Pauly Law Offices, Inc.
Arthur J. Pauly, Jr. JD
Estate and Business Transfer Planning
916-207-7526
artpauly@paulylaw.com

25 WAYS YOU CAN MESS UP YOUR ESTATE PLAN

1. Failure to Understand How Your Assets will Pass on Your Death.

Many people think their Wills control how their assets will pass upon their death, yet most assets today pass outside of Wills.

For instance, joint tenancy assets pass to the surviving joint tenant. If there is a surviving named beneficiary (such as on life insurance, annuities, or IRAs), then such assets pass to the surviving named beneficiary. It is only the other assets (sometimes called your "probate estate") that will pass pursuant to your Will.

Example: Bill named his oldest son as the beneficiary on his life insurance. His Will left his estate equally to his three children. The oldest son gets all of the life insurance and 1/3 of the remainder of the estate.

Another example: While still single, Don named his brother as the beneficiary on his retirement plan and his life insurance. Don purchased his first home in joint tenancy with his brother who shared the house with Don. Don later had a falling out with his brother and still later got married. Don changed his Will to leave everything to his wife.

But because Don never changed his beneficiary designations and joint tenancy, the bulk of his estate passed to his brother on Don's death and not to Don's wife.

This problem can be avoided by having a Living Trust to be the focal point of your estate plan. All or at least most assets can be titled in the name of your Living Trust or with the trust as the named beneficiary. That way, your trust will control how your assets will be distributed. If you ever want to change your estate plan, you do it only in one place.

2. Trying to Plan an Estate around Specific Assets

Unless there are compelling reasons why a specific asset should go to a specific person, we strongly discourage our clients from trying to plan around specific assets.
Example: Bill had three children and wanted to treat them equally. His Will even confirmed this. Several years before he died, he put his home in joint tenancy with his older son, added his daughter as a signer on his savings account, and named his younger son as the beneficiary on his life insurance policy.

When he did this, all three assets were about equal in value. But between when he did

this and his death, he sold the home, put the proceeds in the savings account, and let the life insurance policy lapse. The savings account, of course, passed to the surviving owner, and not pursuant to his Will. By planning around specific assets, he actually disinherited two of his children!

By the way, this problem often surfaces in a Will as well. If an asset is no longer owned, the bequest lapses. Let's say your Will leaves rental home #1 to your son and rental home #2 to your daughter, and the balance equally to both children. If you sell rental home #2, and then die, your son still gets rental home #1 plus he gets a full 50% of your other assets and your daughter gets the other 50%.

A good attorney will discuss this "ademption" aspect with the client, even if the client insists that the rentals will never be sold. For instance, in some of our trusts we provide that the estate will be divided equally, with the son having the right to take house #1 at fair market value as part of his share, and the daughter having the right to take house #2 as part of her share.
We may, as appropriate, include such wording in your Living Trust Estate Plan.

3. Failure to Minimize Estate Taxes.

The estate tax exemption, which was $600,000 for many years, was increased gradually in the late 1990's and as of 2009 is $3,500,000. The exemption is scheduled to decrease to $1.0 Million in 2011.

Many of my clients in the late 1980's said things like, "My estate is only about $400,000 - I don't think I will even have a taxable estate."

Perhaps they didn't want to pay the extra fee for estate <u>tax</u> planning. And my mistake was agreeing with them. Since then, there has been considerable appreciation in real estate in California and in the stock market in general. These same clients have seen their assets double twice over since we did their estate plans.

If the surviving spouse died in 2003, the estate taxes would be $255,000! This estate tax could have been totally avoided if they had had a properly-drafted Living Trust Estate Plan with tax planning in place before the first death.

4. Failure to Avoid Probate

Probate is the court procedure for proving a Will, paying the bills, and distributing the estate.

Probate can be expensive, time consuming, and frustrating. Probate often runs 5-7% even on small estates, and can take an average of 16 months.

Probate is a matter of public record. Once probate is opened, anyone can examine your file, even make a copy of your will and get a list of your family members and their addresses.

Probate gives disgruntled heirs a low-cost opportunity to challenge your Will. A simple letter to a probate judge by a disgruntled heir can tie up probate for a year or more.

If you own real estate in other states, your family may have to open probate in each of those states. Probate can be totally avoided by creating a Living Trust during your lifetime and then transferring record title of your assets to that trust.

