

"The 7 Deadly Estate Mistakes And Easy Ways To Avoid Them"©

"The trouble is, you think you have time" - Buddha

I recently read that 75% of all those who pass away each year leave no written instructions as to how to distribute their estate which is tragic and leaves family members with terrible consequences in the clean-up.

As a result, estates are probated and excessive attorney fees are paid that can be avoided saving time and money.

And, of the 25% that die with estate planning document in place, many of them make mistakes that end up costing their heirs dearly as well.

Why don't people take a few minutes and plan as they should?

Only two possible reasons:

-they don't know the risks

or

-there's no sense of urgency and they wait until it's too late.

How many of these mistakes are you making?

Mistake Number One - Not having something in writing.

Having nothing in writing describing how you'd like your estate settled is called dying in testate.

If you die in testate, you're simply **giving the probate court permission to settle and distribute your estate as they see fit**. Of course each state has established rules that the probate judge for the most part must use as a guideline, but ultimately, if you do nothing, you have made the decision, consciously or not, to settle your estate in the most unpredictable and expensive manner possible.

Mistake Number Two - Not understanding the implications of how you own your property.

Many folks hold all their property jointly, or as "joint tenants". In some cases, this can work out OK, but in many cases, it can be the cause of an expensive mistake.

Unmarried individuals holding property as joint tenants may have to pay double estate taxes. The results for married couples can be equally costly because the surviving spouse does not get the full benefit of the step up in tax basis upon the first spouse's death. In other words, the surviving spouse selling a property held as community property instead of joint tenants could save significant taxes on the resale of the property. Recent case law also allows couples to save significant estate taxes on community property by allowing them to take a 15% valuation discount. Usually the benefit of the added creditor protection for joint tenancy property is far less than the benefits of holding property as community property.

Also, if you are on title with your son or daughter and they have a creditor, that creditor is going to come for half your home, Joint Tenancy is not a well-groomed planning strategy.

Mistake Number Three - Not knowing which estate-planning document to use so you'll avoid probate

Should you use a will or a trust?

A lot of folks don't know that a **will always causes an estate to be probated; period**. **A will is simply a written list of instructions to the probate court.**

If you want to avoid probate, you need to use a living trust.

Mistake Number Four - Not using specific trust strategies to reduce or eliminate estate taxes

Planning for estate taxes today is a bit like trying to hit a moving target. With the estate tax law slated to change 4 more times in the next 7 years, planning to avoid estate taxes is more difficult now than ever.

However, with proper planning and the right strategy, it's still possible to completely avoid federal estate taxes in every instance.

However the key is planning. If you don't take time to analyze your situation, explore your options, and design a game plan, Washington DC will do it for you when you die. And believe me, their way is probably not the best way!

You need to know if you'll need an A/B or A/B/C depending on your circumstances. If you don't know what you need, then you should talk to an expert to assist you.

Mistake Number Five – Not funding your trust

It's amazing to me that **many people go to the trouble and the effort to set up a trust, and then don't take the time to fund it.**

What I mean is, make sure everything is in the trust. We have seen so many expensive plans that were worthless and the client thought they were protected from probate. If the clients had passed away, it would all have been just one big waste of time and expense.

If you don't take this necessary step, all the time and money you spent to set up a trust will be completely wasted.

Mistake Number Six- Ignoring Health Changes

There really are 2 Probates.

The first encounter with Probate occurs while your alive and we refer to it as the "Living Probate." This is when life throws you a curve ball like a stroke (800,000 people suffer one annually and 35% are 45 and under), heart attack, dementia or Alzheimer's.

Things often happen overnight you go to bed, a stroke occurs and you wake up different slurring your speech or unable to move parts of your body.

We recently saw a person at work suffer an aneurysm and had no clue it was lurking in her head and she was never the same afterwards and had to be dragged out to court in a less than tolerable condition so the court could see her during appointment of a conservator over her person and property.

This process is costly, humiliating and creates a public record when it can all be avoided with a simple legal document that keeps things running smoothly even if you are not.

Mistake Number Seven- Procrastinating

This is **likely the biggest and most frequent mistake** people make.

If you want to avoid these outcomes, you need to take a little bit of time out of your schedule and plan.

The truth is with proper planning almost anyone can dramatically improve their estate plan.

Due to the complexities of estate planning and the many changes slated to occur, it's extremely difficult to explain each application of these strategies here in print.

While one client may be able to benefit from a strategy by using it one way, another client may be able to benefit from a different application of the same strategy. It is our experience that people and their finances are like snowflakes; no two are alike.

If you would like more information on estate, retirement or business planning please give us a call at:

The Law Office of James Burns

James Burns, Esq.

J.D., LL.M., (2 law degrees)

Attorney-at-Law

Veteran - USMC 1981-87

Law Office of James Burns

6B Liberty, Suite 130

Aliso Viejo, CA 92656

PH: (949) 540-6730

Fax: (714) 464-4448

www.jamesburnslaw.com

www.oc-estateplanners.com