



# TOP 10 ESTATE PLANNING MISTAKES THAT COST YOUR HEIRS MONEY



Whether you are planning for retirement or have already arrived, everyone should consider two scenarios: what happens to their estate when they die, and what happens to their estate if they live but aren't healthy, and need to rely on others, on a permanent basis, for assistance.

Creating an estate plan can help protect assets and make sure your wishes are carried out in the event of death, or if you become disabled and need long-term care and support.

According to the U.S. Department of Health and Human Services, 70% of our population over the age of 65 will need some type of long-term care, and more than 35% will need nursing home care for some period of time. I personally think those figures seem a bit high, but the concept is sound: don't be in denial of the possibility of the need for long term care and fail to plan.

Yes, we should examine the cost of long-term care, but should not be paralyzed by fear, which would cloud the big picture of planning to preserve your estate and pass it on in the most efficient manner possible. An experienced Elder Law attorney can balance all the many factors to bring you peace of mind, knowing that you have done all you possibly can, within reason, to avoid costing your heirs money.

**1**  
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**NOT  
HANDLING  
YOUR REAL  
ESTATE  
PROPERLY.**



## ONE

# NOT HANDLING YOUR REAL ESTATE PROPERLY.

Transfers of real estate during lifetime, rather than through Wills or Trusts, may result in high capital gains taxes that could have been avoided. Even “just adding my kid’s name to my deed” causes the same tax problems while causing the property to be subject to their, and their spouses’, creditors, arising from lawsuits, debts, divorce, IRS liens. It also complicates insurance, your property tax exemptions, and causes you to give away control of your property.

**2**



**IMPROPER  
RELIANCE ON  
BENEFICIARY  
DESIGNATIONS.**

## IMPROPER RELIANCE ON BENEFICIARY DESIGNATIONS.

Be sure to update beneficiary designations on bank accounts, investment accounts, retirement accounts, and insurance policies. Don't just "set it and forget it." If you have a revocable living trust to avoid probate, you probably want to think about designating the trust as your beneficiary, behind your spouse (if you do not need to worry about estate tax) since if a child or other heir dies, your Trust, if my firm drafted it, will take into consideration alternate situations. If that alternate heir is a minor child or individual with immature spending habits, it can be held so that a minor does not require a guardianship for their inheritance or until that heir who is a spendthrift can better manage their money. A simple beneficiary designation (which is sometimes called a "poor man's trust") cannot do this even if you keep up with it.

And, you just might not want that \$1 million insurance policy or IRA to go to that deadbeat ex-spouse, old business partner, relative or other individual who, as time has unfolded, you may decide is not trustworthy or deserving.

**3**



**NOT HAVING  
ADVANCE  
DIRECTIVES IN  
PLACE.**



## THREE

# NOT HAVING ADVANCE DIRECTIVES IN PLACE.

Make sure that you have proper and adequate advance directives in place, i.e., Durable Power of Attorney for finances and a Health Care Surrogate/Medical Power of Attorney. Be aware that "standard forms" downloaded from the Internet may not be valid or may lack an adequate scope of powers.

The alternative is likely to be an expensive and frustrating guardianship proceeding in court, which will certainly cost your heirs a lot of money.



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**NOT KEEPING  
YOUR  
ADVANCE  
DIRECTIVES OR  
OTHER ESTATE  
PLANNING  
DOCUMENTS  
CURRENT.**



## FOUR

# NOT KEEPING YOUR ADVANCE DIRECTIVES OR OTHER ESTATE PLANNING DOCUMENTS CURRENT.

**The laws change periodically so you must review your documents regularly.** For instance, the power of attorney law changed in October of 2011, making the old-style ones unenforceable in many cases. The federal law concerning the privacy of your medical records (HIPAA:Health Insurance Portability and Accountability Act) requires your agent under your advance directives to specifically have this enabling language for you agent in your documents.

Every two or three years you should provide yourself peace of mind by having us review your documents and verify everything is up-to-date, that your assets are properly titled, and that no new laws or family developments have impacted your estate planning. We offer our clients who had us prepare their estate planning documents complimentary reviews every three years for that reason. If you have older documents, contact our office today to schedule an appointment for a comprehensive review.

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**NOT BUYING  
THE RIGHT  
KIND OF  
LONG-TERM  
CARE  
INSURANCE.**

## NOT BUYING THE RIGHT KIND OF LONG-TERM CARE INSURANCE.

If you are considering long-term care insurance, make sure that the benefits are adequate, that you have an inflation rider, and can afford the premium (including any likely increases in premium over time). You don't want to find that you do not have sufficient cash flows to cover gaps in coverage and then have to rapidly deplete your assets to pay your premiums, as well. Also, there are a number of insurance products that will maximize your assets in case you do not ever need the long-term care insurance. If you do not need the long-term care insurance, your premium will pay out as life insurance and go to your heirs tax free. If you don't already have an insurance agent or financial planner, call our office for a referral to a trustworthy and experienced insurance professional who can tell you more.