5. Relying on Joint Tenancy to Avoid Probate

Many married couples own their home and other assets in joint tenancy so as to avoid probate. Yet, joint tenancy avoids probate only on the first death. Everything usually ends up in the probate estate when the survivor dies. Worse yet, all family assets are usually included in the survivor's taxable estate when he or she dies.

If the couple dies in a common disaster in which we cannot tell who died first, there could be TWO probates: half of the assets will be subject to the husband's probate, and half subject to the wife's probate.

By creating a Living Trust and transferring their assets to that trust, a married couple can avoid probate on both deaths, and, with proper drafting, reduce or totally eliminate estate taxes.

6. Loss of Control by Adding Someone Else's Name to Your Account.

In the early 1990's, Jill, lost her checking account to her father's creditors. Here is what happened:

She put her father on her checking account so he could pay her bills while she was traveling. He had several creditors, however, and one of them filed a lien on the account. The bank was forced to pay the creditor $80,000 of Jill's money. When he was added as a signer, he legally became a co-owner of the account. He had a legal right under California law to withdraw the entire account, and the creditor "steps into the debtor's shoes."

In addition, Jill was deemed to have made a taxable gift to her father at such time as the creditors withdrew money from the account! Don't you just love our tax laws!

Interestingly, if Jill had had a Living Trust, she could have had her father as a co-trustee with herself. As such, he still could have paid her bills from the account, but his creditors could not have attached the account. He would have been only a trustee and not an actual owner of the account.

When you simply add someone's name to your account, you are subjecting that account to his or her creditors. You don't have to be a bad person to be sued these days or to be subject to a tax lien.

A Living Trust can protect your assets while still allowing another person to pay your bills.

7. Avoid Common Problems with Uniform Transfer to Minors Act Accounts

You can gift securities, money, or other investments to minor children and grandchildren by gifting such assets to a custodian for the beneficiary under the Uniform Transfers To Minors Act (commonly called UTMA accounts).

Each account can have only one beneficiary and only one custodian (although a successor custodian can and should be named.)

Such a transfer is eligible for the annual gift tax exclusion (which used to be $10,000, but in 2002 the exemption was increased to $11,000) as it is treated as a direct gift to the minor.

The account is treated as the property of the minor for income tax purposes and can be used for the minor's benefit in the Custodian's discretion.

If the minor dies, the account will pass

pursuant to the minor's Will (if over 18 years of age and has a Will) and if no Will, will pass pursuant to the law of intestacy.

At 18 years of age (in California; the age does vary from state to state) the minor is entitled to whatever remains in the account. Such accounts can be set up at most banks or brokerage firms.

We frequently recommend these accounts if you plan to gift small amounts (a few thousand dollars a year for a few years) to the minor. Chances are, the account will all be used up during the first year or two of college.

But if you plan to gift $11,000 per year for many years, there could be several hundred thousand dollars in the account by the time the minor reaches 18 years old.

Would that provide a disincentive for going to college? Would you really want that 18 year old to have full unrestricted access to that much money at that age?

Therefore, with larger gifts we tend to recommend the use of special trusts to avoid this problem.

If your minor grandchild dies, the account usually passes by the law of intestacy to the child's parents.

And if they are divorced, yes, 50% passes to your child's ex-spouse! Again, a specially drafted trust can protect against this contingency.

If the custodian dies and you have not named a successor custodian, then typically the probate court (at considerable expense) will appoint a successor custodian, usually the closest adult blood relative of the beneficiary.

Yes, the ex-son-in-law (your grandchild's father) may be appointed as custodian. In California, the minor over 14 years of age can appoint a successor custodian without court order if no successor has been designated.

A common mistake is having the donor serve as custodian. If you make the gift AND are serving as custodian on your date of death, the UTMA account will be includible in your taxable estate! Yet, the goal of many people are making these gifts to remove the gifted amount from their taxable estate.

Many very capable financial advisors are unfamiliar with this IRS rule. Once the minor turns 18 years of age, this is no longer a problem.

To solve the problem in the meanwhile, we usually suggest that you name a relative (perhaps your child or your brother?) to serve as custodian.

8. Putting the House (or other assets) in Joint Tenancy with Children

When you put your home (or any other asset) in joint tenancy with your children, it is a lot more than saying "I want you to have this after I am gone." Your children become co-owners of the property with you.

