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## 10 Common Mistakes in Estate Planning - Avoid the Pitfalls

Estate planning seems like it should be simple. It can be deceptive, though. Here are ten mistakes people commonly make that can cause chaos for you and/or your family later.

### Mistake #1: Procrastination and Failure to Plan at All

Many people know they should have a proper estate plan in place but think they are too young, do not have enough assets to worry about, or will just get to it later. The truth? Everyone over the age of 18 should have their estate plan in place which should include, at a minimum, the following documents:

1. Health Care Power of Attorney. This is a document which designates someone to make medical decisions for you if you cannot.
2. Living Will. This is a document which specifies what kind of medical treatment you would or would not want, particularly in an end-of-life circumstance.
3. Financial Power of Attorney. This is a document which authorizes someone to manage and handle your financial matters and affairs (outside of a Trust) either with you or if you cannot, depending on how you set up the power of attorney.
4. Last Will and Testament or Trust. A Will is effective on death and nominates someone after your death to marshal your estate assets, pay valid debts and expenses, and distribute the net estate, if any, to the person(s) or organization(s) you designate in the Will. By contrast, the most common type of Trust used for estate planning and probate avoidance purposes is effective during lifetime and thereafter. This is a written agreement where you (Trustor) establish the Trust, transfer ownership of assets to the Trust, and designate a Trustee (typically yourself) and successor Trustees to manage Trust assets for your benefit during your lifetime. The Trust will also designate the beneficiaries of the Trust after your death, just like a Last Will and Testament.

If you die without a Will, Arizona intestate laws designate your heirs, which may or may not be the person(s) you assume or desire. You should choose your heirs, not the legislature.

### Mistake #2: DIY - Do It Yourself Planning

Estate planning is more than just creating documents. It involves understanding the whole picture of your finances, family dynamics, and personal goals and then determining the best legal structure(s) to accomplish your objectives. You cannot properly plan your estate on your own using software or internet forms. You should also beware of documents prepared by “trust mills” or other non-lawyers. Unless you are a licensed electrician, you wouldn't likely consider re-wiring your own home. Similarly, if you are not an estate

planning attorney, you should not consider preparing your own estate planning documents. Often times, the mistakes are discovered too late and result in what would otherwise be unnecessary legal proceedings and/or litigation, or the equivalent of burning the house down.

**Mistake #3: Failure to Update Estate Planning Documents**

Over time, your family dynamics, testamentary wishes, assets, and tax laws will likely change. If you do not routinely review and update your estate plan accordingly, your estate plan may not actually work the way you initially intended and/or the "wrong" person(s) may inherit from you!

**Mistake #4: Failure to Coordinate Non-Probate Assets with the Overall Plan**

Your Will or Trust will only distribute assets which they control. For example, your Trust only controls the testamentary distribution of assets owned by the Trust. Similarly, your Will only controls the distribution of assets that are titled to you, individually, at your death that are not otherwise controlled by joint ownership, transfer on death, pay on death, or beneficiary designation. In other words, the Will only controls distribution of assets that are not first otherwise told where to go at death by title or beneficiary designation. The distribution of life insurance, annuity and retirement proceeds simply must be coordinated with the entire estate plan to avoid unintended results and provide estate liquidity, where necessary. By way of example, if you have a Will that provides that upon your death, your estate shall be distributed to your two (2) children, in equal shares, but your life insurance policy designates only one (1) child as 100% primary beneficiary, that child will inherit the insurance proceeds, not both children.

**Mistake #5: Failure to Properly Fund Your Trust**

If you have a Trust, it can only be used to manage Trust-owned assets. If you die with your home or other assets titled in your name, individually, and not titled to the Trust, a probate may still be required. In Arizona, a probate is required if an individual dies with more than \$75,000.00 in personal property (i.e., bank and brokerage accounts, vehicles, etc.) or more than \$100,000.00 in equity in real property in their name, individually.

**Mistake #6: Failure to Plan for Contingencies, Such as People Dying “Out of Order”**

All governing documents (including the Will, Trust, and all beneficiary designations on retirement assets, annuities and life insurance policies) should cover contingent situations such as a predeceasing spouse or children. If minors or incapacitated persons could conceivably inherit, a Trustee or custodian should be considered.

**Mistake #7: Failure to Deal with Blended Family Issues and Potential Contests**

“I won’t have any trouble with my husband’s kids when he dies -- I get along great with his kids.”

“I have an estranged child that I haven't spoken to in years and he will not show up after my death and create a problem.”

Please, don't count on it! Plan for the worst and then hope for the best.

### **Mistake #8: Failure to Plan for Potential Incapacity**

Unfortunately, a common perception is that estate planning is only for death planning. However, proper estate planning is for both life and death planning. A Financial Power of Attorney will allow you to select in advance who will handle your financial affairs in the event of your later incapacity. Likewise, a Health Care Power of Attorney will allow your selected person to arrange for medical care if you become incapacitated. Failure to have these two documents could mean that a costly guardianship or conservatorship court proceeding(s) would be necessary. If you do not want to be kept alive on life support if your condition is terminal or irreversible, you should also be certain to have a Living Will.

### **Mistake #9: Failure to Consider Using a Trust as Part of Your Estate Plan**

Many people believe they do not have enough money to justify using a Trust. However, proper estate planning does not necessarily depend just on how much you have. Rather, it is about how you handle what you do have, your personal circumstances, goals and objectives. A Trust can be a very valuable tool to minimize estate tax liability for married couples, avoid probate if properly “funded”, and provide the best vehicle to authorize someone to manage your assets for you during your lifetime if you cannot (Successor Trustee vs. Agent under power of attorney). A Trust can also protect you against financial exploitation and mismanagement should you later become incapacitated for any reason, such as dementia or Alzheimer's disease.

### **Mistake #10: Failure to Leave the "Bread Crumbs"**

So, let's say you have great estate planning documents in place. If you do not, however, advise your designated successors in charge (Agent, Personal Representative, or Trustee) of all information regarding the identity and location of your assets (real property, life insurance policies, bank and brokerage accounts, annuities, vehicles, etc.) or let them know where they can locate said information, you are making their job increasingly difficult. They may not even locate all assets, particularly digital assets with passwords. To prevent this, make sure you have a list of assets and all online user names and passwords, and that the appropriate family member, professional, or trustee has access to the information. If your goal is to make the transition and post-death estate or Trust administration as easy as possible for your family, this is where a trusted advisor and/or estate planning attorney can bring added value.

**You owe it to yourself – and more importantly to your family – to avoid mistakes and get a proper estate plan in place by working with an experienced estate planning attorney. Otherwise, the legacy you leave may be one of chaos for your family to clean up.**

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