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**NOT PLANNING  
IN ORDER TO  
OBTAIN  
GOVERNMENT  
BENEFITS FOR  
LONG TERM  
CARE.**

## NOT PLANNING IN ORDER TO OBTAIN GOVERNMENT BENEFITS FOR LONG TERM CARE.

Many people fail to take advantage of possible penalty-free transfers when applying for government benefits such as **Medicaid** or **VA Aid and Attendance** for unreimbursed medical expenses. Instead, they needlessly spend down on private pay home, assisted living facilities, or nursing home care. **Most people believe that they must spend down their life's savings before they can apply for Medicaid, but this is simply not true.** Likewise, VA benefits for wartime vets is a very valuable but little-known benefit. Our attorneys have significant experience in Medicaid Planning and VA Aid and Attendance and can walk you through how to qualify.

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**OVERSTAYING  
YOUR  
WELCOME.**



## SEVEN

# OVERSTAYING YOUR WELCOME.

Don't stay in an investment that should be sold to diversify just because you don't want to pay Capital Gains taxes. Taxes should always be considered, but a good investment strategy must consider the risk of staying in one or two investments that could lose value, especially if you may later need funds for your long-term care. Sometimes you just need to take your money off the table and capture your profits. People hate paying taxes. However, you don't pay taxes unless you made money.



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**NOT PLANNING  
PROPERLY TO  
AVOID A  
CONTEST OF  
YOUR ESTATE.**

## NOT PLANNING PROPERLY TO AVOID A CONTEST OF YOUR ESTATE.

Lawsuits can be incredibly devastating, both financially and emotionally. Be sure to take steps to avoid conflicts and potential litigation among heirs and family members. A Trust or Will that make your intentions clear about excluding, as well as including, certain people as beneficiaries can be very helpful. Telling your attorney of your concerns about family members as you are drafting your Will or Trust and the attorney's thorough note-taking, has forestalled many litigated matters after the death of the client. Our firm has seen countless lawsuits and contested cases in the last 25 years and has the training and experience to head off problems **before** they occur.

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**DRAFTING A  
REVOCABLE  
LIVING TRUST  
TO AVOID  
PROBATE AND  
NOT MOVING  
YOUR ASSETS  
INTO IT.**

## DRAFTING A REVOCABLE LIVING TRUST TO AVOID PROBATE AND NOT MOVING YOUR ASSETS INTO IT.

Make sure you have properly re-titled the assets in the name of your Revocable Living Trust to avoid the expensive and lengthy probate process.

**Free bonus: MISTAKE 9A.... Believing that a Last Will and Testament avoids probate.** A Will is essentially a letter to the probate judge saying who you want as your executor and who gets your stuff. It does not avoid probate! Rather, it contemplates probate. Usually, one or more trusts, funded with your assets, are a probate-proof and better way to go.

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**NOT DOING  
ANY ESTATE  
PLANNING AT  
ALL!**

## NOT DOING ANY ESTATE PLANNING AT ALL!

Beware: procrastination is the “silent killer” of estates. People say, “I don’t have the time right now.” When will you? They say, “I want to research and understand all of this before I get started.” If you are sick, do you put off seeing the doctor until you’ve read every medical journal or internet article on your problem, assuming you even know what your problem is?

OR “I’m not sure about who I want to be my Trustee, beneficiary, etc.” Estate planning attorneys are sometimes referred to as “counselors”, which in fact is a much better description of how we can assist you in making these types of important estate planning decisions even before documents are created.

Doing nothing will cost your heirs more than the fee for proper estate planning. If you do nothing, the state dictates who gets what when you go ... if there is anything left.

# OK, SO... NOW WHAT?

Over the past 30 years, my firm has worked with families who have experienced some or all these mistakes and their heirs have sustained unimaginable financial losses as a result. Don't let this happen to you!

The Estate Planning and Elder Law Center of Brevard stands ready to assist you in acting to safeguard your assets and secure the welfare of your heirs. Call us today at 321-729-0087 to set up an initial estate planning consultation at no charge.



321 Sixth Avenue, Indialantic, FL 32903  
8085 Spyglass Hill Road, Viera, FL 32940  
Phone (321) 729-0087 | Fax (321) 729-6969  
[www.ElderLawCenterBrevard.com](http://www.ElderLawCenterBrevard.com)