First Problem: Putting your home in joint tenancy with your children is a taxable gift under IRS regulations.

Second problem: If your child has any lawsuits against him, is going through a divorce, or has a tax lien against him, you may find out that you no longer own it with your child, but with your child's creditors or predators. They can actually foreclose on (forced the sale of) your home to get at your

child's fractional share.

Third problem: When you go to sell the home, you can use your primary residence exemption (up to $250,000 of the gain on the sale of your home) only on your fractional share. Each of your children may have a LARGE long-term capital gains tax bill to be paid that could have been totally avoided if the house had still been titled just in your name.

9. Botching an Attempted Joint Tenancy with a Child.

Many people think that if two (or more) names are on a deed, title is in joint tenancy. Actually, in California, the rule is just the opposite. Unless the deed specifically states "in Joint Tenancy" or words to that effect, tenancy in common (the opposite of joint tenancy) is assumed.

Rather than passing to the surviving owner, the deceased person's interest in the property passes through probate pursuant to his or her Will.

Example: Susan's parents originally took title to their home in joint tenancy. Later, to avoid probate, they deeded the home to the three of them. They didn't consult with an experienced attorney, but prepared the deed themselves. Unfortunately, they failed to indicate joint tenancy on the deed.

Mom died first, then Dad died. When Susan later tried to sell the home, the title company told her that title was held by the three of them as tenants in common.

Before the title company would insure title, Susan was required to open TWO probates, one for her mother and one for her father, costing her several thousand dollars.

Actually, this story gets MUCH worse. It seems her father had no Will, and had a son by a prior marriage. Although her father had not seen this child in many years, Susan discovered that under California law he inherited 50% of the father's interest in the home. She had to buy out his share at a cost of over $30,000.

Another negative aspect of tenancy in common: her original 1/3 share did not receive a step up in basis (discussed later in this report), significantly increasing the capital gains taxes paid by her upon sale.

Had this couple used a Living Trust, they could have avoided probate on both deaths, and left the property to their daughter without the half-brother even knowing about the property, saving their daughter a small fortune.

10. Failure to Make Special Provisions for a Disabled Beneficiary

If you have a disabled beneficiary, perhaps a handicapped child, you should consider leaving them their inheritance in a specially-drafted trust to protect the handicapped child and keep them eligible for public assistance.

Without public assistance, many such children would have to spend their entire inheritance within a few years on medical and other needs. If you leave the inheritance to them outright, they may be ineligible for public assistance until they spend the inheritance down to the statutory $2,000 limit.

If you leave the disabled child's inheritance to another child with the understanding that that child would help the disabled child, that child may die, get a divorce, or be sued, and that intended inheritance may not be available to the intended beneficiary.

We frequently include these special trusts in our Revocable Living Trust Estate Plans. The trust share for a disabled beneficiary can be managed by the selected family member, and can be available for the beneficiary's "supplemental needs" - over and above what Medicaid or SSI would provide.

This trust can provide the disabled beneficiary with a specially-equipped automobile, stereo equipment, computer equipment, vacations, and the like.

Even a small amount of money left to this type of trust can make a significant difference in the beneficiary's lifestyle over a great many years, and yet still keep them eligible for SSI and Medicaid.

11. Failure to make Special Provisions for the Spendthrift Child.

After you are gone, will your beneficiaries use their inheritance in a constructive manner? Or will they waste it foolishly? How are they today at managing their money? That may give you some idea as to how their inheritance will be spent after you are gone.

Will it be available for the education of your grandchildren, or will it all be gone in just a few years?

Many of our clients like the idea of holding an inheritance in trust until the beneficiary reaches a certain age, such as 30 years of age.

Others like giving their children 1/3 after they are both gone, with another 1/3 in five years, and the last third five years after that. That gives the beneficiary three chances to blow it!

We have had some clients that are so disillusioned with a child that they have required that the child's share be distributed in monthly payments over 20 years.

Other clients have required that their children be tested drug or alcohol free monthly for three years before receiving an inheritance outright.

Remember, as long as an inheritance is being held in trust, it can be protected from the beneficiary's spending habits, from creditors, and even from divorcing spouses. Also, your trust can control where the inheritance goes upon the death of the beneficiary. Many of our clients would prefer to see a deceased child's inheritance go to their other children rather than their deceased child's spouse.

