34 COMMON ESTATE PLANNING TRAPS

AND HOW TO AVOID THEM

A good estate plan is a tremendous gift to your loved ones and to yourself. It will ensure your assets pass to the people you want to benefit and to the causes and organizations that matter to you. It can minimize probate costs, reduce taxes, and insulate inheritances from creditors. It can provide a succession plan for a family business. It can protect you if you are incapacitated, ease the emotional burdens on your family, and give you great peace of mind.

Tupper Butler Law PLLC
9850 Von Allmen Court, Suite 201 | Louisville, KY 40241 | 502.631.1488

www.tupperbutlerlaw.com

In contrast, lack of an estate plan or an ill-conceived estate plan may mean that taxes and fees eat deeply into your estate, probate drags on, the wrong people inherit, and your family suffers turmoil. Many families have been destroyed by bickering over what a departed loved one would have wanted when he or she left no estate plan or a defective one.

You play a crucial role in developing a good estate plan. You have to take the initiative to find the right estate planning professional to work with. And you need to be engaged in the planning process every step of the way. One of the most important things you can do is educate yourself. Although you do not need to understand all the technicalities involved in estate planning, you need a basic understanding of what can be achieved given the extent of your estate and the needs of your loved ones. Moreover, you need to know how to avoid common pitfalls that have bedeviled people from all walks of life, from the rich and famous to those of modest means.

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A. NEGLECT, AVOIDANCE, AND PROCRASTINATION

#1. THINKING YOU DON'T NEED A WILL, TRUST, OR OTHER ESTATE PLANNING DOCUMENTS.

Shockingly, less than half of American adults report having a will or other estate planning documents. If you die without a will or revocable living trust, your estate will pass according to your state's intestacy laws. These laws will supersede any wishes you may have had and can lead to results that you may not have contemplated. The state rules are the same for every person who does not make an estate plan, regardless of his or her circumstances. They are inflexible and there's little your loved ones can do after your death to change the result, outside of disclaiming (giving up) an inheritance so that it can go to the next relative in line.

In some states, your estate may go entirely to your spouse even though you may have wanted part of it to go to your children; in others it may be split between your spouse and children even though you may have wanted it all to go to your spouse.

If you have no close relatives, without a will, your estate could go to people you have never met! Moreover, in this situation it's even possible that time and money from your estate will need to be spent locating your heirs and confirming their relationship to you. The singer and song-writer Prince died without a will and his estate faced this problem. Some 45 people came forward to claim they were entitled to a share of his estate. A probate judge had to decide which claimants were legitimate.

In your estate plan, you may want to provide for a partner to whom you are not married; leave something to a friend or loyal caregiver; make a donation to charity; leave unequal shares to your children, or even disinherit a child. The intestacy laws will not permit any of these. You need a will or trust to accomplish these goals.

A will or trust is even more important if your affairs are complicated by step children, property overseas, ownership of a business, or potential estate or inheritance tax liability. By writing an estate plan, you can ensure your actual wishes are carried out, there are adequate financial and guardian provisions for dependents, and you have clearly identified who is to receive what property.

#2. PUTTING OFF ESTATE PLANNING BECAUSE YOU ARE NOT READY TO MAKE THE NECESSARY DECISIONS.

If you think your estate plan has to be the final word about how you want your estate to be administered and you're just not ready to make such huge decisions, think again. An estate plan is something you create for right now—not for some nebulous time in the future—with what you currently have, what your thoughts are for giving it away, and whom you currently want to give it to. Next year, all that can change. All you have to do at that point is revise your plan. Once you've made your first plan, the next one becomes much easier. You reach a point at which you have clear ideas of what you should change, enabling you to easily keep your plan consistent with your current wishes. See #24-#27 for advice for keeping your estate plan up to date. And see #11 about the dangers of attempting to make the changes yourself.

#3. BELIEVING YOU ARE TOO YOUNG TO NEED AN ESTATE PLAN.

Young people are generally healthy and think they have time on their side. However, often young people are the ones who need a will the most, especially if they have young children. You can use a will to designate who will care for your children and be their legal guardian should you and their other parent both die.

In your will, you can name a trustee to manage the assets you leave for your minor children until they become of age. Minor children cannot inherit property and if you don't name a trustee to manage their assets, the court will appoint one. This can be both time consuming and expensive. See #15 and #16 for more tips on providing for minors and young beneficiaries.

A will is just one part of an estate plan. Often young people overlook health care directives (also called living wills) and financial powers of attorney. You may think you do not need these documents until you are old or seriously ill. But an incapacitating accident can strike at any time. When you write your will, write a health care directive and a financial power of attorney as well. This is especially important if you have a life partner to whom you are not married so he or she can make decisions on your behalf if you become incapacitated. Without these documents, your partner will not legally be able to make any decisions for you. For more tips on planning for incapacity, see #18 and #19.

Anyone entering the military should make sure his or her affairs are in order. Even for an 18-year-old, that means creating a will and other basic estate planning documents like a health care directive and financial power of attorney.

#4. DELAYING ESTATE PLANNING BECAUSE YOU AND YOUR SPOUSE OR PARTNER DO NOT AGREE.

Sometimes spouses and life partners disagree on their estate planning goals and whom they want to name as beneficiaries. This situation is particularly common with second marriages and blended families. Although each person is free to have his or her own will, they should generally agree about the inheritance of their children. Otherwise, it is often the longest surviving spouse who gets the "final say."

