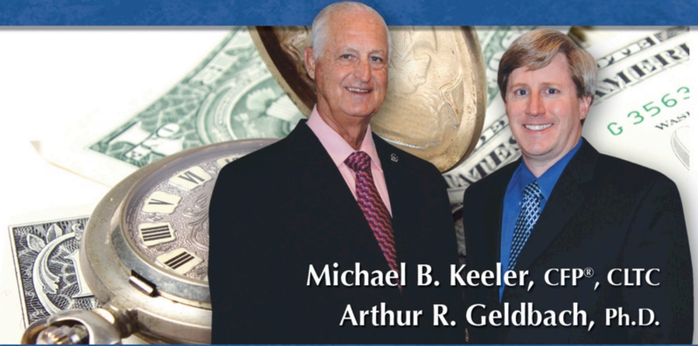


# Eight Major Estate Planning Mistakes

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Most people would prefer to plan a vacation or do something that they consider fun instead of reviewing how their estate should be handled. Having said that, it is still necessary to make sure that all of the wealth you have worked long and hard to obtain ends up where you would like it after your passing.

There are many details when it comes to estate planning such as the use of trusts, ways to minimize estate taxes and strategies to avoid probate. Clearly, a knowledgeable financial advisor can help you set up a game plan and keep you informed so that you can sit down with an estate planning attorney to go over all of the details both simple and complex. The size of your estate and your needs will determine what strategies are best for you.

There are eight major estate planning mistakes that are often made. Most of these mistakes are easy to avoid, as long as you know how to recognize them! In addition to this article, it is also important to consult with an estate planning attorney in your State in order to review whether or not a particular issue pertains to you. Here are the eight common mistakes:

## Mistake 1 - Not having a comprehensive estate plan.

Many people believe that as long as they hold title to their assets as joint tenants that this is all that is necessary for a comprehensive estate plan. As we know, one of the major estate planning goals in many States is to avoid probate. This will obviously vary depending upon your estate, but in most cases, going through probate is a very lengthy process and very often it is wise to avoid it to reduce unnecessary legal fees and court costs.

Holding title as joint tenants usually avoids probate - but only upon the first death! If, for example, a married couple holds title to their house as joint tenants, and the husband passed away, then the wife would automatically inherit his half without going through probate. Let's assume a mother transferred the title of the asset into her name only. When the mother passes away, the children would usually have to go through probate in order to transfer the title of that asset from their mom's name over to them.

Some advisors recommend their clients put their children on as joint owners with their mom after the husband would pass away. Although this strategy does avoid probate, this can also cause major tax problems due to step-up in basis rules, gift estate tax complications, and, very often, liability or control issues! The bottom line is everyone should consider a comprehensive estate plan.

## Mistake 2 - Believing that having a will avoids probate.

Although it varies from state to state, avoiding probate is usually a major goal of an estate plan.

In order to avoid probate, the two most common ways are holding title as joint tenants (see Mistake 1) and holding title in the name of a trust (see Mistake 3 below). It is also important to note that in most cases, beneficiaries of life insurance policies, retirement accounts, and annuities are also not subject to probate.

In most cases however, using only a will in an estate plan guarantees probate.

## Mistake 3 - Believing that establishing a revocable living trust will reduce estate taxes.

It is correct that anything that is held in trust will usually avoid probate, but it won't necessarily reduce estate taxes. As of the date of this article, an individual can have up to $3.5 million in his or her estate without having to pay any federal estate tax. If it is a married couple, they can have up to $7 million in their estate without having to pay any federal estate tax. However, a separate trust, referred to as an exemption trust, must be established at the date of death of the first spouse to be able to take advantage of this additional $3.5 million of net worth without having to pay federal or estate taxes. Although this provision to establish this exemption trust is often part of a living trust, it is not necessarily so. It is important to review your living trust to make sure that the proper wording to establish the exemption trust is included.

Many of the existing estate planning laws, along with these estate exemption amounts of $3,500,000 will change starting January 1, 2010 unless new tax laws pass before the end of this year. We will keep you informed of any changes.

## Mistake 4 - Not having your estate plan updated on a regular basis.

It is best to have your estate plan reviewed by an estate planning attorney at least once every three years to make sure that everything is current. Very often someone has many changes in their life during a three-year period of time which may warrant changing the beneficiaries. Changes can include death, divorce, new children and grandchildren, just to name a few.

In addition to this, the individual may have moved to a new State and their existing estate plan does not comply with the various rules of the new State! This is ***extremely*** important, especially if they move to a community property State (see Mistake 7 below).

New tax laws often warrant amending your estate plan. For example, as mentioned above, current tax laws allow you to have up to $3.5 million in your net worth without paying any federal estate taxes. This amount will change starting January 1, 2010 if new tax laws are not passed. It is possible that someone may have had a taxable estate in the past when the exemption amount was only $1,000,000 or less and now that the exemption has risen to such a high number, they may no longer have a taxable estate. Sometimes it's a good idea to actually eliminate the provision of the exemption trust or make it only as an option for the beneficiaries to erect in order to reduce any unnecessary paperwork, legal or accounting fees in the future.

