

Avoid These 10 Most Common Estate Planning Mistakes



TOP
10

AVOIDABLE
ERRORS



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The team from Theus Law Offices works with people from all walks of life. While everyone has varied needs and desires, it can universally be said that the failure to plan for matters related to incapacity or death is in effect planning to fail.

More often than not, we see people who have made well-intentioned mistakes with their estate planning. It is our hope that by being cognizant of these correctable errors, you can avoid (or help your loved ones avoid) significant inconvenience, stress, expense and disappointment. So, here are the ten most common estate planning mistakes:



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ESTATE PLANNING MISTAKE:

01

Procrastination

While no one really wants to reckon with their own mortality, thoughtful preparation for what will occur after your death is one of the most important things you can do to ensure your personal and financial affairs will be handled properly. The good news is that once you have a properly designed estate plan in place, you can rest easy knowing that you have taken care of your responsibilities to others and — everything you own and everyone you love will be protected.



ESTATE PLANNING MISTAKE:

02

Not updating your estate plan.

Change is the only constant in life. Many changes will occur within a family or business structure, including birth, marriage, divorce, death, incapacity, graduation, career change, business evolution, new property acquisitions, change of financial circumstances, and retirement. We recommend that you review your estate plan at least every three (3) years, or at any life changing event, to ensure the assets you leave behind are given to those you love and that your personal and financial affairs remain in order. Theus Law Offices offers a complementary estate planning review as a service to our clients.



ESTATE PLANNING MISTAKE:

03

Misuse of “canned” documents.

Beware of documents prepared by “trust mills” or other non-lawyers. Beware of any document you download from the internet or purchase at the office supply store. Only a licensed Louisiana lawyer can give you proper counseling regarding your estate plan to ensure your wishes are carried out with minimal expense and inconvenience. Due to the proliferation of bad forms, courts are now quick to annul a will that fails to comply with the particular requirements of Louisiana law. Having successfully litigated numerous will contests, it is “penny wise and pound foolish” to entrust anyone other than a qualified Louisiana estate planning attorney to prepare your estate plan.



ESTATE PLANNING MISTAKE:

04

Failure to coordinate non-probate assets and over-use of “pay on death” accounts.

The distribution of life insurance, annuity and retirement proceeds simply must be coordinated with the entire estate plan to avoid unintended results and provide estate liquidity, where necessary. Non-probate assets are not considered part of a probate estate in Louisiana, so a valid last will and testament does not control disposition of these assets. Testamentary intent can easily be frustrated by failing to take into account and coordinate non-probate assets in Louisiana.

In a medium or large size estate, holding significant assets “...with rights of survivorship” or “pay on death”, potentially thwarts the overall plan and increases taxes. This should only be done where the particular circumstances have been analyzed and there is specific legal advice to do so. This mistake is exacerbated if the surviving spouse accidentally waives the right to disclaim these assets by exercising ownership over them prior to consulting his or her tax advisors. Consult with a qualified estate planning attorney about how to hold your accounts and again immediately after a death.

ESTATE PLANNING MISTAKE:

05

Failure to plan for blended families and other contingencies, such as people dying “out of order.”

“I won’t have any trouble with my husband’s kids when he dies--I get along great with his kids.” Please, don’t count on it! Unpleasant dynamics emerge even in the best of families. Successions tend to bring out undesirable character traits and unresolved issues in most people. Plan for the worst and then hope for the best.

All governing documents (including the will and all beneficiary designations on retirement assets, annuities and life insurance policies) should cover contingent situations such as a predeceasing spouse or children. If minors or incapacitated persons could conceivably inherit, a trustee or custodian should be named.

Tutors / guardians should be nominated for minor children.

Overuse of the simple “I Love You” plan which leaves all assets to the surviving spouse may increase the taxes ultimately paid by the family by hundreds of thousands of dollars. On the contrary, utilizing a tax-sensitive will or trust could preserve the tax-free amount and result in significant tax savings. Tax laws are constantly changing, so even if your estate is under the current value threshold subject to Federal estate tax, it is always best to plan for that contingency, especially in this volatile political climate.



ESTATE PLANNING MISTAKE:

06

Overuse of living trust planning when no real need for a trust exists.

