



Top Ten Estate Planning Mistakes

By: Maria E. Quinn, Esq.

We should learn from our mistakes and not repeat them. But, in estate planning we usually learn our mistakes when someone is ill, incompetent, or passed away and it is too late. I would like to share the top ten mistakes I see every year as I review my new clients' estate plans or open their guardianships.

1. Overuse of Jointly owned property.

Jointly owned property avoids probate but its use can often do more harm than good. Adding a name to your bank account or home gives ownership rights to the co-owner, their spouses and creditors. Just ask Mrs. M. who added her son to her \$70,000 account to avoid probate only to have her money taken by the IRS for nonpayment of taxes by her son, or Mrs. A who transferred her home to her daughters, sold it, and her soon to be ex son-in-law refused to sign his dower rights off on the deed. Both her and her daughters were sued for failure to deliver title for the house. Want to avoid probate and creditor risks? Leave the account in your name alone and name a beneficiary. Want that person to have access to the account in case you are sick? Give them a Power of Attorney.

2. Will Errors.

You write a will that says "everything equal" but you add names to your bank accounts, investments and home. Understand that title and beneficiary designations pass outside of the Will. That "equal" will only apply to assets in your name only. Add an heir to your account and another heir can be left out unintentionally. Ask the son, grandchildren, siblings and charities named in the 10 page Will of Mr. X who named them all as heirs in his Will but who received nothing from his million dollar estate. You see, he had his money in a joint account with his second wife. She got it all. Title rules.

3. Everything to my spouse.

There are times when some or all of your assets should not go to your spouse. For example: if a spouse is ill, in a nursing home, or doesn't need the money.

Consider giving directly to your children by changing your Will and the beneficiary designation on insurance and other assets. Estate tax exemptions can be lost when property goes directly to the spouse or a nursing home can get it all.

4. Wrong Executor.

If you put your money on the table, who would you want to hold it for you? That is the only person you want as Executor to transfer your estate. If you cannot name someone, name a bank or one of your professional advisors who are usually bonded, insured or better trained. Don't name your Son who has money, marital or emotional issues. They shouldn't handle your money and they could be tempted to "borrow" from your estate and your heirs. Also keep in mind that Ohio does not like out of state executors. Always have a second choice for Executor in case the first one cannot serve or the courts can name one for you.

5. Wrong Power of Attorney and No Advance Directive.

The wrong person named on a Power of Attorney can lose you your property. Ask the elderly sweet lady in Geauga County who gave the power to her long time neighbor who took a loan out in her name and put it into his failing business which closed. She sued, but he was uncollectible. A Power of Attorney will avoid a guardianship but in the wrong hands, it is a license to steal.

No Living Will and no Health Care Power of Attorney will hurt when your loved ones need access to your medical records or an authorization to make medical decisions. We live in an age of "privacy" laws and if there is no written document in a form mandated by Ohio, a guardianship will be required and time could be of the essence in getting care.

6. Unfunded Trust.

Your Trust avoids probate only if assets are transferred into it or the Trust is a beneficiary. Everything else must be probated through the Will known as a "Pour-Over" Will. People continually misunderstand the importance of "funding" their trust both to avoid probate and to balance the estates of spouses to take advantage of the estate tax exemptions of both spouses. Probate Estates are opened on a regular basis for decedents who forgot to place their real estate and other assets in their name as Trustee of their Trusts. Don't be fooled by getting a low fee to do a Trust because no advice goes with it to fund and place assets into the Trust. Review your assets every year to confirm both ownership and/or beneficiary designations.

7. Wrong Disposition of Assets.

Want to leave money to a minor or a special needs child or to provide creditor and spouse protection for your doctor son or daughter? Trusts do not come in one size fits all. Money can be left in a trust, give income to your heirs until they reach some specified age, say 25 or 30. Language can be included in your Trust for a special needs person so that the government cannot take it and it is available for personal items. If your adult child has their own large estate and would like to by-pass their own estate taxes, avoid

shrinkage and establish asset protection for themselves, a life estate in a trust can be created that allows access to the funds but keeps it in your bloodline. Know your options so you can make the right choices.

8. Know the value of Gifting.

Too many people ignore the tax value of gifting. Gifting before death saves estate taxes and allows you to see what heirs will do if they get money. Today, you can gift \$13,000 per year (annual exclusion) to as many people as you like. You can gift up to \$5 million (2011 and 2012 law) without paying gift tax. However, reporting is required for gifts over \$13,000. Gifting removes appreciation from your estate and transfers it to heirs who may be in a lower income tax bracket.

Giving a gift to a charity through a Charitable Remainder Trust can avoid capital gains, save income taxes and provide a steady stream of income for retirement. Charitable gifting tells others "I care about the world and want it to be a better place for my family." Consider gifting to old insurance policies, appreciated property, a business, or appreciated stock.

9. Never Shared or Never Shown.

What good are thoughts if they are not written down where someone can find them? Let someone know where your documents can be found or at least the name of the attorney who did them. I see families who must place a loved one into a nursing home or hospital and do not know any financial data or if there is a Living Will or Health Care Power. Unnecessary guardianships could be opened and necessary decisions delayed when documents are hidden

10. No Game Plan.

No Will, don't worry. The State has one for you in its Code. If you do not want the State to decide how your property will be distributed call us to discuss your choices.