The reality is if partners or spouses do not agree on the estate planning details, there is a good chance that neither of their wishes will be fulfilled. This is because a couple who believes their disagreements cannot be resolved may delay their planning indefinitely with each spouse hoping that the other spouse will eventually relent. When that happens, the couple may make no estate plan or may allow an outdated estate plan to remain in effect even though the family's circumstances have changed.

One possible solution is to work with a mediator or neutral third party facilitator to achieve a compromise you both can live with. It may also be advisable for you each to retain separate estate planning attorneys.

#5. DELAYING ESTATE PLANNING UNTIL IT'S TOO LATE FOR YOU TO MAKE A PLAN.

To make a will, you must have "testamentary capacity." You must be able to understand that you are making a will, know generally what property you have to pass, and recognize those that a person in your situation would normally want to benefit from your estate.

The capacity to make a will is relatively low. If the testator one day is of sound mind to execute the will and the next day the testator does not remember the will signing and is not sufficiently "with it" to execute a will, the will is still valid.

The minimum capacity to execute a financial durable power of attorney varies from jurisdiction to jurisdiction. In some cases the courts and practitioners argue that this threshold can be quite low: the principal (person executing the power of attorney) need only know that he or she trusts the attorney-in-fact to manage his or her financial affairs. Others argue that since the attorney-in-fact generally has the right to enter into contracts on behalf of the principal, the principal should have capacity to enter into contracts as well. Because of these wide variations in the law and subjective interpretation of what constitutes a sound mind, it is important to get these documents executed when you are of sound mind and there is nothing to question regarding your mental state.

In summary, you want to execute your estate planning documents while you still have the capacity to do so. Otherwise, your family is left with few options. If you do not have a trust with an incapacity clause and/or a financial power of attorney at the time of lost capacity, the only way a loved one can obtain the power to make decisions for you is to be appointed your guardian or conservator by a court. This takes both time and money. It also does not guarantee that your wishes will be carried out. A proper legally executed estate plan is the best way to ensure your wishes will be carried out.

B. DO IT YOURSELF DISASTERS

#6. RELYING ON A HANDWRITTEN WILL OR LETTER EXPRESSING YOUR WISHES.

Sometimes people leave a handwritten will or letter to their loved ones expressing their intentions for the disposition of their estate. Some jurisdictions accept handwritten wills (called holographic wills) for probate even though they are not properly witnessed, but not all do. If you live in a jurisdiction that does not, your handwritten document will have no effect on the disposition of your estate.

Handwritten wills, even where legal, are more likely to provoke contests and be denied probate than typed or printed wills because they often have flaws that raise questions about their authenticity and validity. For example, they may be unsigned or signed “Bob,””Dad,” or “Grandma” rather than with the testator’s full name; they may not be dated; they may not clearly state that they are intended to be wills; they may have strike outs, insertions, and other obvious alterations creating ambiguity or even raising the possibility of forgery.

#7. DRAFTING YOUR OWN WILL.

Regardless of whether a will is handwritten, typed, or prepared with a preprinted form, self-drafted wills are notorious for mistakes. Some common problems include:

Making a gift of one or more specific assets to a particular person without considering what will happen to that person’s inheritance if you no longer own the asset when you die. As a general rule, if your will attempts to give away an asset you no longer own, the gift lapses and the beneficiary isn’t provided with an alternative gift. However, the result may depend on how a court in your state would interpret the language of your will. For example, suppose you leave your home, which you describe in your will by its street address, to your daughter. At the time of your death, you have a different home at a different address. Does your daughter get nothing or does she get your current home? There is a correct way to provide for either option. Your estate planning attorney will know how to word your gift of a specific asset to account for your wishes should you no longer own the asset when you die.

Not providing alternative beneficiaries who would take if the first named person predeceases you. In this case, do you want the deceased beneficiary's gift to go to his or her heirs or to someone else? For example, suppose you provide that your estate is to be shared equally between your two children. If one of your children predeceases you, do you want your deceased child's share to go to your other child or do you want it to go to your deceased child's children (your grandchildren). If your deceased child has two children, do you want them each to take a quarter of your estate with your surviving child receiving half or do you want your two grandchildren and your surviving child to each get a third of your estate? An estate planning attorney will discuss these issues with you and include the appropriate language in your will to ensure your wishes will be carried out.

Failing to provide for what should happen to property in your estate that you have not specifically mentioned in your will. The property could be omitted through oversight; it could have been acquired after the will was drafted; or its intended beneficiary could have predeceased you and you did not name an alternate. The solution is to include a residuary clause in your will. A residuary clause is a provision in a will that disposes of any property in your probate estate that is not disposed of by other provisions in your will. Your will needs a residuary clause even if you think you have dealt with all your property. If you omit a residuary clause from your will, any assets in your estate that have not been disposed of will pass to your heirs pursuant to the laws of intestacy just as though you did not have a will.

Failing to provide for the possibility that you may have more children after executing your will. States have laws designed to protect children born after a will is executed from being unintentionally disinherited. These laws vary and are not guarantee. The safest approach to ensuring an after born child gets a share of your estate is to update your estate plan after the birth. See #24. To guard against the possibility that, for whatever reason, you neglect to update your estate plan, you can include language in your estate planning documents to the effect that you intend for any children born to or adopted by you after the date you execute your will to share in your estate to the same extent as your other children.

#8. RELYING ON A WILL OR TRUST KIT YOU PURCHASED AT A STORE OR ON THE INTERNET.

