

## The Estate Planning Advisor

### Top Ten Estate Planning Mistakes – Part II

By Richard J. Shapiro, J.D.

In the last issue of the *Senior Gazette*, I described five common estate planning mistakes. Here are five more:

1. Leaving assets directly to a spouse. Married couples typically leave assets directly to a spouse through an “I Love You” will, via joint ownership of assets, and through beneficiary designations on life insurance and retirement accounts. This common approach may cause a number of unintended consequences, including the loss of a significant estate tax deduction, and the disinheritance of one’s children if the surviving spouse were to remarry.

2. Failing to utilize the estate tax exemption. Under current law, every person may shelter up to \$2 million of assets from the imposition of federal estate tax, and \$1 million of assets from New York state estate tax. However, these exemptions are forfeited if the assets are left directly to a surviving spouse. With appropriate planning, a married couple with assets of \$4 million can leave the full value of their assets to their children free of federal estate tax. If all of the assets pass to the surviving spouse at the first death, no estate tax is owed at this time because of the unlimited marital deduction. Upon the second spouse’s death, under current tax law the estate would be liable for estate taxes of approximately **\$780,000!**

3. Owning large life insurance policies in your own name. Many people believe that the death benefits from life insurance are “tax free.” This is not always the case. If the insurance policy is properly established, life insurance proceeds will pass to the beneficiaries *income tax* free. However, if the decedent is also the owner of the policy, then the full value of the death benefit will be included in the decedent’s taxable estate. For example, if a single individual has \$2 million in assets plus a \$1 million life insurance policy that she owns in her own name, then upon her death, her total estate will be valued at \$3 million. Under current law, the total federal and New York estate tax bill would be \$550,100. If, instead, the policy were owned in an Irrevocable Life Insurance Trust for at least three years prior to her death, the life insurance proceeds would not be included in the decedent’s estate, thereby eliminating the estate tax liability for the life insurance proceeds.

4. Not providing adequate instructions for your children’s guardians. Naming guardians for your minor children is an important task. But do the named guardians know what your preferences would be for your children’s growth and development? A detailed set of instructions can be a useful tool for the guardians and for your children as they grow up. Instructions might include provisions such as providing allowances to children; whether to send the kids to private or religious school; and, whether to fully fund a child’s college education, or require the child to work to pay for some of the cost.

5. Failing to make your health care wishes known. Absent a properly executed Health Care Proxy, no one will have legal authority to make health care decisions for you if you are incapacitated. Under such circumstances, a costly and stressful court proceeding to have a Guardian appointed for you might be necessary.

Also, it is critical that the person you name as your Health Care Proxy know your preferences regarding end-of-life decisions, including whether (and when) to terminate life-support procedures. Such instructions can be contained in a Living Will. It is usually a good idea to provide copies of these documents to both the named agent and your primary care physician.

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