Ten Common Estate Planning Mistakes

Whether your estate plan is simple or complex, there are many details, often overlooked, that can undermine your plan's effectiveness. Below we've listed ten common estate planning mistakes. Although these are numbered, this is not an indication of severity or prevalence.

1) Titling property jointly with your children as a substitute for a will. Unlike a will, a transfer of an interest in your property is irrevocable, which may prevent you from changing the disposition if circumstances change before your death. Also, titling your personal residence jointly can result in partial loss of the capital gain exclusion if it is sold before your death.

2) Failing to plan for the possibility of children getting divorced or having problems with creditors. Parents often have cause to regret having made outright gifts to their child when the child subsequently divorces and the ex-son or daughter-in-law is awarded an interest in the gifted property by a court, or when the property is taken pursuant to a legal judgment against the child. Such problems can be minimized through proper use of trusts or a business entity, such as an LLC.

3) Failing to make sure that all your assets pass in accordance with your wishes upon your death. Many types of assets can pass to your heirs or others based upon beneficiary designations (life insurance, IRAs, brokerage accounts). The provisions of your will cannot change a beneficiary designation. Remember to account for things you've already designated. You should review your will as well as all other beneficiary designations when formulating your estate plan.

4) Underestimating the true value of your estate for federal estate tax purposes. For instance, many people are unaware that the proceeds of life insurance on their lives are includable in their taxable estates if they own the policy. This could bring their total estates to more than the amount sheltered from estate tax by the applicable exclusion amount ($2 million in 2007).

5) Failing to consider state death taxes in light of recent changes in the law. Many states have "decoupled" their death tax from the federal estate tax, which means your estate could be subject to death tax in a state even if no federal estate tax is due. This could result in an unpleasant surprise upon your death, one that might be avoidable with proper planning. The laws of each state where you own property should be carefully reviewed to determine the potential exposure to state death taxes, and how to minimize them.

6) Not recognizing that there is now a difference between the amount that can be transferred free from gift tax during your lifetime and the amount that can pass free from estate tax upon death. The maximum amount that can be given away during life without incurring gift tax is $1 million, whereas the amount sheltered at death is $2 million in 2007, scheduled to increase to $3.5 million in 2009, with repeal of the estate tax (but not the gift tax) currently scheduled for 2010. You can make yearly gifts up to the annual exclusion amount (currently $12,000 for gifts made by an individual, $24,000 for those made jointly by husband and wife) that don't count against your $1 million gift tax exemption.

7) Failing to maximize the benefits of the income tax basis "step-up" at death. Low-basis/high-value assets should generally not be given away during your lifetime, since the basis for capital gain computation purposes will be increased to fair market value at death. If the asset is given away, the basis remains at the property's original cost.

8) Failing to indicate your desired funeral arrangements. A pre-arranged funeral can greatly relieve family members from additional stress upon your death. And, you get the send-off you want.

9) Failing to plan for disability. In the absence of adequate medical care directives, powers of attorney, or trusteeship of assets, costly and time-consuming court proceedings may be required in order to appoint a guardian or conservator to act on your behalf if you become disabled.

10) Not reviewing and updating your estate plan on a regular basis. Changes in the law and in your personal financial and family situation over time make it essential that you review your estate plan periodically to make sure it still carries out your wishes.

Some of these common mistakes can be avoided with a few, simple actions. Be sure to consult with you tax, legal, and financial professionals. Early and thorough planning can help you reach your financial goals and leave a lasting legacy.

Copyright © 2007 Liberty Publishing, Inc. All Rights Reserved.
EPGMIST0