

The Weekly Scenario: Three Common Estate Planning Mistakes

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Estate planning attorneys frequently see certain common mistakes in an estate plan. Here are the three estate planning mistakes that you should be able to easily avoid.

Naming Minors as Beneficiaries

Beneficiary designations are a simple way to avoid probate and be certain that an asset goes to your beneficiary at death. Most life insurance policies, retirement accounts, investment accounts and other financial accounts permit you to name a beneficiary. Many well-meaning parents and grandparents name a child or grandchild as a beneficiary. However, a minor is not permitted to own property. Therefore, the financial institution will not name the minor child as the new owner. A guardian or conservator must be appointed by the court to receive the asset on behalf of the child and they must hold that asset for the minor's benefit until the minor becomes of legal age. The guardian must file annual accountings with the court reflecting activity in the account and report on how any funds were used for the minor's benefit until the minor becomes a legal adult. The time, effort, and expense of this are unnecessary and should be avoided. Handing a large amount of money to a child the moment they become of legal age is rarely a good idea. Leaving assets in trust for the benefit of a minor or young adult, without naming them directly as a beneficiary, is a possible alternative.

Adding Joint Owners to Bank Accounts

It seems like a good idea. Adding an adult child to a bank account, allows the child to help the parent with paying bills if hospitalized or lets them pay post-death bills. If the amount of money in the account is not large, that may work out okay. However, the child is considered an owner of any account they are added to. If the child is sued, gets divorced, files for bankruptcy or has trouble with creditors, that bank account is an asset that can be reached. This concept also applies to houses and other property that is owned jointly.

Joint ownership of accounts after death can also be problematic if your will does not clearly state what your intentions are for that account (and even if they do, it could still result in a contest). Do those funds go to the joint owner, or should they be distributed between heirs? Analytical estate planning, that includes power of attorney and trust planning, will permit access to your assets when needed and division of assets after your death in a manner that is consistent with your intentions.

Poor Choices of Co-Fiduciaries

If your children have never gotten along, don't expect that to change when you die. Recognize your children's strengths and weaknesses and be realistic about their ability to work together when deciding who will make financial decisions under a power of attorney, health care decisions under a health care proxy and who will best be able to settle your estate. If you choose people who do not get along or do not trust each other (and never will), it will take far longer and cost more to settle your estate.

As always, if you have any questions or would like to learn more, please contact Steve Shane at sshane@offitkurman.com or [301.575.0313](tel:301.575.0313).