Top 10 Estate Planning Mistakes

And All of Them Can Be Easily Corrected

By BRETT KAUFMAN

To err is human, and to correct is divine. If you have an existing estate plan and haven't revisited it for several years, or you never thought you needed one, there is no time like the present to fill that gap. You can address past oversights and begin creating an effective plan that protects your interests and those of your heirs.

Since no one has a crystal ball to tell what the future holds, here is a list of 10 common estate planning mistakes that can be easily be corrected.

1. Failure to accurately determine your taxable estate. It is important to understand what assets are taken into consideration in determining your taxable estate. Assets such as real estate, stocks, bank accounts, IRAs, and life insurance are all included in your taxable estate. By not properly valuing it you could be subject to a significant amount of estate tax, thereby reducing the amounts that could be left to your family and friends. It is crucial that you make yourself aware of the available estate planning options that could reduce or even eliminate potential estate taxes.

2. Failure to recognize recent changes to the Massachusetts estate tax law. Massachusetts recently 'decoupled' its estate tax from the federal estate tax, which means that your estate could be subject to Massachusetts estate tax even if no federal estate tax is due. Since the federal estate tax exemption is currently $2 million and the Commonwealth's threshold is $1 million, without proper planning, this variance could result in an unpleasant surprise for your heirs upon your death. It's a good idea to review your current financial situation to determine the potential exposure to Massachusetts estate tax and how to minimize it.

3. Failure to plan for a physical or mental disability. A power of attorney guarantees that your finances will be handled properly by someone you trust. A health care proxy will provide you with the comfort that your health care decisions will be made according to your wishes, thereby reducing that emotional burden on family or friends. If you do not have an updated health care proxy and power of attorney, 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 physically or mentally disabled. These two documents are quite effective and relatively easy to implement.

> *It is crucial that you make yourself aware of the available estate planning options that could reduce or even eliminate potential estate taxes.*

4. Failure to review and update your estate plan. It is essential that you periodically review your estate plan to make sure it reflects your current wishes. Failing to address changes in the law or in your personal financial and family circumstances can result in additional taxes, family conflicts, and unintended people receiving a significant part of your estate. If any of the following events occur, you should make certain to review your estate plan:

- Relocation to another state;
- Changes in the estate tax laws;
- Birth of a child or grandchild;
- Receipt of an inheritance;
- Marriage;
- Death of an intended beneficiary; and
- Acquisition of real estate.

In order to keep your plan current, you should review it every three to five years.

5. Leaving your estate outright to minor children. In the unfortunate event that you die while your children are still young and maybe not responsible enough to handle a large sum of money, it might not be in their best interest to leave them their share outright. Without proper planning you could end up leaving thousands of dollars that young children may spend as they see fit.

Think back to when you were 20 years old. If you came into a significant amount of wealth to spend at your disposal, the money may possibly have been spent before your 21st birthday. To adequately address this scenario, your estate planning documents may provide that if any of your estate passes to someone who is under 30 or 35, it should be held in trust for them and paid out at predetermined ages. For example, one-third may be paid at age 25, one-half at age 30 and the balance at 35.

If you want to teach your children financial responsibility but also want to make sure they are properly cared for, you could have language in your documents stating that during the term of the trust, income and principal should be paid to your children for their health, education, support and other legitimate purposes.

6. Failure to plan for the possibility of a child getting divorced or having creditor issues. If your child is going through a divorce or has substantial creditor issues, you need to create an estate plan that will not bring unintended results. For instance, would you want your ex-son or daughter-in-law to be awarded an interest in your estate by a court? Alternatively, if your child has significant creditor issues, would you want their inheritance to be subject to a legal judgment against him or her? Such problems can be minimized through proper use of trusts or a business entity, such as a family limited partnership or limited liability corporation.

7. Failure to review beneficiary designations and asset ownership. Certain types of assets, such as life insurance policies and IRAs, pass directly to the recipients you specify on your beneficiary designations. Other assets pass by right of survivorship, such as bank accounts or real property held as joint tenants with right of survivorship. Assets such as these pass according to the beneficiary designation or the surviving joint tenant, regardless of the provisions of your will.

For example, if you intend to leave a joint bank account to all of your children but you only designated one child as a joint owner of the account, that child is only under a moral responsibility, not a legal one, to give his or her siblings an equal share of the account upon your death. Therefore, when planning your estate, it is important to review these types of assets to assure that the individuals designated as beneficiaries are those you intend to receive these assets.

8. Failure to address life insurance ownership. Life insurance is often a significant part of an individual's estate plan. A common misconception that people have about life insurance is that the policy is tax-free. It is important to understand that life insurance death benefits are not subject to income tax. However, they are subject to estate taxes if the policies are owned by the insured at their death. This can reduce up to 60% of your policies' values. By transferring the ownership of your existing policies or purchasing a new policy through an irrevocable life insurance trust, you can avoid paying unnecessary estate taxes.

9. Failure to create a business succession plan. If you currently own a business that you want to pass down to your children or grandchildren, you need to address business succession as part of your estate plan. Family-owned businesses have only a 40% chance of surviving when passed from the first to the second generation, and that survival rate drops drastically as it passes to future generations. In order to plan for succession of your business to future generations, both tax and non-tax considerations should be considered as part of your planning. A properly drafted plan will assure that your business continues for future generations.

10. Leaving money to people with disabilities. If you have a disabled child who is receiving government benefits, such as Medicaid, and your current plan leaves him or her money outright, or in a trust without the required language protecting the benefits, you may disqualify him or her, either temporarily or permanently, from receiving future benefits. To avoid the loss of benefits, your child's potential inheritance should be placed in a Supplemental Need Trust (SNT). An SNT will guarantee that your child will still receive government benefits, while providing for his or her additional needs through distributions from the SNT.

This list covers only the 10 most common mistakes, but an effective estate planning review addresses many other issues. It is important to understand the potential issues and conflicts that may arise from an improperly planned estate. Knowing your estate planning options provides you with the ability to create a plan that maximizes your wealth and minimize your taxes.❖

Brett A. Kaufman is an Estate Planning and Elder Law associate with the regional law firm of Bacon & Wilson, P.C. His practice includes sophisticated estate planning issues, guardianship, conservatorship, and planning for long-term care; (413) 781-0560; bkaufman@bacon-wilson.com.