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Estate Planning Truths: Estate Planning Blunders You Cannot Afford to Make and Debunking Estate Planning Myths

Presented by
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Estate Planning & Business Law

- Estate Planning
- Probate & Trust Administration
- Business Succession Planning
- Asset Protection
- Charitable Planning
- Business Law
- Entity Formation
- Employment Law
- Mergers & Acquisitions
- Real Estate

Presenter



Paula Clarkson Chamberlain

Paula Clarkson Chamberlain is a founding partner and head of Merhab Robinson & Clarkson's Estate Planning practice. She primarily practices in the areas of estate planning, probate, trust administration, and conservatorships.

Common Blunders



1. Lack of healthcare planning

Most deaths occur in hospitals or other healthcare facilities, where many patients near the end of their life are unable to make or communicate their decisions.

Without a plan, families and providers can be left guessing. Advance Healthcare Directives outline your preferences for end-of-life care, donation of organs, and disposition of remains. Advance Healthcare Directives appoint a trusted person to make decisions on your behalf when you cannot.



2. Health Insurance Portability and Accountability Act (HIPAA) privacy lockout



If incapacity leaves you unable to communicate, family members, even your spouse, may be unable to access your medical records or talk to your doctors because of HIPAA privacy rules. Signing a HIPAA authorization form ensures that the people you choose can access your medical information.

3. Failure to appoint financial decision-makers

There may come a time when you need someone to manage your financial and legal affairs, either because you are incapacitated or simply unavailable for a specific transaction.

A financial power of attorney, trust, and will allow you to appoint a trusted person to act on your behalf, ensuring that bills are paid and important matters are handled without the need for court intervention.



4. No will or trust

Without proper planning, your estate may be held up in the often long, public, and costly probate process for months or even years after your death, at a great emotional and financial cost to your family.

If you have no will, a judge will apply the state's statutory default distribution plan to determine who will receive an inheritance from you and how much they will receive. This plan may not match your wishes.

Even with a will directing where your assets go, probate is still required. The CA probate threshold is \$208,500.



5. Lack of attention to digital assets



In this day and age, we can't overlook the digital world. Without a plan for your digital assets (such as digital photos, cryptocurrency, nonfungible tokens, social media profiles, content creation accounts, and accounts associated with e-commerce businesses) your loved ones may lose access to critical documents, photos, memories, and other important family records. They may also be unable to access any bank accounts or money associated with or generated by your digital assets or accounts.

These accounts can be managed by your agent under your Power of Attorney (which ends at your death) and the Trustee of your Trust provided they are assigned to your trust.

6. Failure to anticipate children's possible future divorces, creditors, or lawsuits

Although it is not fun to consider, if your children divorce, rack up massive debt, or are sued at some point in the future, their inheritance could be lost and end up in the hands of unintended people. A trust can help protect your legacy and your children's inheritance.

With a trust, you can structure how your children receive and control their inheritance.

7. Wasted individual retirement account (IRA) funds

Generally, retirement account beneficiaries have the option to receive funds in a lump sum which can result in a massive income tax bill or stretch the payment out over a period of 10 years. Unfortunately, when you are gone, you don't control which option is chosen.

Other options for retirement plans for tax planning purposes are charities (to avoid income tax on distribution), naming your revocable trust as beneficiary with special language and designations to allow your Trustee to make the choice on distribution option. Additionally, a standalone retirement trust, sometimes called an IRA trust, can help safeguard retirement funds from premature or imprudent withdrawals as well as from beneficiaries' creditors and financial predators while still ensuring that those assets are available to support your beneficiaries.

8. Chaotic record-keeping



Proper planning ensures that your loved ones do not spend months or years trying to piece together your finances or interpret your wishes. A comprehensive estate plan helps you organize your finances and create a clear system for keeping your important documents, financial information, and instructions about your wishes in one place, readily accessible to your loved ones when they need them most. Some things that can help:

- Clean out and dispose of old financial documents
- Keep an updated list of current assets and beneficiaries
- Keep a list of your online passcodes so that ebills and documents online can be accessed

9. Failure to consider a surviving spouse's remarriage, creditors, and predators

If your surviving spouse remarries, your estate could end up in the hands of people you never intended. Likewise, if your surviving spouse is victimized by financial predators, your family may discover too late that your legacy is gone. A trust can help protect your money after you are gone.