There are a lot of do-it-yourself options when it comes to drafting estate planning documents, including a will. Most of these do-it-yourself options are internet based companies that advertise full completion of your documents by just filling out some online fields. Others offer kits where you complete your will on forms. However, writing your own will and/or estate plan is not a good idea. Unfortunately, estate planning is not a one size fits all model. Just as everyone's fingerprints are different, so are everyone's estate planning needs. What will work for you and your family will most likely be different from what will work for your brother, parents, co-worker, or friend.

These do-it-yourself forms, whether found in books or online, are generated by estate planning computer software that is designed to cover only the most basic of estate planning needs. These forms also deliberately keep it as simple as possible in order to comply with the laws of all 50 states and the District of Columbia. Each of these print and online resources comes with a disclaimer, "The information contained in this book/program is not legal advice and is not a substitute for legal advice. For legal advice, consult with an attorney." The reality is that even books and programs about estate planning recommend that you seek the expertise of an experienced estate planning attorney.

#9. ATTEMPTING TO DISPOSE OF PROPERTY IN YOUR WILL THAT IS NOT PART OF YOUR ESTATE.

If you own property (e.g., real estate or bank accounts) in joint tenancy with right of survivorship, on your death, your interest in the property belongs to the surviving co-owner. You cannot pass your interest to anyone else in your will. Any attempt to do so is void. If you don't want your co-owner to succeed to your interest, you will have to take steps to sever the joint tenancy while you are still alive.

Similarly, you cannot dispose of property in your will that passes by beneficiary designation. See #14.

#10. NOT EXECUTING YOUR ESTATE PLANNING DOCUMENTS WITH THE LEGALLY REQUIRED FORMALITIES.

Even if you have professionally prepared estate planning documents, all your planning can be for nothing if the documents are not executed correctly. A document that is improperly executed is not valid.

Each state has its own requirements, but in most states, a will must be written and show the testator's intent to make a will; the testator must have testamentary capacity; the will must be signed by the testator in the presence of two witness who watch the testator sign the will and then sign it themselves. The witnesses must also be disinterested parties, which means they are not beneficiaries under the will.

Other estate planning documents require similar execution procedures. For example, financial powers of attorney typically have to be signed and notarized and living wills and medical powers of attorney typically have to be signed before two witnesses or a notary.

Many estate planning attorneys offer to hold a signing ceremony at their offices so that they can supervise the execution of the documents. It's a good idea to take advantage of this opportunity.

#11. ATTEMPTING TO REVISE OR AMEND YOUR ESTATE PLANNING DOCUMENTS YOURSELF.

For the same reasons that you should hire a qualified estate planning attorney to draft your initial estate plan, you should also hire a qualified estate planning attorney to revise or amend your estate plan.

There are rules about how documents can be revised. Often the best procedure is to revoke the old document and replace it with a completely new updated one. If revisions are done improperly, your efforts to update your documents can invalidate not only the changes you wish to make, but even the original document.

For example, people often try to make changes to their wills by crossing out provisions they no longer want and handwriting in their changes. You should never attempt to amend your will this way. After you make the handwritten changes, the will would need to be re-executed in front of witnesses, which rarely happens. The net effect may be that the deletions are valid (because you can revoke a will by defacing it), but the additions are not, so you end up with no will or a will that you never intended to make.

C. MISSTEPS WITH BENEFICIARY DESIGNATIONS

#12. NAMING YOUR ESTATE AS A BENEFICIARY OF YOUR RETIREMENT ACCOUNTS.

If you have a retirement account (IRA, 401K, non-qualified plan), you should have received a form from the plan administrator asking you to name one or more beneficiaries who will receive the balance in the account when you die. One of the most common estate planning mistakes people make is to name their estates as the beneficiary of a retirement account. This is a bad idea for several reasons.

If you name your estate as the beneficiary of your retirement plan, the plan assets will be part of your probate estate and will need to pass through probate and be subject to probate fees. If you name a beneficiary other than your estate, your retirement plan balance will pass outside of probate. Naming your estate as the beneficiary of your retirement plan creates unnecessary roadblocks for your loved ones in accessing the retirement funds. Furthermore, if you name your estate as your retirement plan beneficiary, the funds paid to your estate will be subject to claims of creditors during probate.

Finally, another reason not to leave your retirement account to your estate is that it denies your heirs the ability to let those assets grow. Non-spouse heirs can normally either liquidate an inherited retirement account and pay income taxes within five years of the owner's death, or "stretch" their required minimum distributions—and tax liability—out over their lifetimes. The stretch option is far more valuable, since it enables the account to continue earning compounded interest for decades to come. By naming your estate and not one or more direct beneficiaries, your heirs lose that ability to stretch and must liquidate the account within five years.

A spouse beneficiary gets special treatment. He or she can roll the inherited account into his or her own IRA and delay minimum distributions until the year after he or she reaches 70 1/2.

You can name a trust as beneficiary, which may make sense if the real beneficiaries are minors. However, the rules governing whether a trust qualifies for the stretch out are complex so you'll need to talk to your estate planning attorney to make sure the trust is set up properly.

Be sure to name an alternate beneficiary in case your first beneficiary predeceases you. See #29. If you don't and your beneficiary predeceases you, the retirement accounts will be payable to your estate.

#13. NAMING YOUR ESTATE AS A BENEFICIARY OF YOUR LIFE INSURANCE.

