

Common Elder Law Planning Errors

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As we have discussed in this column before, it is so important for seniors to address their elder law planning needs at the earliest possible point in time. However, it is equally as important to make sure that the planning is done properly. Over the years, we have seen many mistakes made by seniors. Some of them are listed below:

- **Lack of or inadequate disability planning.** Many seniors fail to plan for the management of their financial and medical affairs if they become incapacitated. Others rely on inadequate or incomplete plans, such as joint bank accounts. A customized durable power of attorney and an advance medical directive should be parts of the estate plan of every senior.
- **Long-term care is extremely expensive.** Staying at an assisted living facility costs approximately \$50,000 per year; residing in a nursing home can cost in excess of \$150,000 per year. Of course, long-term care insurance should be considered by all who can afford it and who are insurable. However, many seniors do not fall into either category and must seriously consider Medicaid planning.
- **Outdated wills and beneficiary designations.** Many people fail to regularly review and revise their estate plans. They frequently have wills or beneficiary designations for life insurance policies or retirement plan accounts that are outdated. Seniors should review their wills and beneficiary designations whenever there has been a significant change in their circumstances and at least every three to five years.
- **Poor choice of agent, trustee or executor.** The choice of an agent under a power of attorney and an advance medical directive, a trustee of a trust, or an executor of an estate is an important decision. Many people chose an agent, trustee or executor for the wrong reasons. For example, they chose their oldest child or the child who lives closest to them, however, they fail to consider whether this child has the ability, the time, or the respect of other family members, and the willingness to serve. In some cases, it is wise to appoint co-agents, co-trustees, or co-executors. In cases where members of the family are not getting along or there are other complex issues, it may be wise to appoint a professional to serve as agent, trustee or executor.
- **Lack of adequate records.** Many seniors fail to keep organized records. This failure makes it difficult to assist them if they become disabled, or to settle their estates upon their deaths. They do not have or can not find the deeds to their real property, copies of their income tax returns, life insurance policies or bank statements. Seniors should maintain complete and organized records.
- **Overuse of revocable trusts, joint ownership or beneficiary designations.** Many seniors fear probate. As a result, they seek to avoid probate by executing revocable trusts, creating payable on death accounts and retitling assets jointly with the right of survivorship. However, the consequences of setting up these types of accounts are often misunderstood. In many cases, an estate can be settled quickly and can provide for a convenient means to liquidate illiquid investments

and provide for the payment of burial expenses, debts and taxes. For many seniors, a will is the better choice.

- **Failure to hold a family meeting.** Many family disputes can be eliminated or the damage minimized if the senior would hold a family meeting to discuss his or her estate planning objectives and the terms of his or her estate planning documents.
- **Inadequate financial planning.** Many seniors have accumulated diverse investments over their lifetimes. Frequently they hold these investments in accounts at several financial institutions without an overall investment plan and without adequate reporting of investment returns. It is generally a good idea for seniors to retain a financial planner to assist them in determining the appropriate level of investment risk to assume and to develop an asset allocation to maximize the investment return based on the assumed level of investment risk. The financial planner can also assist the senior in consolidating his or her investments and obtain improved reporting of investment returns.

Prior planning is important. There is no one right answer or form that is appropriate for everyone. An experienced elder law attorney can help seniors avoid these common estate planning errors.