10. Family feuds over sentimental items

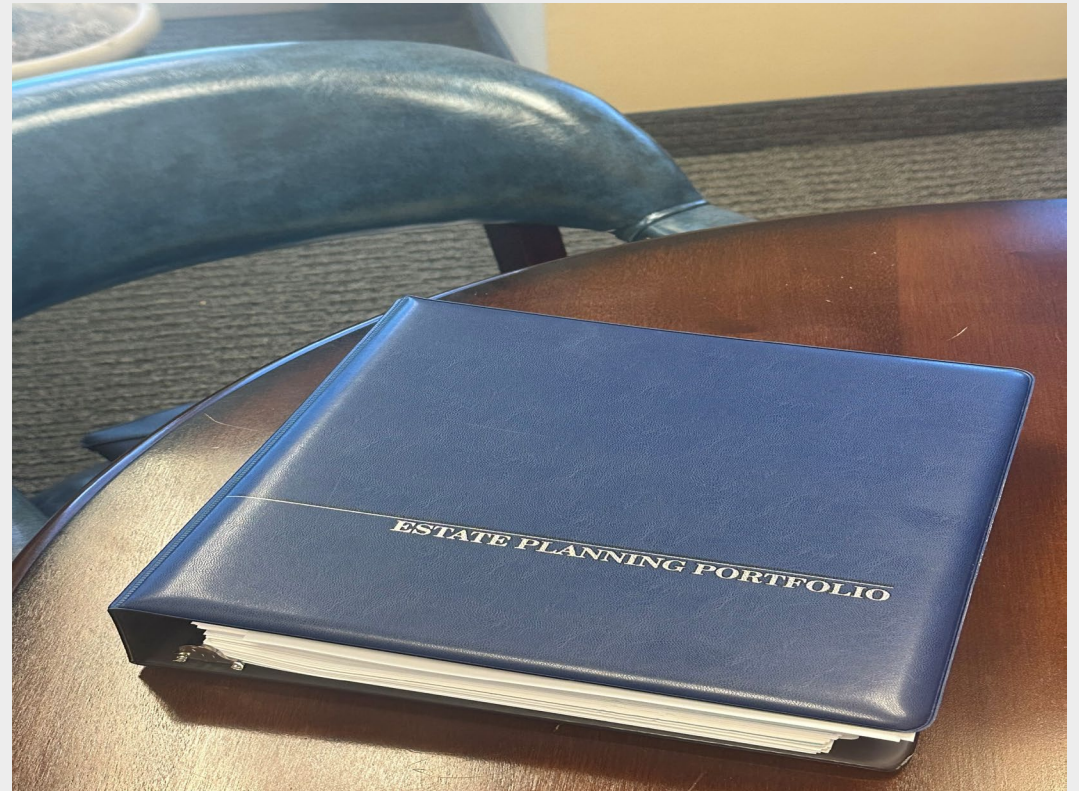
Sometimes fights are not just about money. Feuds and infighting among your loved ones can occur over items that have little monetary value but high sentimental value. In addition to the financial accounts, your plan should include careful consideration of important family items.

You can help avoid such conflict with a personal property memorandum that lists who gets special items such as artwork, family heirlooms, and jewelry. You may also consider giving away items during your lifetime at holidays and special events (graduations, weddings) so you make sure the correct person has the item and you can watch them enjoy it.

11. Outdated estate plan

Does your estate plan reflect your current circumstances, goals, and needs? Have you, your beneficiaries, or your trusted decision-makers had any major life changes (such as getting married, having a child, passing away, divorcing, receiving an inheritance, or moving to a different state)?

A comprehensive review ensures that your estate plan reflects current laws and tax rules and carries out your wishes based on your and your loved ones' lives today.



It's myth-busting time!

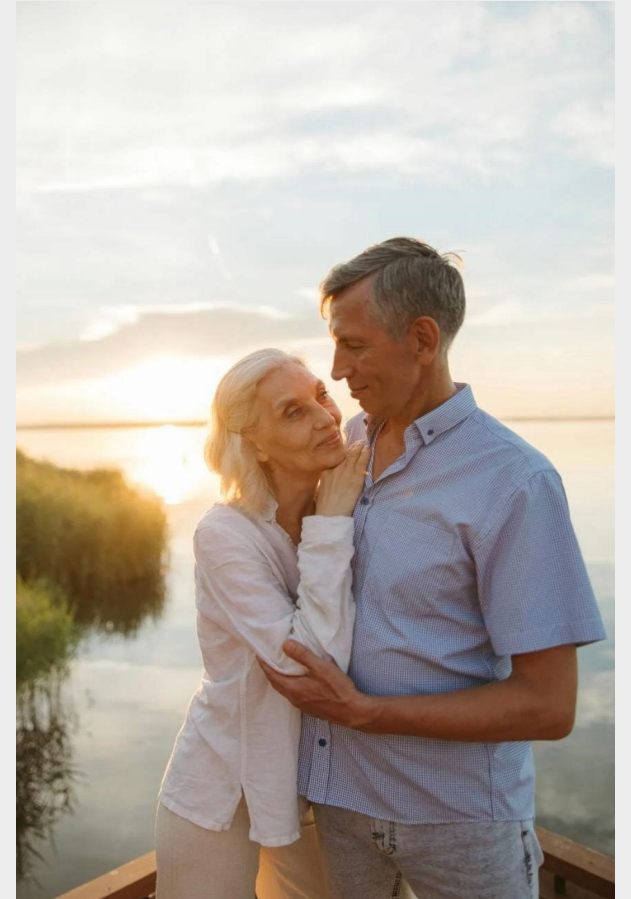


Myth #1:

My spouse can make all my healthcare and financial decisions because they are my spouse.

