Chapter 37. Avoiding 30 Estate Planning Mistakes

If You Own Any Property

1. Not having a Will or Living Trust.
    - Without a Will or funded Living Trust the State Statutes specify who receives your separate property.

If You Are Married

2. Leaving your Estate to your spouse without protecting your spouse from unforeseen accident litigation risks.
    - A Living Trust can help address this.

If You Have Children

3. Having a Will or Trust that leaves your property directly to minors, grandchildren or young adult children who are not yet financially responsible.
    - A Living Trust enables child and grandchild inheritance to be protected in trust until designated time or age.
4. Leaving no instructions for raising your children if you die or are disabled.
    - An Estate Planning Letter can address this.
5. Not naming your hand-picked guardian for minor children.
    - Your Will can accomplish this.

If You Want to Keep Control Upon Your Disability

6. Letting the Courts control your financial and health care matters if you become disabled.
    - A Financial Power of Attorney and Health Care Power of Attorney can avoid this.

If You Own Life Insurance

7. Not having the right amount and types of insurance to cover your and your family's living expenses and taxes after your death.
    - A Life Insurance Needs Plan can help determine the Life Insurance needed.

8. Owning your life insurance directly, if your Estate exceeds the Lifetime Estate Tax Exemption.
    - A Life Insurance Exemption Trust can be used to avoid the approximate 40% Estate Tax on life insurance.

If You Own Investments

9. Having no direction to continue your present investment management upon your disability or death.
    - A Living Trust can address this.
10. Owning property in Joint Tenancy with children.
    - This can subject parents to their childrens' creditors.

If You Own a Business, Profession or Farm

11. Not having a written agreement covering buy-out and business succession for your business or profession.
    - This can be addressed with a Buy-Sell Agreement or Shareholder Agreement.
12. Not being prepared to sell or transfer your company or for the expected or unexpected retirement, death or disability of company owners.
    - This can be addressed with a Fourth Quarter Gam Plan (www.MyFourthQuarterGamePlan.com).

If You Want to Avoid Probate Court

13. Holding title to your separate property directly in your name.
    - Property re-titled to your Living Trust before death avoids Probate Court.

If Your Estate Exceeds The Lifetime Estate Tax Exemption

14. Forfeiting one of your Lifetime Estate Tax Exemptions by using a Simple Will or Joint Tenancy with your spouse.
    - A Simple Will and Joint Tenancy fail to set aside property to obtain the exemption. Relying on exemption portability is not sufficient since it doesn't cover valuation growth after the first death.
15. Having a Will or Trust that doesn't automatically allow for change to the Estate Tax exemption.
    - Your Estate Plan can be drafted to allow for this.
16. Failing to properly balance property ownership between spouses.

- Balancing Spouse Ownership helps assure each spouse has sufficient property to fully use the full benefit of both Lifetime Estate Tax Exemptions.

17. Having the wrong type, or an improperly drafted, marital deduction in a Will or Trust that doesn't comply with IRS requirements (resulting in Estate Tax on the death of the first spouse) or doesn't protect your children.
    - An outright marital deduction must comply with IRS Rev. Proc. 64-19. A life estate (QTIP) marital deduction must comply with Tax Code 2056.

If You Have a Retirement Plan

18. Incorrect Retirement Plan Distribution Elections and Beneficiary Designations.
    - Proper Beneficiary Designations to a spouse and/or Living Trust can minimize taxes, help avoid Probate, and help preserve funds for the family. Proper Distribution Elections upon retirement can minimize income taxes.

19. Not considering the permitted stretch-out options to extend the compounded, tax deferred benefits of your retirement plans.
    - Use of a Stretch-Out IRA in appropriate circumstances can extend the retirement savings tax deferral.

20. Using your retirement savings instead of considering the right long-term care insurance products to cover your expenses of long-term or nursing home care.
    - Long-Term Care Insurance can protect your retirement savings.

If You Want Family Gifts to Also Save Taxes

21. Failing to use available Estate Tax reduction techniques.
    - Property gifted during your life to children and grandchildren is not subject to your Estate Tax. Using your Annual Exemption Gifts ($14,000) and/or your Lifetime Gift Tax Exemption can reduce Estate Taxes.
    - Investments gifted through a Family Limited Partnership or Limited Liability Company can be value-discounted to increase the tax benefit of your Exemption Gifts.

22. Naming yourself as custodian under the UTMA for gifts to your children or grandchildren if your Estate exceeds the Lifetime Estate Tax Exemption.

- This would result in the gifts still being taxed in your Estate for Estate Tax purposes.

If You Want to Keep Some Control Over Gifts

23. Making substantial lifetime gifts directly to minors, grandchildren or your adult children who are not yet financially responsible.
    - Use of a Family Limited Partnership or Limited Liability Company can provide certain controls and protection by holding gifts for children and grandchildren.

If You Want to Give to Charity

24. Failing to arrange to complete your lifetime charitable giving if you die prematurely.
    - A Will or Living Trust can be used to make bequests to charities effective upon your death. A Family Private Foundation or Charitable Remainder Trust can also be used to establish a charitable giving program.

General Mistakes and Misperceptions

25. Thinking that Estate Planning only deals with what happens when you die.
    - Estate Planning also protects assets while you're alive, healthy or disabled.

26. Thinking that Estate Planning is only for the wealthy.
    - Estate Planning deals with issues affecting families regardless of the size of their Estate.

27. Focusing first on avoiding Estate Taxes and Probate rather than first on what it takes to maintain control and to protect yourself and your family upon retirement, disability, accident or death.
    - All of these are important, but the primary objective is to maintain control by parents of their Estate and to protect the family.

28. Having an Estate Plan that uses short term thinking and doesn't properly provide for contingencies.
    - An Estate Plan needs to be drafted to anticipate life and asset changes – to the extent reasonably feasible.

29. Waiting until you believe you have everything exactly ready before doing your Estate Plan and never getting it done.
    - Estate Planning is less complicated than most people think.

30. Failing to update your Estate Plan through periodic check-ups or upon significant life or asset changes.
    - Laws, family, life and finances change. Your Estate Plan should be periodically reviewed to address these changes.

To Do List

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