

# Top 10 estate planning concerns

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A colleague of ours recently assembled a list of the top 10 estate planning issues. We have edited the list to provide you with a helpful tool to assure that nothing is overlooked when planning your estate.

Each issue can be dealt with after a little thoughtful consideration, but they can create major problems if not dealt with in advance. One of the biggest keys to successful estate planning is to plan in advance so that you can be proactive — rather than reactive. Acting out of necessity is seldom the best option.

So here's our current list of the top 10 estate planning concerns:

## 1. Maintaining family harmony

I tell my clients that my number one goal as their estate planner is not to save taxes or avoid probate. Rather it is to make sure their family doesn't fight or argue after they're gone. Estate planning is a way for you to say you care about your loved ones. It is an unselfish act. But choices you make for executor or trustee can rock your family's core and cause irreparable harm to your loved ones' relationships with each other. Giving thought to how to help resolve these conflicts or at least, not make them worse, can help to avoid family conflicts, maintain family harmony, and even strengthen weakened family ties.

## 2. Avoiding probate

Court-supervised administration of your estate is never a pleasant journey. Despite the helpful court personnel, there are still court and lawyer fees, lack of privacy issues, long waiting periods before distribution, and the overall loss of control over the process. And that's if all goes well. A fully-funded, comprehensive living trust will avoid probate, provide a mechanism for incapacity, and put the control back with your family instead of with judges and lawyers.

## 3. Maximizing asset protection

Many people do not take advantage of the asset protection opportunities that even some basic estate planning can achieve. Creating trusts for spouses and children with the right provisions means your assets can be protected from claims of creditors, predators, and lawsuits for years to come. While we hope that our children would not fall victim to divorce, this is one asset protection conversation that must and can be planned for.

## 4. Planning for taxes

This is never an easy issue as the various tax systems (income, estate, gift and generation



**Danielle Peterson / Statesman Journal**  
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skipping) don't always line up with each other. Consider the tension between gift planning, (giving away some of your assets) to shelter appreciation by moving them outside of your estate, and loss of basis for capital gains purposes. While not easy, this issue can really cost you money if not handled properly and proactively.

#### **5. Controlling attorney's fees**

The best way to control legal fees is to incur them while you are alive and able to oversee the planning process. Failure to plan is likely to increase the total amount of fees paid, especially if family members decide that fighting is the best way to resolve disputes after you're gone.

#### **6. Naming successor fiduciaries and contingent beneficiaries**

Make sure that you name back up executors and trustees, or provide your beneficiaries with a way to fill a vacant role, so that a court proceeding is not required.

Also include contingency plans for your estate in the event your immediate family members die and are unable to inherit your estate. Name more distant relatives or close friends, and/or consider a charitable gift in a permanent fund to create an ongoing legacy for you and your family.

#### **7. Updating beneficiary designations**

Life insurance and retirement accounts are controlled by the beneficiary designations you make when you purchase the life insurance or open a retirement account. They are most notably the small boxes you checked at the end of your application. Make sure these stay updated. We have seen more than one policy which still names a client's first wife or husband many years after a divorce and remarriage.

#### **8. Reviewing joint accounts**

Often used as a convenience during life and a will substitute at death, owning property jointly with a child can be a costly mistake. Jointly owned property can be lost if the other owner(s) go bankrupt, have creditor problems, get sued or get divorced, and there can be substantial gift tax issues caused by adding someone as a joint owner. Because these accounts go automatically to the survivor, make sure that this lines up with your overall plan of passing assets to your heirs. Leaving money in a joint account for one child with the idea that they will spread the wealth around after your death can be a recipe for disaster — and create additional gift tax problems.

#### **9. Keeping things flexible**

Change is inevitable. Our families change, the laws change, and legal strategies change. A will is merely a death document. A living trust is a more modern and efficient estate planning strategy. A living trust becomes effective when you sign it, can provide the family with control if you become incapacitated, and can be revised quickly, easily and at a reasonable cost to best maximize family control and adapt to and address life's changes. Including a Trust Protector can ensure your plan works as you originally intended, without court involvement, and a regular 3 -5 year review schedule will keep your plan current and effective.

#### **10. Failing to start**

Procrastination is probably the leading cause of problems in estate planning. Once a disability or death occurs, planning becomes very difficult and lots more expensive, if possible at all.

Attorney Eden Rose Brown is dedicated to providing comprehensive, highly personalized, counsel in wealth preservation strategies, family legacy design, and estate, tax and charitable planning. Honored as one of the Top 100 Attorneys in the United States by Worth magazine,

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