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ESTATE PLANNING

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AVOIDING PITFALLS

Even with recent revisions to the Federal Estate Tax System, many people are still rightfully concerned over costs when their assets pass to their heirs; hence the motivation to do estate planning. In spite of best intentions, even the most sophisticated estate planning tools can go awry due to some simple oversights.

Even absent any major life changes, it is advisable to review your estate plan at least every couple of years

Henceforth the top 10 most common pitfalls:

1. **Not Funding Your Living Trust**: It really does not matter how thorough the Living Trust document is. If the appropriate title transfers are not made so that the trust becomes the owner, assets may be subject to probate and eventually, estate taxes. Generally, to be effective property and assets must be moved into the trust by making the trust the legal owner.

2. **Too Much JTWROS Property**: Titling assets under joint-tenancy-with-right-of-survivorship does avoid probate, yet does not avoid estate taxes. It is important to keep in mind that property titled JTWROS goes to the surviving joint tenant regardless of what a will or trust says.

(3) **Leaving Too Many Assets to a Surviving Spouse**: Thanks to the Unlimited Marital Deduction, we can leave as much of our estate to our surviving spouse as we wish. The problem (and extra tax) may come when those assets in turn pass to the next generation. A major goal of a Living Trust is to preserve the first spouse's "Unified Credit" (now referred to as the first-to-die spouse's applicable exclusion amount). Bottom line: it may be better to pay some estate taxes (at a lower marginal tax rate) upon the first spouse's passing.

(4) **Not Equalizing Assets Through Gifts Between Spouses**: This is another example of improper titling and wasting the applicable exclusion amount. Having all property titled in one spouse's name can create problems when the non-titled spouse dies first and does not pass on any property under his/her credit.

(5) **Not Having a Will**: For those who die without a will, the disposition of property falls under the purview of the state intestacy laws. In effect, a judge decides who gets what according to a preset formula based on lineage. Not only can your wishes of who gets what be thwarted, but this process can also bring additional legal costs, taxes, delays and frustrations to your heirs.

(6) **Improper Ownership of Life Insurance**: Policies are often owned by the insured, payable to the insured's estate or survivors. This makes them includable in the owner's taxable estate and therefore subject to estate taxes. Strategies to avoid this include giving the policies directly to the beneficiaries or transferring them to an irrevocable trust.

(7) **Being Donor & Custodian of a UTMA Account**: Creating and contributing to a Uniform Transfer to Minors Account of which you are the custodian will cause the account to be includible in your estate and possibly subject to painful estate taxes.

(8) **Not Knowing Where All the "Stuff" Is**: All too often, heirs are burdened with having to hunt down accounts and documentation. A scattered estate plan by a secretive decedent may cause some assets to be left uncollected, undistributed and even lost. It is best to keep copies of documents, recent account statements, safe deposit box information, etc., in a notebook and to make your trusted heirs aware of its contents.

(9) **Naming the Wrong Executor**: The tasks facing an executor are often formidable and demanding in all but simple estates. If you are concerned that your spouse and/or close relatives or friends are not up to the task, consider a professional or trust company.

(10) **Not Periodically Updating an Estate Plan**: It is human nature that people simply do not like to think about dying. That makes estate planning one of the most frequently procrastinated aspects of our financial plans. Often when the original documents are drafted, people are tempted to put it on a shelf and be done with it. However, life involves change, whether it be with economic situation, health, family or the tax code. Even absent any major changes, it is advisable to review your estate plan at least every couple of years. It's best to work with an experienced financial planner who can help make necessary modifications. The best thing people can do for loved ones upon death is to allow them to resolve the estate quickly and easily so they can get on with their lives. Understanding and avoiding these common errors can help assure that, in addition to fulfilling best wishes and minimizing the tax bite for heirs.