You should not designate your estate as the beneficiary of your life insurance policy for many of the same reasons that you do not want your estate to be the beneficiary of your retirement accounts. Life insurance proceeds payable to your estate will pass through probate, increasing estate administration costs and delaying distribution of the funds to your heirs. They will also be subject to the claims of your creditors.

In addition, life insurance proceeds payable to your estate will be subject to federal and possibly state estate taxes if the value of your estate is high enough. This is true even if you didn't own the policy when you died.

Instead, you should make the benefits payable to a person or to your irrevocable life insurance trust (see #23) or living trust, which can then describe how the funds are to be distributed. Be sure to name an alternate beneficiary in case your first beneficiary predeceases you. See #29. If you don't and your beneficiary predeceases you, your insurance proceeds will be payable to your estate.

#14. FAILING TO COORDINATE YOUR BENEFICIARY DESIGNATIONS WITH YOUR WILL OR LIVING TRUST

Your will applies only to assets that are part of your "probate estate" and your trust only to assets you transfer into it. See #26. Your will or trust has no impact on beneficiary designations you make for life insurance, qualified retirement plans, military pensions, or other assets where a beneficiary is named. If you change your mind about whom you want as beneficiaries of these assets, you must execute new beneficiary designations. Unless you make your estate the beneficiary, you cannot leave these assets through your will, but naming your estate is generally not a good idea for reasons mentioned in #12 and #13.

People unintentionally thwart the effectiveness of their wills all the time with beneficiary designations. For example, the will states that the testator's assets are to be divided equally among the his three children, but then the testator names one child as the only beneficiary to a retirement account or life insurance policy and puts another child's name on his bank account. The testator intends that the children follow the will and share the assets equally. However, the unnamed beneficiary has no legal right to these assets and has to rely on his siblings to share, which they may be unwilling to do. If you plan to divide your estate equally among your children, make sure the beneficiary designations for each of your accounts do not frustrate your plan.

It's a good idea to review your beneficiary designations with your estate planning attorney. He or she can advise you how to word them or even complete them for you so that you do not inadvertently derail your estate planning goals.

D. POOR PLANNING FOR YOUNG OR SPECIAL NEEDS BENEFICIARIES

#15. NAMING A MINOR AS AN OUTRIGHT BENEFICIARY OF A WILL, TRUST, LIFE INSURANCE POLICY, OR RETIREMENT ACCOUNT.

Another big mistake that people often make in estate planning is to name their minor children as direct beneficiaries. If you name a minor child as the outright beneficiary, the funds cannot be disbursed to him or her. Instead, your next of kin must petition the court to appoint a guardian to take care of the money until the child is 18 or 21, depending on the laws of the state in which you reside. There will be court costs and you run the risk of the guardian being untrustworthy or incompetent.

In the alternative, in your estate plan, you can do one of the following:

Name an adult custodian to manage the child's inheritance pursuant to the Uniform Transfer to Minors Act: In the case of life insurance, you have to make sure your insurance company permits this kind of transfer, and you have to name the adult custodian at the time you fill out the UTMA form with the insurance company. Also, be sure to name the minor by giving the full legal name.

Create a trust: You can set up a trust for the minors and have the funds paid to the trust. You will have to designate an adult trustee to oversee the trust. This method can ensure that the minors' inheritance is protected, because you can choose a trustee whom you trust and state law and the trust instrument will require the trustee to manage the funds prudently and for the benefit of the minor beneficiaries. Although more expensive to create than an UTMA account, a trust gives you more flexibility and control over how the funds are to be used and disbursed.

#16. DISBURSING FUNDS FROM TRUSTS TO IMMATURE YOUNG ADULT BENEFICIARIES.

If you have established a trust for your child's benefit, it need not terminate when the child comes of age. Even though your child may technically be an adult at 18 or 21, he or she may not be ready to have unrestricted access to large sums. As the settlor of a trust, you have great freedom to decide when and how funds will be disbursed to your young adult beneficiaries.

Parents leaving money to a child in a trust may fear that too much money can quash ambition and drive, or the child will waste the money on frivolous things and have nothing to show for it in the end. The solution for these situations can be either or both of the following: 1) use incentives in the trust rather than leaving the majority of the trust outright; 2) disburse the principal trust funds at various intervals as the child now turned adult matures.

The incentives can be as creative as you can imagine. For example, the trust could provide that the trustee will disburse to the beneficiary $10,000 (or other appropriate sum) upon attainment of a Bachelor's degree and $20,000 (or other appropriate sum) upon attainment of a Master's or Doctorate degree. In setting up the trust for milestone goals, you can encourage your child to have vision, set goals, and engage with other motivated individuals, all of which enhance his or her likelihood of success.

The trust can also be set up for age distributions at the discretion of the settlor. In general, trusts usually don't begin mandating distributions of income to the beneficiary until he or she reaches a certain age. On occasion, distributions may begin as young as age 18. More frequently, they start at age 21 or even age 25. Rarely the settlor may delay the start of mandatory income distributions as late as age 30.The trust principal is commonly distributed in shares at five-year intervals, so that a beneficiary would receive, for example, one-third of the principal value at age 25, one-half of the remaining value at age 30, and the balance of the trust principal at age 35.

#17. LEAVING AN INHERITANCE DIRECTLY TO A SPECIAL NEEDS INDIVIDUAL.

Most individuals who receive government assistance cannot receive money or property outright, whether by inheritance, gift, or lawsuit settlement. Such funds will go to repay the government. They may also make the individual ineligible for further assistance until they have been exhausted in paying for the individual's care.

