

Common Estate Planning Errors

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The following are common and serious estate planning errors made by seniors:

- **Lack of or inadequate disability planning.** Many seniors fail to plan for 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 advance medical directives should be parts of the estate plan of every senior. In some cases, a revocable living trust should be used in addition to the power of attorney and the advance directive.
- **Failure to plan for the payment of long-term care.** Long-term care is extremely expensive. Staying at an assisted living facility can cost in excess of \$50,000 per year; residing in a nursing home can cost more than about \$125,000 per year. Every senior should consider long-term care insurance if they can not pay for their long-term care out of their income. If they can not afford or qualify for long-term care insurance, then they should consider Medicaid planning.
- **Outdated wills and designations of beneficiaries.** Many people fail to regularly review and revise their estate plans. They frequently have wills or designations of beneficiaries for life insurance policies or retirement plan accounts that are at least 20 years old with outdated dispositions of their assets. Seniors should review their wills and designations of beneficiaries whenever there has been a significant change in their circumstances and at least every five years.
- **Poor choice of agent, trustee, or executor.** The choice of an agent under a power of attorney, a trustee of a revocable 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 closet to them, however, they fail to consider whether this child has the ability, the time, or the respect of other family members to serve adequately. It is important to pick a person who has the respect of other family members and has the time, the ability, and the willingness to serve. Frequently, it is wise to appoint co-agents, co-trustees, or co-executors. In cases where members of the family

are not getting along or are scattered geographically, 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 and retitling all of their assets into their trusts.** In many cases, the cost and effort of establishing, funding and administering these trusts exceeds the savings in time and the cost of probate. In New York, the probate fees are relatively modest compared with other states. Assuming that there are no serious disputes, judicial supervision can be minimized. Often, an estate can be settled as quickly as a revocable trust. For many seniors, a will is the better choice.

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.