A properly-drafted Living Trust Estate Plan can include these subtrusts at little or no additional cost, yet provide the desired protection for your family.

12. Sloppy Drafting which May Sound Good, but Does Not Reflect Your Intent

Example: John had three children. His Will left his estate to "my surviving children." Sounds good, but is that what John meant?

If his daughter were deceased, did he really want his estate divided between his other two children, or would he have wanted his deceased daughter's share to pass to her children (his grandchildren)?

Will the law of the State where he lives at the time of his death provide some other meaning? Careful drafting can avoid such ambiguities.

Another example: Janet's Will left her estate equally "to her descendants." At the time she drafted her Will, she had two children and no grandchildren. But by the time she

died, her son had four children and her daughter none.

Under State law the term "descendants" includes children, grandchildren, great grandchildren, etc. Thus, by law each descendant gets 1/6 of her estate. Do you think that is what Janet wanted, or do you think she wanted her estate to go half to her son and half to her daughter?

A properly-drafted estate plan could have made this clear. For instance, "I leave my estate equally to my children, and if a child is then deceased, such deceased child's share shall pass to such deceased child's descendants, per stirpes" is probably what both John and Janet meant.

13. Trying to "Do It Yourself"

Although the previous example shows how easy it is to botch simple planning, there are many other examples available. John and Mary didn't want to pay an attorney to draft their estate plan, so they bought a living trust kit under which they or the survivor would serve as trustee.

In modifying the trust to meet their personal situation, they decided to change the language in the Family Trust which allowed distributions to the surviving spouse for her "health, education, maintenance, and support" by adding the words "comfort and welfare". This addition seemed harmless enough to them.

But the IRS regulations make it very clear that this addition results in the Family Trust being included in the survivor's taxable estate, which was exactly what they were trying to avoid. On a $2 million estate, that change could cost their children over $400,000 in estate taxes!

Your estate, even if it is small, still represents big bucks to your spouse and children. Use a competent estate planning attorney to make sure that your estate plan and any changes is written correctly.

14. Failing to Realize that Wills can Always Be Changed by the Maker.

Jeff and Sara had been married for over 25 years. Each of them had two children by a prior marriage. They wanted to provide for each other first, and then leave the assets equally to all four children.

Although their Wills stated this intention, the survivor could always change his or her Will to leave everything to his or her children. Or if the survivor's Will cannot be found (perhaps destroyed by one of the survivor's children), then all of the assets would pass to the survivor's children.

The use of trusts can help protect children by a prior marriage. In addition, we often use a separate agreement under which each spouse promises not to disinherit the children of the first to die. This agreement can actually give the children of the first to die enforceable rights to inherit from the surviving spouse.

Second marriage planning is often complex and doesn't get the attention it usually deserves, even from many attorneys who supposedly specialize in estate planning.

15. Relying on Beneficiary Designations

A beneficiary designation is a very simple form of estate planning which does not handle contingencies very well. For instance, if you name your son and your daughter as the beneficiary on your life insurance policy, and your daughter

predeceases you, do you think the insurance company will pay the proceeds all to your son, or do you think the insurance company will pay your daughter's half of the proceeds to your daughter's children?

Most of us would like to think the latter, but most of the beneficiary forms I have seen say just the opposite: The forms usually say "Unless otherwise indicated, we, the insurance company, will pay to the surviving named beneficiaries."

By naming your Living Trust as the beneficiary of your life insurance, your Living Trust can control exactly how the proceeds will be distributed, including such contingencies. The trust can also name who will manage and distribute the money for minor children or grandchildren.

16. Trying to Leave Property to a Minor Child or Grandchild.

No insurance company will knowingly pay $100,000 to a twelve year old. They will only pay it to a court-appointed conservator, who may not be the person you would want. The cost of obtaining such a court order can also be substantial.

Example: Your Will or beneficiary designation indicates that your deceased daughter's share is to go to her children. If they are minors, a conservator will need to be appointed by the probate court. The court would give priority to the children's father, who may be your ex-son-in-law!

In a conservatorship the money is required to be turned over to the minor once he or she reaches 18 to 21 years of age, depending upon the state of residency. That age is perhaps one of the worst ages to turn over a significant inheritance to a child or grandchild.

