

Biggest Mistakes Made In Estate Planning

Your Last Will & Testament is one of the most important legal documents you will ever make. It allows you to direct where you want your property, guardianship and debts to go after you die, and allows you to appoint an fiduciary to carry out your wishes. Too many Americans don't have an Estate Plan right now. According to a [Caring.com Survey](#) of 2,500 Americans in 2020, 2 out of 3 adults don't have an Estate Plan despite the pandemic. Procrastination and the belief that they don't have enough assets to leave someone were the top reasons people gave for not having made one. Almost everyone over age (18) needs some estate planning documents. It may not be anything complex, but having those documents can spare your family a lot of financial and emotional suffering at a time they are grieving. Here are some other mistakes.

Assigning Joint Fiduciaries

You should definitely just have only 1 fiduciary, but definitely name successor fiduciaries (executor, agent, attorney-in-fact, guardian and trustee). A lot of testators think they want to make all of their children responsible for administering the estate, because of fairness. That is a bad idea. You have to have everybody agree on something. In the middle of the conflict, your best interests are not served. "If you have a house and you want to sell the estate assets, obviously some kids will be like, 'No, it should remain in the family. I don't want to sell. How much should it sell for?' Whether you should prep the house before it sells. Little disagreements that inevitably turn into family in-fighting and there are going to be two sides and two factions. Not everybody gets along and all those things come out. There was a family with seven siblings all co-executor/trustee. It was a disaster. Everybody should get their own attorney at that point because of conflicts of interest. They didn't want to do that because it's seven times the legal fees. Can you imagine having seven attorneys trying to communicate on one thing? It becomes very costly. To avoid that cost, everyone should sign waivers. This made them aware that there might be conflicts of interest later that could not be anticipated now. What if one person wants to purchase the house, or one person does all the work, other people don't do anything and everybody gets commission. It's a sore spot. Things that happen during the administration of their loved one's estate are the things that happen throughout their lifetime that are repeating themselves. The issue that comes up with too many executors, if you have two, and they don't agree, who gets the final say? If you are going to choose more than one, make it an odd number so it's majority-rule. Some people are like, 'I want all of my kids,' and they have four children. Then it can be two against two, and then what happens? Although the will says what is supposed to be done, it's the instructions, it does not guarantee that everything is going to run as smoothly as hoped.

Being Too Vague About Sentimental Items

Sometimes people say, "To all my kids, an equal share." But that may not leave the option available for the kids to say, 'I want to buy this property' or 'I want this specific item.' They may say 'My kids will figure things out, they all get along.' When people pass away, relationships change, money changes people. Your children who got along when you were alive may not get along as well when you are gone and not there to dictate who's right, who's wrong or be the mediator between them all. If you are too general, it will be based on their interpretation, which may be different. My grandmother had this gorgeous painting and when she died, I really want this painting.' We didn't fight over it, but my aunt was like, 'I really want it,' and then one of my cousins wanted it. I jokingly said to my aunt, 'Well, when you pass away, put it in your will that I get this painting.' Luckily, we were able to hash it out. My aunt being the next in line, she got it before the grandkids. If there is something that has lots of sentimental value, that's the thing people fight about the most. People are processing their emotions with those sentimental things. If they regret not spending more time with somebody, they want all of the things, or every single memory or picture that they can get their hands on. If you know somebody wants something, just put it down. It will make it so much easier.

You Don't Update Your Estate Plan To Reflect Life Changes.

The biggest mistake people have when it comes to doing Estate Plans is their failure to update those documents. There are certain life events that require the documents to be updated, such as marriage, divorce, births of children. It's typically recommended that your Estate Plan be revisited every five to seven years. For many, once it's done, they tend not to think about it. When you do an Estate Plan, make the time to update it because there's certain life events that may change your wishes. Say you name your children, and one of your children passes, but the way you had your Estate Plan structured didn't account for your grandchildren, so they would not be included because their parent passed, and that was not your intention.

You Don't Think Through Whether What You Leave Someone Will Actually Help Them At Your Death

The biggest mistake people make with doing their Estate Plan is not doing anything and having no documents at all. For those people who have documents, the next biggest mistake people make is to let the documents get stale. The next big mistake we see people make is to not carefully consider the consequences of the bequests that they make. Yes, leaving people money is an empowering thing. But sometimes those same bequests can cause a lot of problems for the person receiving the gift. When leaving money to children, some consideration should be given to the child's maturity and place in life. An 18-year-old may be a legal adult, but is probably not in a good place in life to receive an inheritance, even a relatively modest one. Additionally, receiving gifts outright might disqualify a college-aged person from financial aid. For those beneficiaries in their midlife, some consideration should be given to the risk of divorce, creditors or vices such as substance abuse or gambling addiction. In each of those cases, the inheritance you may have intended to benefit a friend or family member could wind up in the hands of someone else and not help your loved one at all — and maybe even hurt them. For older beneficiaries, thought should be given to whether that person may be in a good mental state to receive gifts and whether that person may be disqualified from Medicaid Title XIX assistance as a result of an inheritance.

A Last Will & Testament Is All That Is Needed To Avoid Conflict & Court

"Believing that a Last Will & Testament alone will avoid the probate process may be the biggest mistake. Probate is the legal process of administering a person's estate both when they die intestate, (without a Last Will & Testament), and when they die with one, (when a Last Will & Testament was made). Although a valid Last Will & Testament can ultimately direct where assets are allocated, it will likely not avoid the probate process if there are assets titled solely in your name. If you have a Last Will & Testament in place, but an account (bank account, investment account, etc.) that does not have a beneficiary designation, (it is solely in your name, the assets would likely have to go through the probate process before being distributed according to the terms of your will.

You Don't Leave Instructions About Where To Find Your Will

If your fiduciaries or beneficiaries don't know where your Estate Plan is, it will be almost impossible and very costly to carry out the wishes of the decedent. Be very clear, if you are very specific, people know where to find your important documents. It makes it easier on your loved ones. Sometimes questions like this come up. Did anybody do a Will or Estate Plan for this person? We are looking for documents we think exist but aren't exactly sure. Did they have a Last Will & Testament or an Estate Plan? It is always a good idea to put the originals in a safe place and tell someone where those documents are. Or at minimum, give them your attorney's contact info. If something does happen, they can call the drafting attorney.

You Don't Work With Someone Who Actually Understands Estate Law

"There may also be a temptation to work with an attorney who is not specialized in this area just because someone's cousin, who normally does litigation, is willing to help you out, or your divorce attorney thinks they can pull a will together for you at a reasonable fee. Estate planning is complex and there are a lot of traps for the unwary, even attorneys. It is important to get these documents right because when the documents are executed, the difference between a good set of documents and not can mean a lot of extra time, money and heartache. Don't skimp in the short term in exchange for problems in the long term.