If you want to provide financial assistance for a special needs individual now or after you die, your estate plan should address how to do it without endangering the person's benefits. Many special rules, both federal and state, govern a special needs individual's ability to receive funds for care and non-essential but life enriching items without being disqualified for government benefits.

In most cases, the estate plan will need to include a special needs trust (different states have different names for these trusts). A special needs trust allows you to leave money for the care of your loved one, without disqualifying him or her from other much needed state and federal assistance. Setting up a special needs trust is not a do-it-yourself project. It is complicated and if done improperly the state and federal government can seize the money that would have gone to the individual thus undermining your intent. A lawyer will know best how to tailor the document to your individual circumstances and build in as much flexibility as the law allows.

E. IGNORING THE POSSIBILITY OF YOUR OWN INCAPACITY

#18. NOT HAVING A LIVING WILL AND MEDICAL POWER OF ATTORNEY.

Your estate plan will likely include a will and perhaps one or more trusts. However, another key component to an estate plan is a living will, also known as a health care directive. This document lets your family, physicians, and friends know what your end-of-life preferences are for surgery, organ donation, pain management, resuscitation, and other end of life care procedures. Additionally, it allows you to outline your religious and cremation/burial preferences.

Including a living will in your estate plan is imperative to spare your family the emotional angst of having to guess your wishes when you are no longer able to express them.

A medical power of attorney is a document in which you can appoint a health care agent to make treatment decisions for you when you are no longer able to make them for yourself. Even if you have a living will, you should also have a medical power of attorney. The two documents work together. The health care agent must make decisions based on your wishes as expressed in your living will. But the living will cannot possibly cover every circumstance that might arise. Also, you may need a person who will advocate for you when doctors or other family members disagree.

The health care power of attorney will include the name and contact information of your health care agent. It is important to keep this information up to date and revisit it periodically as life circumstances necessitate. This is doubly true if you have remarried and your spouse and children from a prior marriage are at odds.

Keep a copy of your signed and completed living will and medical power of attorney safe and accessible to ensure that your wishes will be known and carried out at the critical moment. Give a copy to your agent and to your doctor and family members as well.

#19. NOT HAVING A FINANCIAL POWER OF ATTORNEY.

Another estate planning document that everyone should have, regardless of age, is a financial power of attorney (sometimes called a durable power of attorney). A financial power of attorney is an important part of a complete estate plan. With it, you choose a responsible agent to manage your finances if you are incapacitated or otherwise incapable of making financial decisions. You can give your agent broad powers to handle all your finances or you can limit your agent's power to specific tasks. For example, you agent may have the authority to access your bank accounts, pay your bills, run your business, and make investment decisions.

F. TAX BLUNDERS FOR THOSE WITH SUBSTANTIAL ESTATES

#20. NOT DOING ANY PLANNING TO REDUCE ESTATE TAXES.

For those with a larger estates in the neighborhood of $11 ($22 million for married couples), failure to do tax planning could have dire consequences. Estate tax rates are high and estate taxes, both federal and state, are in addition to probate expenses. With no planning, half of your estate could go to pay taxes and expenses. With careful planning, estate taxes can often be reduced or deferred.

If you are married, whatever you leave to your U.S. citizen spouse, whether outright or in a marital deduction trust, passes tax free, but will be subject to tax in your spouse's estate if not consumed during your spouse's lifetime. To minimize taxes you can make sure you both use your lifetime exclusion. One strategy is to leave assets up to the exclusion amount to heirs other than your spouse. Another is for the surviving spouse to elect to use the deceased spouse's unused exclusion on the deceased spouse's estate tax return. Finally, the spouses can establish a bypass trust that can benefit the surviving spouse during her lifetime, and then pass to heirs named by the deceased spouse without being included in the surviving spouse's estate. Unmarried couples can also use a bypass trust to avoid taxation of assets in both estates.

Regardless of your marital status, you can minimize estate taxes by removing assets from your estate. You can do that by adopting a gift giving strategy. See #22. You can also use various types of trusts, and other structures (limited liability companies and family limited partners). This type of planning requires complex, professional services and an experienced estate planning attorney with a background in tax as well as financial planner and accountants should be consulted.

Some estate planners point to the estate of Oscar winning actor Phillip Seymour Hoffman as an example of what can happen with virtually no tax planning. When Hoffman executed his will, his estate was reportedly worth around half a million and he had one child. By the time he died more than a decade later, it has grown to $35 million and he had two more children, yet he did not revise his estate plan. See #24 for tips on when you need to review and update your plan.

He left his estate to Mimi O'Donnell, his long-time partner and the mother of his children. She faced a tax bill of around $15 million. And her estate will be subject to tax on assets inherited from Hoffman when she dies. Had they been married, his estate would have passed to her free of estate tax.

Even without marriage, Hoffman could have taken some steps to reduce the tax burden both in his estate and in O'Donnell's. He could have set up tax-saving trusts for O'Donnell and his children and charities that he supported and made tax free annual contributions. Reportedly, Hoffman did not want his children to have trust funds because he feared they would become spoiled and entitled. But the trusts could have been set up with various restrictions and incentives to prevent the children from reckless spending and encourage them to achieve goals. See #16. Trusts could also have been set up to pay their educational and medical expenses.

#21. NOT PLANNING FOR HOW TO PAY ESTATE TAXES.