An inheritance left in trust for such a beneficiary can not only indicate who is going to manage the funds and make distributions for college and the like, but also indicate the age at which the funds will be turned over to the beneficiary.

For instance, in our trusts we typically use 25 years of age, although many clients request an older age.

Remember, as long as the inheritance is held in trust, it can be protected from the minor's spending habits, protected in the event of a divorce, protected from the minor's creditors, and can indicate who receives the inheritance in the event of the minor's death.

17. Failure to Consider Who Pays the Estate Taxes.

John drafted his will to leave his home to go to his companion of many years and the remainder of his estate to go to his children. But he and his attorney never discussed who will pay the estate taxes, and his Will said (as most Wills do) that taxes and expenses will be paid out of the "residuary estate," that is, from the remainder distribution.

Therefore, on John's death, the estate taxes will be paid solely out of assets which pass pursuant to the residuary clause of his Will, and therefore, out of the children's inheritance.

In this extreme example, the home was worth $5 million and the remaining assets were worth $5 million. The estate taxes were $800,000 (in 2009) and the expenses were $70,000, so the kids received only $2.500,000, while the companion walked away with the $5 million palatial home estate tax free.

We doubt if that is what John would have wanted if he had considered who pays the estate taxes.

Most Wills say "pay all taxes out of the residuary estate." Phrases like that sound good, but may not be what you want unless you fully understand exactly what they mean.

For instance, in our Living Trusts we usually require that anyone receiving property outside of the trust pay their pro rata share of estate taxes, although sometimes we modify this provision depending on our client's desires. We also feel it is important to discuss the tax aspects of specific bequests.

18. Failure to Consider the Income Tax Aspects of Your Assets.

Marlene's two major assets were her life insurance and her (traditional) IRA; and they were of equal value. So she named her son as the beneficiary on the life insurance, and named her daughter as the beneficiary on her IRA.

The proceeds of life insurance are income tax free, but the proceeds from an IRA are generally all income taxable.

The daughter lost approximately 1/3 of the proceeds to income taxes.

We discourage our clients from leaving specific assets to specific persons.

Consider naming all children as beneficiaries, or, better yet, leaving all assets to your Living Trust, with the trust dividing them equally and providing who will receive them in the event a child should predecease you.

19. Gifting Highly-Appreciated Assets (Failure to consider all the estate, gift, and income tax aspects of a gift)

Mary was diagnosed with terminal cancer. She had heard that probate could cost her children thousands of dollars. She heard that probate could be avoided by deeding her home to her kids while she was alive.

Luckily, none of the problems we previously discussed under joint tenancy developed, such as a child's divorce, lawsuits, tax liens, etc. But when the kids sold Mary's home for $180,000 after her death, they discovered that their "basis" (cost for determining taxable gain) was Mom's cost 30 years ago, which was $20,000. The taxable gain was $160,000 and at 25% (the federal and state tax on the capital gain), the tax was $40,000.

Their accountant correctly informed them that if Mary had owned the property on her death (or if it were owned by her Living Trust), then children would have inherited it with a "step up in basis". That means that their basis (or cost for determining taxable gain) would have been the fair market value on Mary's date of death. There would have been no capital gains tax payable on the sale shortly after Mary's death. Mary's gift to avoid probate cost her children $40,000!

If the children acquire the home on mom's death (and not by gift) and did not sell it, but rented it out, they could take depreciation based upon its fair market value on mom's date of death.

20. Using the Wrong Assets to Fund a Gift to Charity.

Mark wanted to leave $20,000 to his church upon his death, and the rest to his children. Mark's attorney was inexperienced in estate planning, and but for a very reasonable fee

drafted Mark's Will as instructed: "$20,000 to my church and the balance equally to my children." Mark's large IRA passed to his children, who had to pay income tax on it.

Had Mark funded the charitable bequest with his IRA, there would have been $20,000 less taxable income to the children, increasing the amount that passed to them after income taxes by, perhaps, $6,000 (at a 30% rate for both federal and state income taxes.) Charities don't care if they receive taxable income, as they don't pay income taxes anyway.

Michael saved a few dollars on the drafting side which later, in effect, cost his children $6,000!

