, distribution of assets is determined by intestacy laws of the state where you reside. The laws of intestate vary greatly depending on whether you were single or married, or had children. In some states, intestate laws favor payment to creditors from estate assets. Beyond payment to creditors, property is generally distributed equally to your "heirs," which could include your surviving spouse, children, siblings, aunts and uncles and other distant relatives (Not a big fan of Uncle Ed? – Well, Uncle Ed can convince the state he was a devoted and dependent fan of yours!) When no relatives can be found the entire estate proceeds goes to the state --- likely not the charitable cause you had in mind while living.

The bottom line:
Have a will and keep it updated.

3. You haven't updated your estate plan.

The following are items that should be regularly reviewed and updated to reflect current governing laws, jurisdictions, etc.

Taxation Assumptions/Formulas: With the increase in the federal exemption, the Tax Policy Center estimates that only .14 percent of estates will owe tax. But, approximately 20 states still have a separate estate or inheritance tax. Your estate plan needs to take this into consideration and the formula to do so may be outdated.

Bypass Provisions: If the "bypass" planning in your trust is no longer necessary, you may save your heirs significant capital gains tax if it is eliminated.

Power of Attorney: A Power of Attorney is a legal document delegating authority from one person to another. In the document, the maker of the Power of Attorney (the "principal") grants the right to act on the maker's behalf to another (the "agent"). The requirements governing powers of attorney are constantly changing and vary by state.

Health Care Provisions: A Health Care Power is a document in which the principal designates someone else to make health care decisions. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule provides federal protection for personal health information. If your document does not specifically address the act, your agent may have difficulty with access to your medical information.

4. The person you named to make decisions for you is dead, has dementia, has moved away or is a party that is not authorized to act in your state.

If you haven't updated your plan after such an event, it may be of little or no value. You should ensure that the parties you have chosen are still ready, able and willing to serve.

5. Your beneficiary designations are outdated.

An outdated beneficiary on an individual retirement account can cause your heirs to pay significantly more in income taxes. They should be reviewed with a qualified advisor.

Of course, there are other missteps one can make when considering estate planning. That's why it's advisable to, whenever possible, seek out the assistance of estate planning attorneys, certified public accountants and financial advisors along with wealth strategy professionals. These individuals are accustom to working together as team – helping avoid estate planning fails while building solutions that honor estate planning visions.

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