8 ways to leave a mess for your heirs

Make these errors and your survivors will wonder what your last wishes were, where your financial records are and why they're paying taxes they didn't need to.

If you've always hated your kids, your spouse and the rest of your family, it's surprisingly easy to make sure the acrimony and hurt feelings endure long after your funeral.

However, if you actually like your friends and family, avoid these eight mistakes in planning your estate:

1. Staying ignorant about the process

As with most things, but especially with estate planning, when you don't know what you're doing, mistakes practically make themselves.

Lawyers are supposed to look out for your interests, but they're not always successful. "They bury their mistakes," says Ron Christner, an associate professor of finance at Loyola University. "In other words, you have a will made out when you're 40 and you die when you're 80, and they look at your will and say, 'Oh, this is all wrong.' Well, that's 40 years too late to discover that. But that's when you find out that somebody made a mistake."

- Your 5-minute guide to estate planning

Of course, the deceased would have to take some responsibility for not updating the will after age 40.

If you don't want to leave a mess for your family, you need to bone up on the subject. Spend at least as much time on it as you would researching a car before buying it, says Denis Clifford, a lawyer and author for Nolo, a publisher of consumer-oriented legal books and software. It's a huge mistake to turn everything over to a lawyer and not get any information about something on which you're going to spend a substantial amount of money, he says.

"Someone should have an idea of what a living trust is before they go ask someone to make one for them. I would say get some information so you're at least an intelligent consumer," says Clifford, the author of "Estate Planning Basics," "Make Your Own Living Trust" and "Nolo's Simple Will Book."

But don't think that scanning a book or two will enable you to do it all yourself. Keep in mind that an estate plan is basically a way to distribute your money after you die, minimizing taxes and fees. Hiring a good estate-planning attorney to do this is highly recommended -- and not that expensive, Christner says.

2. Being clueless about the role of wills

"Where attorneys make money is in probating the will. They might do a simple will for you for $300, but if they probate the will when you die, they get approximately 2% of your assets, depending on state law," says Christner.

Many people think a will acts as a free pass around probate court -- a common misconception.

"A will is simply a letter of instruction appointing someone to be in charge of your estate and specifying how you want your estate to be distributed or divided, but it doesn't avoid probate," says Benjamin Berkley, an attorney specializing in estate planning and administration.

Berkley, an author of two estate-planning books, "My Wishes" and "The Complete Executor's Guidebook," says another misunderstanding people have about wills is thinking they need to be notarized. "Having it notarized invalidates it. It has to be witnessed, not notarized," he says. "It depends on your state: It could be one witness or two witnesses."

Instead of simply writing up a will, experts recommend putting assets into a living trust -- especially if you own real estate.

3. Putting your kid's name on the deed

Adding your kid's name to the title of your house is not a good way to pass the old homestead on to the next generation. Tax implications make it a clunky way to bequeath assets.

And yet "so many people do this to avoid having to set up a revocable living trust," says personal-finance author and TV host Suze Orman. "Your mother or father may say to you, 'Let me put your name on the house with joint tenancy and right of survivorship so that when I die, it's immediately yours.'"

Several problems can emerge when someone puts another's name on a house, Orman says.

"First, it's a gift, and the most you can gift to somebody (without notifying the Internal Revenue Service) is $12,000 a year," she says. "So, if the house is worth $200,000, and they put your name on it as a joint tenant with right of survivorship, they just gave you a $100,000 gift for which they have to do a gift-tax report, which then becomes a matter of public record."

This also means you lose tremendous tax benefits that you would have received had you inherited the house.

Estate mistakes: The lessons of Anna Nicole Smith

Dying without a will or a without naming a guardian often leaves a big mess for loved ones.

"When you inherit property, you get an incredible step up in basis on it," Orman says. "So if you inherit a house and the value of it is worth $500,000 on the day you inherit it, and you then turn around and sell it for that, you don't pay any tax because that's your new cost basis.

"If you get that property as a gift while a parent is alive, you take over your parent's cost basis," Orman says. If the property has appreciated since your parent bought it, you're on the hook for the gains, which will be taxed when you sell it.

If you live in a community-property state such as Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington or Wisconsin, the rules for property ownership are different still.

"You have people who think that you can hold property in joint tenancy, which is not valid in community-property states," says Christner, the Loyola associate professor. "But they think you can just own something together and it goes automatically to the other person. That's not a good idea for estate planning. If you have a very small amount of assets and live in a state that allows joint tenancy with right of survivorship, that may work, but it's basically not a good idea."