21. If You Have a Living Trust, Be Sure to "Fund" It.

Bob and Carol had a Living Trust, but neglected to retitle their assets as instructed by their attorney. The attorney even deeded their home to their trust, but they later sold the home and purchased another home in joint tenancy and not in the name of the trust.

Bob died a few years ago, and on Carol's death, all of the assets were subject to probate and were part of her taxable estate. By not titling their assets in the name of their trust, they defeated two of their planning goals: avoiding probate and reducing estate taxes.

Moral: If you have a living trust, be sure to fund it with your assets by changing record title or beneficiary designations as instructed by your attorney.

22. The Disinherited Child

Ken's Will left his estate to his two children. But his Will never mentioned Ken's child by a prior marriage and whom Ken had not seen in years. Although you can disinherit your children by specific reference in your estate planning documents, because there was no reference to Ken's first child in the Will, that child may be entitled to a portion of Ken's estate under state law.

Moreover, if the disinherited child contests the Will, he may force the other children to settle for a significant portion of the estate to avoid tying up the estate in probate for potentially a year or more.

Some people will leave a disinherited child one dollar. That at least shows an acknowledgement of the child and an intent not to leave them anything substantial. We feel it is better to acknowledge their existence, and then state "that for reasons personal to me, I have not left my son, Joseph, anything in this Will."

Better yet Ken could have used a Living Trust Estate Plan, rather than relying on a Will to pass his assets. With a Will Ken's executor is required to notify all heirs, including persons (such as Joseph) who would inherit property if there were no Will. But with a Living Trust, there is no such requirement.

Accordingly, if you plan to disinherit a relative, you should consider using a Living Trust to make your estate plan more bullet proof.

23. Missing a Disclaimer Deadline

A disclaimer is a refusal to accept an inheritance. A qualified disclaimer is one that complies with the IRS requirements, one of which requires that the disclaimer be made in writing within nine months of the decedent's death.

So why would someone want to disclaim an inheritance? Let's say a couple has a taxable estate and holds considerable property in joint tenancy. The wife dies. If the husband disclaims his wife's half, her half will pass to the children, or, if the couple has a properly drafted Living Trust, to the Family Trust for the benefit of the surviving spouse.

If the disclaimer is made pursuant to IRS guidelines, the disclaimer is not treated as a taxable gift.

Example: Michael was in poor health when his wife died in 2003. Their combined estate was $2.0 million and was owned in joint tenancy. (They should have had a Living Trust, but didn't.) If Michael files a qualified disclaimer within nine months of his wife's death, her half would pass to their children, and not be treated as a taxable gift by Michael. If Michael dies in 2003, no estate taxes would be due.

But if Michael misses the deadline, his wife's 1/2 of their assets will be includible in his taxable estate, and on his death, the estate taxes will be $435,000 - all of which could have been avoided if Michael had made the qualified his disclaimer.

Qualified disclaimers are an important planning tool in many estates. In fact, some estate plans are designed to anticipate the use of disclaimers for saving on estate taxes.

Disclaimers are just one of the many reasons why it could be important to see an estate planning attorney shortly after someone dies.

24. Relying on Wills for Estate Tax Planning

Some attorneys try to accomplish tax planning with complex Wills. Often this planning fails because the couples still hold title to their home and other assets in joint tenancy or have named each other as beneficiaries on their life insurance and IRA's and the like.

Thus, on the first death, nothing passes pursuant to the Will of the first to die; it all passes outright to the survivor, and will all be included in the survivor's taxable estate.

Also, to accomplish estate tax planning on the first death with a Will-based estate plan, a couple will have to have probate on both deaths. Is it any wonder that this type of planning is typically recommended by probate attorneys?

By using a fully funded Revocable Living Trust, a married couple can avoid probate on both deaths, and yet still achieve the desired tax planning.

25. Not Doing a New Estate Plan While a Divorce is Pending

If you get a divorce, your ex-spouse is typically disinherited from your Will by State law, and from your Living Trust by specific trust provisions. But what if you die before the divorce is final? Your soon to be ex-spouse will still inherit under your will or trust! Therefore, it is usually very important to change or amend your documents as soon as a divorce is filed.

Many people will usually wait until the divorce is final, which, by then, is often far less important.

A divorce decree does not automatically change beneficiary designations, such as on life insurance and qualified plans. You must file a change of beneficiary form. We mention this not so much for our clients, but for our client's children as divorce seems more common with that generation.

