5 Estate Planning Mistakes Checklist

1. Not having a real plan in place – Failing to plan

I use the term “real plan” because everyone has some type of plan in place — it’s likely a poorly designed plan for your situation with little thought behind its development. If you don’t have a will or trust in place, state succession laws and the probate process will help determine where your assets go. Do you really want your estate and end of life care determined by state laws and the court system?

2. Improper ownership of assets – Not Properly Funding Your Plan

End of life planning can expose oversights surrounding asset ownership. Funding your trust is the process of transferring your assets from your name into the name of your newly established trust. Fully funding your trust is the only way to make sure that you avoid probate and that your assets go to exactly who you intended them to go to.

Other times, people think they’re outsmarting the system by deeding real estate property to their kids or selling property for $1. These transactions are treated as completed gifts, potentially creating a gift tax liability or at least a requirement to file a gift tax return form to the IRS.

Not reviewing impact of beneficiary decisions on retirement accounts

Since retirement accounts can be one of the largest assets that an individual owns, they can represent a large part of their estate. As such, it’s important to consider how to pass along the account and which beneficiaries are the best to inherit a retirement account.

Taking asset ownership too lightly or improperly executing it can cause problems when it pertains to estate and end of life planning.

3. Not updating plans over time

Estate planning isn’t a “set it and forget it” matter. Simply having a plan isn’t enough. Estate plans need to be updated after major life events, when your goals shift or when laws change.

For example, if you move to a new state, you need to review your estate plan. Legal instruments like wills, trusts and powers of attorney are state law driven documents, and moving can cause issues. If a new family member is born or someone dies, beneficiary designations might need modifications. And changes at the state or federal government level can severely impact estate planning.

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4. Not planning for disability and long-term care

Seventy percent of people age 65 will need long-term care before the end of their life. A private room in a nursing home can cost more than $100,000 a year, and a home health aide can be more than $50,000 a year.

Long-term care is likely the largest unfunded retirement risk retirees face today, and it's easy to see why when you look at the numbers.

Considering the facts, it's clear that no estate plan is complete without some planning for things like disability and long-term care. When you're still working, disability planning is about making sure you have the right amount of short-term and long-term disability insurance. As you move into retirement, the focus will shift to long-term care planning — how you want to receive it and how you want to fund it.

It is also important to have the proper Powers of attorney – both financial and health care directives. Naming a Power of Attorney will allow you to control who would step in to make decisions should you become incapacitated and avoid "living" probate, where the court would appoint someone to act on your behalf.

5. Not considering the impact of income taxes on you and your beneficiaries

Certain assets left to heirs can create unintended income taxes for your beneficiaries. While many people are aware that their IRAs and 401(k)s are subject to required minimum distributions (RMDs) after age 70.5, you might not know that inherited accounts can also be subject to RMDs. A 401(k) or IRA inherited by an adult child is subject to RMDs and these RMDs could impact the beneficiary's tax situation. Money will have to come out of the account each year, and in most cases with traditional IRAs and 401(k)s, the entire distribution is taxable. The RMD is taxed as ordinary income and stacks on top of an individual's current earnings.
If an heir is a professional in their peak earning years, the distribution will likely be taxed at the highest marginal tax rate. This isn't ideal as it decreases the total wealth passed down.

Bonus - Not planning for minor children/beneficiaries

One of the most important goals of estate planning is to make sure your children are cared for in the case of you and/or your spouse's untimely death.

You also need to have a proper will in place that designates a guardian. (Make sure you ask the relative or friend before listing them as the designated guardian.) Beyond naming a guardian, spell out instructions for how the money should support the children — too often people leave money to the guardian to manage at their discretion.