A Living Trust can be a useful tool, but is not a magic elixir. Living Trusts (also known as Revocable Trusts) can be expensive to prepare and often are more expensive than a probate. Proper funding of the Living Trust is vital and often overlooked, which defeats the purpose of a Living Trust in avoiding probate. The cost and administrative burden of the probate process tends to be greatly exaggerated. Laws allowing for independent estate administration minimize probate expenses for most Louisiana residents who utilize this procedure. A Living Trust is no longer necessary to maintain privacy due to the enactment of a new law in 2017. While a Living Trust can be useful for certain purposes, most Louisiana residents do not really need a Living Trust.

Living Trusts can be useful in limited circumstances, such as preserving the characterization of assets, avoiding ancillary probate in another state, or as part of a comprehensive asset protection plan. Living Trusts provide zero asset protection or tax benefits alone, but in conjunction with other devices, can be useful in toggling control or effecting a relatively quick transition of assets across state lines or into more protective entities. Beware of promoters and always seek a second legal opinion on the need for a Living Trust.

ESTATE PLANNING MISTAKE:

07

Failure to consider the impact of community property laws.

Unless the property on hand at the termination of a marriage in Louisiana can be proven to be the separate property of one of the spouses, it is presumed community property. This is true even if the property is held in the name of only one spouse. This can dramatically impact the dispositive plan. Surviving spouses can be left destitute. Children can be effectively disinherited. Disputes regarding the character of property are commonplace and expensive. Failure to consider, change or preserve the character of property in Louisiana can disrupt the best laid estate plan.

ESTATE PLANNING MISTAKE:

08

Failure to plan for potential incapacity.

A durable power of attorney will allow you to select in advance who will handle your financial affairs in the event of your later incapacity. Likewise, a medical power of attorney will allow your selected person to arrange for medical care if you become incapacitated. Failure to have these two documents could mean a curatorship or guardianship would be necessary. If you do not want to be kept alive on life support if your condition is terminal or irreversible, a directive to physicians should be considered.

ESTATE PLANNING MISTAKE:

09

Putting a child's name on a deed or account, or using a Medicaid Asset Protection Trust.

If you need to divest yourself of assets for some reason, create a plan that allows you to maintain control of your assets in the event you need continued access without having to negotiate with your child or any other person. Assets transferred to a child during life are subject to the claims of creditors of the child, which puts your financial security at risk if you need continued access. When you put a child's name on a deed, you are making a taxable gift. The child will not receive a step-up in tax basis for any asset received as a lifetime gift, which can be costly if the asset is later sold by the child. Conversely, assets received by way of an inheritance receive a step-up in tax basis, which means they can be sold tax-free.

Beware of Medicaid Asset Protection Trusts, which are designed to qualify an individual for public long-term care benefits. These trusts are "income only" trusts, which specifically preclude access to principle. If assets are insufficient to produce a large enough income stream, a settlor can find themselves in a very uncomfortable financial situation. Theus Law Offices has developed a proprietary alternative to a Medicaid Asset Protection Trust that allows continued access to principal in the event of financial need without rendering such assets "countable" for purposes of qualifying for Medicaid.

ESTATE PLANNING MISTAKE:

10

Choosing the wrong attorney and not discussing Asset Protection.

An experienced estate planning attorney can provide you with strategies based on the particular needs and demands of your estate. Beware of “trust mills” and other promoters who use scare tactics and sales techniques to “sell” rather than “advise” a client.

Many attorneys claim to provide Asset Protection services, however, there are very few attorneys with the resources and capabilities to provide effective Asset Protection. In selecting an estate planning attorney, you should look for an attorney who also specializes in Asset Protection in order to provide you with the most advanced tools and advice for protecting yourself and your family. This is particularly important in Louisiana where virtually anything, including your home, can be seized and sold to satisfy claims.

At Theus Law Offices, we use the most trusted and tested Asset Protection tools available, and our clients are guided by the nation’s top Asset Protection attorneys and experts, which include J. Graves Theus, Jr. In addition to being a certified specialist in Estate Planning & Administration, as well as Tax, with over 20 years of experience, J. Graves Theus, Jr. is the only certified specialist in Louisiana who is also licensed to practice law in the State of Alaska — the first state in the United States to adopt domestic asset protection legislation and universally considered a top-tier Asset Protection jurisdiction. As such, Theus Law Offices is uniquely qualified to offer estate planning with integrated Asset Protection solutions of the highest caliber.