Reality: This is a dangerous misconception that can lead to significant stress and financial hardship for your family. While your spouse has certain rights, they generally do not automatically have the legal authority to make all medical decisions or manage all your financial accounts if you become unable to manage your affairs (i.e., become incapacitated).

Proper planning ensures that your spouse or another trusted individual you choose has the immediate legal authority to act on your behalf and honor your wishes without court involvement.



Reality

Medical Decisions: Your spouse may be unable to access your medical information, direct your care, or make critical end-of-life decisions without a medical power of attorney (also known as a durable power of attorney for healthcare) and an advance directive. Without these documents, a court may need to appoint a guardian or conservator in a public, costly, and time-consuming process.

Financial Decisions: Similarly, your spouse could be locked out of accounts in your sole name, unable to pay bills or manage investments without a financial power of attorney. This can prevent timely financial management and even payment of day-to-day expenses. As with medical decisions, a court may need to appoint a guardian or conservator before your spouse can access these important accounts.

Myth #2:

My family knows my wishes. They'll never fight about it.



Reality: While your family may genuinely intend to honor your verbal wishes, discussions about your affairs carry no legal enforceability without proper legal documentation. After your death, without a legally binding plan, your estate may be distributed according to your state's intestacy laws, which may not necessarily be what you intended. This could lead to some undesirable outcomes.

A comprehensive estate plan is the only way to legally ensure that your estate is passed on as you intend, protecting your legacy and providing clear guidance for your loved ones.

Reality

Unintended Beneficiaries



If you rely on the state's default distribution plan, your money and property could go to distant relatives rather than close friends, stepchildren, or other nonrelated loved ones.

Family Disputes



Even well-meaning family members can disagree on what your true wishes were, leading to bitter conflicts and costly litigation that depletes your hard-earned money and property.

Loss of Control



Without a last will and testament or revocable living trust, you have no say regarding who inherits your money and property and how they receive it, who will raise your minor children, or who will be in charge of winding down your affairs.

Myth #3:

I already created an estate plan, so I'm done, right?

Reality: Life shifts, laws change, and your goals evolve over time. An outdated estate plan can be just as detrimental as having no plan, so be sure to review your estate plan regularly. A comprehensive review of your estate plan every three to five years or after any major life event is crucial for ensuring that your estate planning tools still reflect your wishes, minimize taxes, avoid probate, and align with current legal requirements.

You should also review your estate plan whenever significant life events such as the following occur.



Big Life Changes

Family changes. Such changes include marriage, divorce, remarriage (yours and your children's), birth or adoption of children or grandchildren, and deaths of beneficiaries or trusted decision-makers (for example, agents under a financial or medical power of attorney, executor or personal representative, or guardian of your minor children).

Financial changes. In addition to seeing significant increases or decreases in the value of what you own, you may have purchased or sold real property or businesses, experienced changes in your retirement accounts, or received an inheritance.

Location changes. Moving to a different state or country can dramatically impact the validity and effectiveness of your existing estate planning tools, as state and country laws can vary widely.

Tax law changes. Estate, gift, and income tax laws constantly evolve at federal and state levels, potentially affecting how your money and property will be distributed, how they will be taxed, and how much a beneficiary may ultimately .

Changes in goals. Your philanthropic desires, legacy goals, or wishes for specific personal property, accounts, or real property may shift over time. Your estate plan should reflect that.

Myth #4:

I'm not rich enough to need an estate plan.

Reality: This myth is perhaps the most dangerous. Almost everyone, regardless of their net worth, can significantly benefit from thoughtful estate planning. While an estate plan certainly addresses your financial accounts, estate planning encompasses far more than just money.

Estate planning is about taking control, ensuring that your wishes are honored, and providing peace of mind for you and your loved ones, no matter what you own.

CA Probate Threshold \$208,500



Why everyone needs a plan

Protecting your children. If you have minor children, a will is the primary legal document for nominating a guardian to care for them if something happens to you. Without one, a court will decide who will raise your children—without your input—often through a public and potentially contentious process.

Caring for pets. You can ensure that your beloved pets are cared for after you have passed away or during a time when you cannot care for them.

Distributing sentimental items. A personal property memorandum can specify who receives your cherished family heirlooms, artwork, or other nonmonetary items, which can help prevent family squabbles.

Planning for your incapacity. A comprehensive estate plan allows you to name trusted individuals to manage your finances, make medical decisions, and carry out your wishes without the delays and expenses of court involvement if you become incapacitated. Such protection is valuable regardless of how much money or property you own.

Q&A

What myths of your own do
you want to debunk?





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