Once you have planned to minimize taxes, you also have to plan for how to pay them. If your estate doesn't have cash, your heirs will have to sell assets that they would have preferred to keep. One extreme example occurred with the $100 million estate of Miami Dolphins owner Joe Robbie. Most of the estate consisted of Robbie's interest in the Dolphins and a football stadium. With no cash available to pay the estate tax bill, the family had to sell the team. Life insurance held in an irrevocable life insurance trust might have provided a solution. See #23.

#22. NOT MAXIMIZING ANNUAL TAX-FREE GIFTS.

One of the most efficient ways to reduce the size of your estate, and thus your potential estate tax liability, is to use the tax exclusion for annual gifts. In 2020, the exclusion amount is $15,000 per year per individual. You and your spouse can give to each of your children up to $30,000 per year tax-free. Annual gifts made pursuant to the exemption do not count against the lifetime estate and gift tax exclusion ($11.58 million per person in 2020). If your children are too young or immature for an outright gift, you can leave it in trust.

For the wealthy, maximizing annual gifts is smart planning. Annual exclusion gifts from you and your spouse can quickly add up. If you have two children and four grandchildren, you and your spouse can reduce your taxable estate by $180,000 per year. The most efficient use of the annual exclusion is to make gifts of assets that are expected to appreciate. The appreciation will not be subject to estate or gift tax. You can also give unlimited gifts to charity (outright or in trust) and you can directly pay another person's tuition and medical expenses without incurring gift tax.

However, be careful to also make sure you leave enough for your needs during your lifetime and to administer your estate.

#23. OWNING YOUR LIFE INSURANCE POLICY.

So long as you name beneficiaries other than your estate, your life insurance proceeds will not need to go through probate. See #13. However, if you own the policy, the proceeds will be part of your estate for determining whether you owe estate taxes. If the insurance proceeds along with your other assets are greater than the amount that is exempt from taxes ($11.58 million in 2020), they will be taxed.

You can avoid having life insurance proceeds included in your taxable estate by not owning the policy. One way to do this is by establishing an irrevocable life insurance trust to own the policy. You will want to have the trust prepared by an estate planning attorney to ensure that it meets all the requirements. As the name implies, it must be irrevocable, which means you cannot terminate it, nor can you amend it. You cannot be the trustee, and the trustee's powers are subject to certain limits. You will want to make sure that the premiums are paid in a way that does not constitute a taxable gift. Your estate planning attorney will advise you about the various strategies for paying the premium while avoiding gift tax liability.

When you die, the policy proceeds can be paid to the trust and then distributed in accordance with your instructions in the trust instrument.

G. NEGLECTING TO MAINTAIN YOUR ESTATE PLAN

#24. NOT REVIEWING AND REVISING YOUR ESTATE PLAN AT REGULAR INTERVALS OR AFTER SIGNIFICANT LIFE CHANGES.

Estate plans need to be reviewed and updated periodically. What you may need in your 20s for an estate plan will certainly be different than what you will need in your 60s. Once you have established your estate plan, make sure it stays sound by revisiting it at regular intervals or at key life events. Reviewing your estate plan at regular intervals in addition to major life events will help ensure that your documents express your current wishes and that your beneficiaries receive their benefits as smoothly as possible.

In addition to regular reviews, it's a good idea to review and update your estate plan with your estate planning attorney at life events such as the following:

- Your marriage or divorce.
- The birth or adoption of a new child or grandchild.
- Death or change in circumstances of the guardian named in your will for minor children.
- Changes in your number of dependents, such as the addition of caring for an adult.
- A child or grandchild becomes an adult.
- A child or grandchild needs educational funding.
- A change in your or your spouse's financial or other goals.
- Illness or disability of your spouse.
- A change in your life or long-term care insurance coverage.
- Purchase of a home or other large asset.
- Borrowing a large amount of money or taking on liability for any other reason.
- Large increases or decreases in the value of assets, such as investments.
- If you or your spouse receives a large inheritance or gift.
- Changes in federal or state laws covering taxes and investments.
- A family member passes away, becomes ill, or becomes disabled.
- Death or change in circumstance of your executor or trustee.
- Career changes, such as a new job, promotion, or you start or close a business.
- You change your state residency.
- You become self-employed, own a small business, or make changes to a personal business.

Although a skilled estate planning attorney will draft your documents to account for foreseeable changes, there is no substitute for keeping your plan up to date. Failure to do so can lead to litigation among your heirs and unintended consequences. For example, when Michael Crichton, the writer of Jurassic Park, died, his wife was pregnant. Although ill with cancer, he did not update his estate plan to provide for their child. Moreover, his will contained a clause disinheriting any relative not named in the will. After his death, his widow went to court seeking a share of his estate for their child. Crichton's adult daughter from an earlier marriage objected, but his widow ultimately prevailed. If Crichton had revised his estate plan or if his original will had been written to provide for after born children, the litigation could have been avoided and his widow saved the stress of not knowing whether their child would be provided for.

#25. FORGETTING TO UPDATE BENEFICIARY DESIGNATIONS ON LIFE INSURANCE AND RETIREMENT ACCOUNTS.

It is important to review your beneficiary designations from time to time. An experienced estate planning attorney and in some cases an accountant or financial planner should be well versed on helping you align your retirement accounts and life insurance with your intended beneficiaries.

Failing to update your beneficiary forms after a divorce can be a big problem. Depending on the law of your state, some types of beneficiary designations may be automatically cancelled by divorce. In this case, if you don't have an alternate beneficiary, your estate will be the beneficiary, which may be undesirable. See #12 and #13. Other types of beneficiary designations may not be affected by divorce. In this situation, your ex is legally entitled to the asset when you die despite the divorce. The best policy is to update all beneficiary designations after a divorce.

