

Common Estate Planning Mistakes

Loss of Spousal Exemptions

Many married couples fail to have their Wills crafted properly by providing for a disclaimer trust option for the surviving spouse. Although every individual is entitled to the federal estate tax exemption and Maine estate tax exemption (as of January 1, 2016 both were set at \$5.45 million per person), a disclaimer trust or proper credit shelter trust should be incorporated in the Will in order to take advantage of each spouse's exemption amount. Under either trust, the surviving spouse continues to receive the income, and if needed, the principal from the trust, and the children inherit the money left in the trust when the spouse dies, with little or no estate tax due.

Bad Beneficiary Designations

People often spend hundreds or thousands of dollars for their estate planning documents but pay virtually no attention to their beneficiary designations under their IRA, pension plan, or life insurance policy. These days the IRA and/or 401k control the bulk of the liquid assets for many people, and these assets are not controlled by the Will but rather by the beneficiary designation forms the owner of the account filled out. It is important to review these forms on a regular basis to confirm whether the owner should complete a new form to change how these assets will flow at death.

Titling of Assets Incorrect

Too often, couples do not hold title to their assets correctly. Most couples may benefit by owning assets as joint tenants, if they want the survivor to own all the assets. For those who prefer to opt for establishing a living trust during their lifetime, it is important to follow through and transfer solely owned assets with no beneficiary designations into the trust as soon as possible.

Trust Propaganda

While creation and establishment of living, or revocable, trusts may be a worthwhile option for some, it is not the "magic wand" that many think. Living trusts do not automatically reduce taxes nor do they automatically protect assets from creditors or MaineCare. In fact, if a person's residence is titled in a trust, it becomes a countable asset as far as the state is concerned for purposes of MaineCare qualification and can make the applicant for such benefits ineligible. In Maine, probate is a very simple and relatively inexpensive process, so, unlike many other states where probate is costly, avoiding probate is not an important aspect of the estate process for most people.

On the other hand, if a Maine resident owns real estate outside of Maine, it can often be worthwhile to put such real estate into a living trust. And, anyone who resides elsewhere but

owns real estate in Maine should consider a trust as an option as well. This can assist with avoiding the need to file for probate in more than one state.