THE MOST COMMON MISTAKES IN ESTATE PLANNING

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As an attorney, I help clients plan their estates or administer the estates of their deceased loved ones. While every situation is different, there are a few things I see regularly that can cause a person's final wishes to go unmet. Below are the three most common "mistakes" that I see in estate planning and my recommendations for how to avoid them.

1 - There is no written estate plan. I once had a teacher whose favorite saying was, "If you fail to plan, plan to fail." Few words ring truer in the estate planning context. Even if your family knows your final wishes, they are not legally binding unless they are spelled out in a properly drafted, properly executed estate plan. In fact, in the absence of such a plan, North Carolina law determines who receives your property, how much each receives, and who is responsible for settling your estate. Property passing to a minor child may require a guardianship, and if an heir is disabled or in a nursing home, valuable government benefits could be lost. Having an estate plan ensures that your assets pass to whom you want them to go, in the amounts that you desire, and under the conditions that you determine. A written estate plan is also invaluable during your lifetime. If you become incompetent to handle your own affairs, powers of attorney will ensure that trusted persons you choose have control of your financial and medical decisions. Without them, a court will appoint a guardian for you, who may or may not be whom you would have chosen for yourself.

2 – Asset titling and beneficiary designations are not coordinated with the Will. Right of survivorship and beneficiary designations are **not** altered by the terms of a Will or a Trust. Consider this example. Your Will dictates that all of your property passes to your three children in equal shares, with a trust set up for them until age 30. Your daughter is 21 and your two sons are 13 and 15. You own your bank account jointly with rights of survivorship with your daughter, and your life insurance beneficiaries are all three children. Regardless of what your Will says, when you die the bank account passes only to your daughter, outright, as the surviving joint owner. The life insurance pays to the children outright, regardless of their age. If the sons are still minors, guardians must be appointed for them to receive the funds. A properly drafted estate plan would coordinate the bank account ownership and the life insurance beneficiary with your desire to share the assets equally among the children and protect the funds in trust until age 30.

3 – The estate plan is never updated. I sometimes see folks whose estate plans are almost as old as I am. Back when the plans were originally drafted, laws were different, the kids were minors, and their estates were modest. Now the kids are grown, the client has grandchildren, the client has divorced and remarried, and the estate is worth substantially more. In short, the original estate plan is not at all what the client needs or wants now. As we all know, change is the only constant in life. Your estate plan should be a living document that is reviewed and updated as you experience changes in life. It is a good idea to review your documents on an annual or bi-annual basis and update them if needed. In between those times, you should review and update if there is a significant life change, such as a death, divorce, remarriage, birth, substantial change in wealth, or move to a different state.

Estate planning deals with incompetency and death, neither of which are pleasant things to think about. However, the consequences of not planning, or planning poorly, are steep. Establishing a

comprehensive, written estate plan and keeping it current throughout life's changes will give you and your family the greatest gifts you can give – certainty and peace of mind.

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