#26. LEAVING A LIVING TRUST UNFUNDED.

One of the principal reasons people choose to include a revocable living trust in their estate plans is to avoid probate. However, if the settler does not transfer all or most of his or her assets (i.e., home, other real estate, bank accounts, etc.) to the trust, probate will still be required. Moreover, if assets are left out of the trust, they cannot be distributed according to the provisions of the trust.

A trust document typically has attached to it a schedule listing the assets to be transferred to the trust. Many people mistakenly believe that the trust document and schedule actually transfer the property. That is not the case. The schedule merely indicates which assets you intend to transfer. To fund the trust, you must still take steps to change the title of the assets to the name of the trust. For real property, this involves changing the property deed. Stocks and bank accounts must be re-titled by the financial institutions where they are held.

Finally, if you have a trust, you should also have a pour-over-will. This type of will ensures that property not in the trust will be "poured over" into the trust when you die so that it can be managed and distributed according to the terms of the trust. However, property that passes to your trust through a pour over will must be probated.

#27. FAILING TO DESTROY PRIOR ESTATE PLANNING DOCUMENTS.

If you have your estate planning documents professionally prepared, they will include language revoking prior versions of the same document. Over the course of your lifetime, you may revoke and replace your estate planning documents several times. Even though the language of the new document revokes the old document, to avoid confusion with multiple documents floating around, you should make sure you destroy all old copies. This can be accomplished by shredding, striking with a pen, tearing, or otherwise.

H. OTHER COMMON OVERSIGHTS AND OMISSIONS

#28. NOT ADDRESSING DIGITAL ASSETS.

Considering how much information we keep on computers and on the internet, estate planning just isn't complete anymore without including digital assets and social media accounts. Do you have a Facebook page, a blog, email accounts? Do you store photos online? Your family would most certainly want to keep these, both for their own memories and, perhaps, for a family legacy. For various reasons, your executor may need access to information stored on computers, hard drives, and online accounts. Unless you make arrangements in advance, family members or administrators may not be able to access these and the information will be lost forever.

Estate planning for digital assets and social media accounts is similar to estate planning for other assets. You need to make an inventory of what you have, name someone to manage the assets after your death, provide that person with access (your login credentials), and provide some direction for what you want to happen to the assets. You can do this in a writing that is separate from your will that you keep in a secure location known to your digital executor. In some jurisdictions, it may be advisable to name a digital executor in your will. But, because your will is public once probated, do not include your list of digital assets and your user ids and passwords in it. Keep them in a separate document.

#29. FAILING TO NAME ALTERNATES.

Your documents should be drafted to ensure that your beneficiaries are clearly identified over several possible scenarios and "what if" situations. If you don't currently have children, but it is a possibility, provide for after born children in your estate planning documents. See #7 and #24 for a cautionary tale. If you leave property and funds to individuals, make sure to list alternate beneficiaries in the event these individuals predecease you. See #7, #12, and #13.

Additionally, you should list alternate executors for your will, trustees for any trusts you establish, agents under financial and medical powers of attorney, and guardians/custodians for minors in case the first individual you name cannot serve or refuses to serve. You want to ensure that you have named enough reliable alternates to carry out the important roles you have defined in your estate plan.

#30. NOT TELLING ANYONE WHERE YOU KEEP YOUR ESTATE PLANNING DOCUMENTS.

One of the biggest mistakes that individuals can make in estate planning is keeping it all secret. If you don't tell your loved ones that you've made an estate plan and where the documents are located, the documents may never be found when you die or become incapacitated.

Proving the existence and terms of a missing or lost will is always time consuming and expensive. It may not even be possible. If the will can't be found or proven, the effect will be as though you died without one. This is what happened to the Olympic gold medal sprinter Florence Griffith-Joyner when she died unexpectedly at the age of 38. The missing will lead to a protracted probate lasting years and a rift between her mother and husband.

If you don't provide your financial agent with a copy of your financial durable power of attorney, or at least tell your agent where to look, he or she will not be able to manage your affairs should you become incapacitated. If you don't provide copies of your health care directives to your doctors, loved ones, and health care agent, they will be forced to guess about your wishes.

Beyond letting your loved ones know where your documents are and/or providing them with copies, you should keep an inventory of your estate. Even with a will, it is very difficult to properly administer an estate if the decedent dies without leaving careful records. Planning your estate includes sharing the necessary information with loved ones, especially those whom you have chosen as executors, trustees, guardians, and agents. A good plan is to summarize all financial and estate planning information every three to six months and make sure that those who will be responsible for administering your estate know where to find your records. If you go through all the trouble and expense to carefully tailor your estate plan to your needs and wishes, it is just as important to make sure that the right people know how to carry out your plan when the time comes.

#31. NOT PLANNING FOR BURIAL OR CREMATION LOGISTICS.

Families are under a lot of stress when a loved one passes. This is even truer when they don't know what your wishes are for the disposition of your remains. When possible, you should include your wishes in your will or trust and your living will or a separate written document. If you put your wishes only in your will or trust, the risk is that the document may not be located and read until after your loved ones have already made arrangements.

You can also pre-pay many of these expenses if you have the resources to do so, or provide that your estate is to pay these expenses before any distributions are made.

#32. NOT PLANNING FOR PETS.

