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TEN BIGGEST ESTATE PLANNING MISTAKES

For twenty five years as a practicing attorney, Arthur Skarmeas has helped people plan their estates so that their assets are maximized, preserved and left to the people that they want in the way that they want. It has become clear, however, that certain mistakes are repeated many times over. The failure to take certain actions in a timely manner has, in some cases, resulted in the loss of hundreds of thousands of dollars, and/or needless family discord and suffering.

1. FAILURE TO DO ANYTHING

Statistics show that the majority of people in this country actually do not take any steps to plan their estate. The reasons for this vary. The same statistics tell you that the majority of these individuals actually plan to plan – they just never get around to it. The reasons are numerous, but most often it simply gets moved to the back burner or people just do not want to talk about the subject (even though they know it is something they should be doing). Others are put off by the cost. The bottom line is that the planning process really doesn't take much time (a few hours) and really isn't all that costly (and in the long run may save you much, much more than you will ever pay to set up a proper estate plan).

2. FAILURE TO PLAN BECAUSE YOU THINK YOU ARE TOO YOUNG OR DO NOT HAVE ENOUGH ASSETS

It is not only about money; it is also about children. One of the most upsetting scenarios to witness is where parents with young, school aged children are killed in an accident, or a single parent passes away because of an illness. What happens to the children left behind? Every parent with minor children should have - at the very least - a Will that specifically designates who is to be the guardian of their children, and a family trust that designates the manner in which the estate assets will be managed for the children.

3. FAILURE TO FULLY PLAN – NOT JUST THE SIMPLE WILL

A proper estate plan should include much more than the simple Will – it should also include a Durable Power of Attorney, Health Care Proxy, Living Will and, in most cases, at least a basic Family Trust.

4. FAILURE TO KNOW THE VALUE OF YOUR ESTATE

People are often surprised, when we review their assets, at how much they are leaving their family members and other heirs. Knowing the value of your estate is important from both a planning perspective, if there are young children, and from an estate tax point of view if the assets exceed the estate tax threshold. Mistakes in this area can cost you hundreds of thousands of dollars.

5. FAILING TO REVIEW PREVIOUSLY EXECUTED ESTATE DOCUMENTS

It is great to finally sit down and execute your Last Will and other necessary estate documents, but this doesn't mean you never have to worry about these issues again. A recurring problem is when a family member executed a Will decades ago and never bothered to look at it again. Life changes; relationships change so you should examine your estate documents at least every 3 to 5 years to make sure that what you have in writing is what you want. Once completed, these documents control your estate, until you change them again.

6. FAILING TO PLAN EARLY ENOUGH FOR LONG TERM CARE

Medicaid Planning is what we refer to as the “best use of assets” to allow you to preserve as much of your life's earned assets as you can and still qualify for Medicaid or Mass Health benefits should you need a nursing home. The cost of a good nursing home in our part of the state can easily exceed \$10,000.00 per month. You can effortlessly spend more than a quarter of a million dollars in just two years on nursing home care (and the average length of stay for a nursing home – should you need the care – is 2.4 years). By planning early to avoid the legal look back periods you can save a large portion of your assets for your family members.

7. FAILURE TO USE ASSETS TO PURCHASE “NON-COUNTABLE” ASSETS

If you believe that you or a family member might need nursing home care in the foreseeable future then you should use your assets for the purchase of “non-countable” assets. One example is to prepay funeral and burial expenses. It is something that you will be paying for, so why not do it in a way that helps you in qualifying for nursing home benefits and in the overall planning of your estate.

8. FAILURE TO EXAMINE LONG TERM CARE INSURANCE OPTIONS

In many cases, especially where you have substantial assets, it is wise to invest in a good long term care insurance policy. These policies cover the cost of nursing homes and may also, depending upon the coverage that you choose, pay for home care or assisted living arrangements. Medicaid does not – for the most part – cover care other than the nursing home – so not only do you save your assets, but you also can get the type of care that you want where you want.

9. FAILURE TO CHANGE THE METHOD OF OWNERSHIP OF THE PRIMARY RESIDENCE

As you get older, it some times makes sense, from both a general estate planning standpoint and a Medicaid planning perspective, to change the way that you own your home. There are several options that might make sense. You may use a Trust, or perhaps a Life Estate Deed to children. It could save thousands of dollars and also make the transfer of the property to your heirs much easier.

10. FAILURE TO HAVE SUFFICIENT LIFE INSURANCE

Depending on your stage in life – life insurance may be a necessity for proper planning. If you have a young family with an expectation of substantial child rearing and educational expenses, such insurance is an absolute necessity. If you are older and have substantial assets, then life insurance, held in an Irrevocable Life Insurance Trust, may significantly reduce the effect of estate taxes on the amount that you leave to your children.

Because every person’s circumstances are different, what is right for one person may not be right for the other. That is why it is imperative for everyone who is concerned about how his or her property will be passed on should spend a few hours with a qualified attorney, and perhaps other professionals in related fields, to make sure that everything is in order. It takes surprisingly little time. And, when considering what is at stake, it is truly a cost-effective and worthy investment.

When you have completed the process you will have peace of mind. You will know that what you have worked for all of your life will benefit those whom you wish to benefit. You will also take the burden off those whom you leave behind and help them avoid long, drawn out and costly processes that sometimes result in unexpected bitterness among formerly friendly family members.