We recommend you have an agreement with an estate planning attorney who will at least review your estate plan at no charge. Obviously, they will charge you if they make changes.

## Mistake 5 - Having the wrong beneficiary named on retirement accounts.

Beneficiaries of most retirement accounts do not have to go through probate to receive their benefits. Unfortunately, many retirement accounts either have an incorrect beneficiary or do not even show who the beneficiary of the account is! In fact, sometimes the actual beneficiary form cannot be

found! Any of these problems can cause a significant burden on the beneficiaries after you are gone. It is critical that your financial advisor retains all copies of your beneficiary forms and confirms that they are in fact the most current and correct.

It is imperative that the beneficiary is not deceased, which in that case the beneficiary becomes the probate estate. Remember - in the event that no beneficiary form is found, the default is usually going to be the estate! This is very unfavorable because the retirement account will not have a designated beneficiary. This can create significant income tax problems for the beneficiaries in the future and the proceeds of this retirement account will now have to go through probate. A good advisor can help you prevent this problem from happening!

## Mistake 6 - Not having a current durable power of attorney for health care/directive to physicians.

This is also an area where many financial advisors and even attorneys often overlook. It is common to find the client does not have a durable power of attorney, cannot locate theirs or the current one they have is expired! For example, most of these documents are governed State by State and many States changed the wording of these documents a few years ago. In many cases, for example, there is an expiration date on some of the older powers of attorney and it is very possible that their existing durable power of attorney has expired and is no longer in force!

We also recommend that your financial advisor keeps a copy of this document on file, (in fact, we think a copy of the entire estate plan should be kept on file in your financial advisor's office!), as this is a document that might be necessary for you to send to a hospital or a doctor in the event of an emergency. Have you ever heard of any of your friends misplacing any important papers?

## Mistake 7 - Not having a community property agreement.

There are important tax laws that only apply to people living in community property (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin). However, this usually also applies in the event that the couple purchased an asset in a community property State while they were married and then moved to a non-community property State and passed away in the non-community property State.

In the event that a couple acquired an asset in a community property State, there is a full step-up in basis on the entire asset equal to the fair market value as of the date of death. This often saves a significant amount of income taxes upon the sale of the asset after the first spouse passes away. This is a considerable tax advantage over holding title as joint tenants or assets that are purchased in a non-community property State, in which case the step-up in basis is only on one-half of the assets.

In order to achieve this tax-favored step-up in basis, there are a few requirements:

1. The couple must reside in a community property State or the asset must have been purchased by the couple in a community property State in the past.

2. The couple must be legally married as of the date of death.

3. The title must be held in community property or there must be a community property agreement. Please note that just because a couple lives in a community property State, this does not mean that every asset is considered to be community property for purpose of the step-up in basis rules. Individuals often mistakenly believe that if they have a living trust, for example, then this will satisfy the community property rules.

Unfortunately, if the title is held as community property, this asset will now have to go through probate. We usually recommend having a community property agreement rather than holding title as community property in order to avoid probate on the asset that is held as community

property, and still retain the tax benefits of community property.

## Mistake 8 - Not funding your living trust properly.

In many cases, people establish a living trust properly, but fail to transfer their assets into the name of the trust. Therefore, it is important to actually look at the title of each of your documents such as account statements, property tax bills, etc. in order to confirm the actual title of the property is now in the trust. If you have a living trust and it is not funded, the provisions of the trust will usually not be honored and assets will be subject to probate. Sadly, many heirs are disappointed when their loved one's trusts were not funded properly.

## Conclusion

In conclusion, there are many mistakes that well intended, hard saving investors make when it comes to estate planning. Many of these mistakes can be avoided by using a qualified financial professional who looks at the big picture, who is current in estate planning rules and comprehensive enough to check these areas. As we mentioned earlier, it is in everyone's best interest to also sit with an estate planning attorney to go over the details of your estate plan. When it comes to the coordination of estate planning, investment planning and tax planning, our experience has shown us that clients of a qualified financial professional are better positioned. We all know the expression, "Nothing is constant but change." This holds true with regards to estate planning. One of our goals is to constantly keep our clients aware of changes and to individually review each of our clients' situations and, where appropriate, offer them strategies that can hopefully best prepare them in this critical area.

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**About Michael B. Keeler**: Mike is a Certified Financial Planner and is the owner of GFS & Associates, a financial planning firm that has been serving Las Vegas for 30 years. Mike works with individuals and small businesses on a variety of financial topics, including retirement planning and employee benefits. Mike is also the host of The You and Your Money Show, which airs Thursday nights from 6-7pm on KLAV 1230 AM. You can also hear select episodes at YouAndYourMoneyShow.com. Mike can be reached at (702) 870-7711 or find him on the web at www.GFSNV.com

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