As much as we love our pets, they cannot legally inherit property. Under the law, pets are personal property, not persons. A bequest to your pet is invalid. Since you can't make your pet a beneficiary of your will or trust, what can you do to ensure your pet is provided for after you are gone? There are several options.

First, you can create an informal agreement with someone to care for your pet after you are deceased or can no longer care for the animal and you can simply give the guardian the funds to do so. However, informal agreements cannot be enforced and you will have no way to control how the pet guardian spends the money you give him or her to care for your pet.

Second, you can provide for your pet's care in your will. To do this, you must include a clause in your will that designates who will care for your pet, and leave an appropriate amount of money to that person to provide for the care. However, as with the informal arrangement, the caretaker could spend the money for other purposes. Importantly, a will cannot provide for your incapacity, so alternative arrangements will need to be made should you experience a prolonged hospital stay or become otherwise incapacitated.

Third, you can set up a pet trust. A pet trust addresses periods of incapacity, as well as the death of a pet owner. Through a pet trust, the pet owner can designate exactly how funds should be spent. Moreover, the pet guardian will have a legal responsibility to care for the pet and follow the instructions in the trust. However, the validity and enforceability of pet trusts vary from state to state and a pet trust is a more expensive option than other arrangements.

Perhaps the most famous pet trust case involved Leona Helmsley, a wealthy New York owner of hotels who was known as the "Queen of Mean" for the way she treated her employees. She left $12 million in trust to care for her Maltese lapdog Trouble, while disinheriting two of her grandchildren. Although upholding the trust, a court reduced the amount to $2 million awarding some of funds left to Trouble to the disinherited grandchildren. Until the dog's death in 2011, Trouble lived in the lap of luxury, receiving care totaling $100,000 annually and enjoying a full-time security guard.

Whichever choice you make, be sure to talk to the person you want to care for your pet to make sure he or she is willing to assume the responsibility. If you cannot find anyone who is willing and able to care for your pet, try contacting veterinary schools, animal rescue organizations, and the SPCA to find an adoption program that can place your pet in a new home.

I. RELYING ON THE WRONG PEOPLE

#33. CHOOSING THE WRONG PERSON TO ACT AS YOUR EXECUTOR, TRUSTEE, OR AGENT.

You will need to choose a person to handle the administration of your estate (your executor) or living trust if you have one (successor trustee), and a person to act as your agent under your durable power of attorney. Choosing the wrong person can mean unnecessary delays in settling your estate, fighting among family members, and legal challenges to your will or trust, or to the decisions your executor, trustee, or agent makes. In the worst cases, your estate could be mismanaged and even plundered.

First, you should think about who you will appoint to be your financial agent or the trustee of your trust if you become incapacitated or are found mentally incompetent. Your successor trustee will control the assets in your trust and your power of attorney will control the rest of your finances. Typically, one person does both jobs, but you could appoint different people.

You may choose to appoint your spouse, other family members, a friend, or even a trusted financial advisor. It is important to consider the amount of work involved before placing this burden on your family or friends. Being a financial agent or a trustee can be hard work especially if your estate is linked to many assets or a business. Keep in mind that your documents may also allow these individuals to hire other professionals to assist with the administration of your trust and affairs during your lifetime, for example a CPA to help sort out your taxes or a lawyer to assist in the running of a business.

Second, consider who you want to manage your estate and trust after your death. These could be the same person or persons you selected to hold these roles during your incapacity, or you could make a different choice. The same principles for choosing someone to handle your affairs during your lifetime apply after death. Choose responsible individuals who can handle the complex matters. After your death there may be additional duties and burdens for the executor and/or trustee, such as court and tax filing deadlines.

Do not choose a person who seems to have little interest in handling the work or who has so many other responsibilities that he or she will not have the time. Do not choose someone who is abrasive or antagonistic to your family. You want a peacemaker who can minimize conflict and soothe ruffled emotions.

Finally, avoid anyone with a past history of dishonesty or irresponsibility. If you have the slightest misgivings about a person's trustworthiness, do not choose him or her even if this person is your only child or other close relative who expects to fulfill the role.

Brooke Astor, a wealthy New York philanthropist who died at the age of 105, made this mistake. She gave her only son, Anthony Marshall, control over her estate and welfare, despite having misgivings about him and his wife.

After Mrs. Astor became incapacitated by dementia, her grandson (Marshall's son) grew concerned that his father was neglecting her and looting her estate. He petitioned the court to name another guardian for her. The court removed Marshall and appointed one of Mrs. Astor's close friends to look after her and a bank to manage her estate.

Marshall was prosecuted for grand larceny and convicted of stealing millions from his mother. He did a short stint in jail, but was released because of advanced age and poor health. When he died, he gave the fortune he inherited from his mother (which had been reduced to account for his larceny) to his widow and her children. He disinherited his son, the grandson who had come to Mrs. Astor's aid. Mrs. Astor doubtless would not have wanted this result.

#34. CHOOSING THE WRONG LAWYER TO WRITE YOUR ESTATE PLAN.

Don't choose a lawyer to write your estate plan just because he or she handled your divorce, your son's DUI, or the incorporation of your business. Don't choose a lawyer just because he or she is a friend, neighbor, or member of your church. Find an experienced estate planning attorney that you trust and remember you get what you pay for. The bottom line is that the time and money you spend on the services of a qualified estate planning attorney to create your estate plan will ultimately be well worth it in the long run. The risks are too great not to seek out the most qualified professional.