We promised you 25 mistakes, but at the last minute decided to add a few extras!

26. Failure to have Proper Beneficiary Designations on your IRA

After his wife died, Fred was advised to name his three children as the beneficiaries on his IRA. He assured us that he has already done so (or that they were the contingent beneficiaries.)

On Fred's death, it was discovered that he had never made the change and that the original beneficiary form had only named his (predeceased) wife as beneficiary. His IRA agreement with the custodian stated that if there is no surviving beneficiary designated, the IRA will be paid to his estate.

Although that provision still gets the IRA to his children, it does mean that they have to liquidate the IRA in a very short period of time, perhaps within only five years.

Had he named the children on the IRA beneficiary form, the children could have pulled it out over perhaps 40 years, allowing it to compound tax deferred. Fred's small IRA could have actually funded his kids retirement had he named them as beneficiaries.

Therefore, it is very important to VERIFY your beneficiary designations (or file a new form) and NOT rely of your memory!

27. Failure to have Gifting Powers in your Powers of Attorney

Harold was on his death bed. His son knew Harold had a taxable estate, so the son, acting under a power of attorney, made gifts of $10,000 each from Harold to himself and each of his four siblings and all their spouses.

This gifting had the potential of removing $100,000 from Harold's taxable estate, saving at least $41,000 in estate taxes.

But the IRS ruled that because Harold's power of attorney did not specifically grant his son the power to make gifts, the son operated in violation of state law, and the gifts were deemed incomplete by the IRS.

A power of attorney generally does not give the agent the authority to give away your assets. The agent is supposed to operate in your best interests. If Harold had a legal right to recover the gifts, the IRS will include them in Harold's taxable estate. The omission of gifting provisions in the power of attorney cost this family over $41,000.

The moral: Be sure your power of attorney contains specific gifting provisions.

28. Assuming That If You Do Have a Living Trust, It will Accomplish All the Things We Discussed in This Memo.

We have seen many poorly-drafted Living Trust Estate Plans (and Will-based Estate Plans) drafted by inexperienced attorneys and even some drafted by financial planners and CPA's.

Some living trusts will not even avoid probate, as such trusts say that "Upon my death my trust shall be paid to my estate." Many trusts drafted for married couples don't have estate tax planning provisions.

A Living Trust can be as short or as long as you want to make it. There is no such thing as a "standard living trust." A one- page living trust may technically be a living trust, but it probably does not do many of the

things we have discussed in this report.

Assuming that living trusts are all basically the same can be a costly error. If you have any doubts, we suggest getting your estate plan reviewed by experienced counsel.

29. Not Having an Estate Plan At All.

If you don't have an estate plan, California has one for you, and it may not be what you would want. Not many people would purposely let their state legislature draft their Wills for them, yet that is what you get if you don't plan yourself.

For instance, if there is a lot of property titled just in the husband's name, that property may be distributed approximately 1/2 to the surviving spouse and the other half to the children. I find that is rarely what my married clients would want. They want to provide for each other first, and the see the kids get an inheritance only after they are both gone.

Many married couples erroneously assume that if one spouse dies, all of his or her property will pass to the survivor. Wrong! California law may require that a significant portion pass to the deceased spouse's children, or even his or her parents!

At a minimum, you should consider at least having a Will.

Consider also that by having a properly drafted and funded Living Trust, you can avoid a conservatorship if you become disabled, avoid probate on your death, and, for married couples and depending on the size of the estate, save over $400,000 in estate taxes than if you relied on a simple Will or joint tenancy.

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The problems discussed above are only a sampling of the estate planning mistakes which are frequently made. Many times we are able to make changes to estate plans to avoid these problems. Other times, it is too late to solve the problem, especially if the person is then disabled or deceased.

We hope these examples of common estate planning mistakes have helped you better appreciate the complexities of estate planning and the role that an experienced estate planning professional can have in creating and updating your estate plan.

As you can see, with proper planning, you can make things easier and less expensive for your family upon your disability and upon your death. A well-drafted Living Trust Estate Plan is worthy of your consideration. That is why we offer a free consultation to review how a Living Trust Estate Plan can benefit your family. Please call our office at 916-207-7526 today to arrange for your FREE consultation.