

# 20 Common Estate Planning Missteps

# 1. Not Knowing What You Want

- Do you recognize these objectives?
  - “Take care of my wife/husband”
  - “Leave everything (equally) to my children”
  - “Do something for charity”
  - “Avoid taxes”
- Your *specific* objectives must be:
  - Considered
  - Chronicled
  - Communicated

## 2. Doing Nothing

- Without a plan, the state will:
  - Appoint a Conservator (lifetime)
  - Appoint an Executor (death)
  - Appoint a Guardian for your minor children
  - Determine the disposition of your estate
- Disadvantages
  - Costly process
    - Time and money
  - Lack of control
    - State intestacy laws may not reflect what you would want

## 3. Incomplete Planning

- Components of an estate plan
  - Beneficiary designations
  - Will
  - Revocable (Living) Trust
  - General Durable Power of Attorney
  - Health Care Power of Attorney
  - Living Will
  - HIPAA Authorization
- Authorization for Disposition
- Marital Agreement
- Irrevocable Trust

## 4. Having Inadequate Documents

- Doing it yourself
- Relying on a relative or friend, the company attorney, etc.
  - Instead, use an attorney who is versed in estate planning
- Assuming your documents are good
  - Look professional
  - Pass the “thud” test

## 5. Naming the Wrong Fiduciaries

- No successors or alternates
  - Widows/widowers
- No successors beyond the current generation
  - Would a professional trustee be appropriate?
- “It is the oldest child’s responsibility”
- Not adjusting for changed circumstances
  - Physical, e.g., health, geography
  - Relationship, e.g., energy, commitment

## 6. Naming the Wrong Beneficiaries

- Identifying specific beneficiaries
  - After-born or adopted children
  - Divorce and remarriage
  - Stepchildren
- Not identifying specific beneficiaries
  - Changes in “spouse” or “children”
  - Are there any children you wish to exclude (or limit)?

## 7. Leaving Decisions to Others

- Fiduciaries
  - I.e., Executors, Trustees, Agents
  - Do you want a successor to be appointed by someone else?
- Beneficiaries
  - Hard-to-divide assets
    - Tangible property
    - Real estate
  - “The kids will figure it out”

## 8. Ignoring Certain Property

- Tangible personal property
  - “Dad wanted me to have that!”
  - Potential tax consequences
- Digital assets
  - User names and passwords
  - Pictures, music, videos, etc.

## 9. Dividing Property Equally

- Splitting the business between “Active” and “Non-Active”
  - Equal ≠ fair
- Splitting assets between family and charity
  - Leaving retirement plans to charity reduces taxes
- Splitting real estate between “Interested” and “Non-Interested”
- Not taking advantage of “redirect” powers
  - General or limited powers of appointment

## 10. Dealing with Probate

- Alternatives:
  - Beneficiary designations
  - Joint Tenancy with Rights of Survivorship (JTWROS)
  - Transfer on Death (TOD)
  - Revocable (Living) Trust
    - Asset management during lifetime
    - Efficiency and privacy after death
- Have you funded your trust?
  - “Pour-over” Will only partially effective
  - Multiple state probate for out-of-state realty

## 11. Commingling Joint Trust Assets

- Joint trusts
  - Administrative convenience
- More common in community property states
  - Must both spouses consent to revoke the trust?
- Potentially problematic in separate property states
  - Who contributed what?
  - What is in each spouse's estate?
  - What is the cost basis of assets when they are sold?

## 12. Using “I Love You” Wills

- Creditors
- Remarriage
- Taxes
  - Federal estate tax
    - Exclusion amount portable
    - Growth included in survivor’s estate
  - State death tax and “GST” tax
    - Exclusion amounts not portable

## 13. Using “A/B” Trusts

- “B Trust” funded with some of deceased spouse’s property
  - Benefits surviving spouse and other family members
  - Avoided forfeiture of deceased spouse’s exclusion amount
    - Prior to 2012
  - No step-up in cost basis upon surviving spouse’s death
    - Capital gains tax on assets sold by children
- Which is the bigger concern?
  - Estate/GST tax
  - Capital gains tax

## 14. Exposing Trust Assets

- Same trustee/beneficiary should be limited to/by:
  - Income
  - Principal subject to an “ascertainable standard”
    - “Health, education, support, maintenance”
    - Not welfare, comfort, best interests
  - Independent trustee or co-trustee
- Principal for support of children
  - Does the trustee/beneficiary have an obligation?

## 15. Distributing Assets Outright

- Examples
  - Immediately to spouse, children, etc.
  - Distributed at certain ages
    - E.g.,  $\frac{1}{3}$  after 25,  $\frac{1}{2}$  after 30 and the balance after 35
  - Can be withdrawn by beneficiary
- Pitfalls
  - Mismanagement
  - Creditors
  - Ex-spouses

## 16. Ignoring Beneficiary Designations

- Types of assets
  - Retirement accounts (IRAs, qualified plans)
  - Insurance contracts (annuities, life insurance)
- Potential problems
  - Long-term trusts established...but assets pass outside of the trust
    - Missed opportunity
  - Trust named as beneficiary...but trust distributes outright
    - “Belt and suspenders”
  - Estate named as beneficiary
    - Probate

## 17. Oversimplifying Beneficiaries

- Naming “the children”
  - RMDs based on the oldest child’s life expectancy
  - Instead,  $\frac{1}{3}$  to Kourtney,  $\frac{1}{3}$  to Kim, and  $\frac{1}{3}$  to Khloe
- Naming “the trust”
  - Is charity a trust beneficiary?
    - No matter how remote
  - Accumulation vs. conduit trust
    - Taxes reduced by paying income to beneficiary, e.g., child

## 18. Owning Life Insurance

- Proceeds generally included in taxable estate
  - \$5.43 million Federal exclusion amount
    - State exclusion amount may be lower
  - Is this a problem?
    - Irrevocable Life Insurance Trust (ILIT)
    - SLAT (“Spousal Limited Access Trust”) alternative
- Gift tax consequences where different owner/insured/beneficiary
  - Keep it simple

## 19. Maintaining Ownership of Other Assets

- Increasing asset values
  - Good problem to have
  - Estate taxes
- Is “ownership” what you want?
  - Income
  - Control

## 20. Failing to Update Your Plan

- Reasons for review
  - Family changes
  - Estate changes
    - Size
    - Character
  - Tax law changes
  - Changed objectives

# 1 More – Lack of Communication

- Surprises = tension
  - We plan in order to minimize surprises
  - Reducing tension can reduce conflicts
    - Happier families
    - Happier clients

## Disclosures

- Robert W. Baird & Co. does not provide tax advice. Please consult with your tax advisor.
- Certified Financial Planner Board of Standards Inc. owns the certification marks CFP<sup>®</sup>, CERTIFIED FINANCIAL PLANNER<sup>™</sup> and federally registered CFP (with flame design) in the U.S., which it awards to individuals who successfully complete CFP Board's initial and ongoing certification requirements.
- Investment Management Consultants Association is the owner of the certification mark "CPWA<sup>®</sup>" and the service marks "Certified Private Wealth Advisor<sup>SM</sup>," "Investment Management Consultants Association<sup>SM</sup>", and "IMCA<sup>®</sup>". Use of CPWA<sup>®</sup> or Certified Private Wealth Advisor<sup>SM</sup> signifies that the user has successfully completed IMCA's initial and ongoing credentialing requirements for wealth advisors.