Continued: Procrastinating can create headaches

4. Dawdling indefinitely

Procrastination may be forgivable for young singles with no dependents, but if you never get around to doing anything, the grief experienced by your survivors will be compounded.

Inaction all but guarantees that tensions will run high after you die.

"The biggest single mistake is avoiding the subject altogether," author Clifford says. "There are a couple of reasons that people do that. For one, it's not fun, and I can't make it fun. Secondly, it's procrastination (caused by) fear of thinking about your own mortality."

Christner says: "The rules for probating, or, in effect, determining whether you have a valid will, are somewhat different in every state. And if it's not valid in your state, then the intestate laws in your state determine how your property is distributed."

Some people may put off doing anything because they don't feel it's the right time. But anyone with assets and a family to protect should at least have a will. "Everyone needs to do some estate planning. The only problem is when to do it," says Christner. "The day you should do it is the day you die, because then nothing can change very much."

Failing that, "anyone with a significant amount of assets, who has children or a spouse should make up a will probably in their 30s or 40s."

5. Not trusting trusts

Going through probate, a necessity if you die intestate (without a will), will result in your estate paying too many fees. Though often discussed, federal estate taxes won't even touch most estates, but court costs definitely will if not planned for. Why fritter away as much as 10% of your assets built throughout a lifetime of hard work?

"The whole purpose of having a trust is to avoid probate, because that allows your estate to pass to your loved ones without having to employ an attorney or go to the court," Berkley says. "It just goes directly to your heirs and minimizes many of the expenses to your estate."

Christner says: "A trust doesn't save taxes, but it does save probate costs. Depending on the state, it probably saves between 8% and 10% of the total estate. If you leave everything you own in your estate, and it all goes by will, then maybe 10% of it will go to attorneys, appraisers and executors."

The aim in planning is to minimize the financial exposure to your loved ones when you're no longer here. "By having an estate plan in place, that avoids many, many, many of those expenses," Christner says.

6. Leaving messy financial records

Pawing through someone else's disorganized records isn't anyone's idea of a good time. Add in grief and the stress of trying to unearth a will or some other evidence of planning, and it's downright chaos.

- Your 5-minute guide to estate planning

Keeping track of all of your information and organizing it in a recognizable way is vital, Christner says. "Social Security numbers, insurance policies, the name of the companies you do business with, your brokerage accounts and where they're held, and account numbers should all be included."

Berkley agrees. Just because a person passes away doesn't mean that credit card companies stop billing.

"The estate is still going to owe the money," Berkley says. "And all of a sudden children are looking at bills that are past due, and they just don't have the information. So many of us now keep information on our computers. Passwords, screen names, stuff like that -- make that stuff available to your loved ones," he says.

You may want to include a letter designating where you want your personal property to go. "Unless it's in your will, it doesn't have any legal standing," Christner says. "But if it's written down, it can prevent fights between relatives where someone says, 'Oh he promised me this,' and you can see that it's written down that no, he didn't. He promised that particular thing to someone else because it's in writing, and here it is."

7. Giving your ex-spouse a parting gift

Failing to occasionally update an estate plan or make changes to beneficiaries after divorce, marriage or other life changes spells trouble.

Major changes such as having children or buying and selling property warrant changes in your will or trust. Equally important are making changes to beneficiary designations on retirement accounts and insurance policies, as those forms trump a will.

- Remarriage means revising your estate plan
- Mistakes that disinherit heirs

"An insurance policy that has a beneficiary on it -- that is not dictated by a will or a trust," Orman says. "A retirement account that has a designated beneficiary or a payable-on-death account at a bank -- those accounts aren't dictated by a will or a trust."

Clifford notes: "In some states and with some types of assets, divorce doesn't necessarily revoke the prior spouse as being a beneficiary. For instance, with any federal pension, you have to change the beneficiary. Specifically, you can't just get divorced and assume that your spouse is no longer your beneficiary. And the same thing is true if you have a child: You should update your will or whatever you have."

8. Letting others figure out what you want

Talking to your family about your intentions seems obvious. After all, they will one day be combing through all of your most closely guarded secrets.

"When someone passes away, you as a survivor have to put together these pieces of the puzzle, and many times these pieces don't fit. And you have the hardest time when, if there had been communication, all of this could have been avoided," says Berkley.

- Executors can inherit an unholy mess
- 6 tips to ensure your last wishes

"I had one situation that was so bad," he says. "The person died without leaving a will or any instructions, and she left three daughters. And there was such fighting between them over who would get what that it went to the court. The court decided that no one was going to get anything and appointed a public guardian to come in and take the entire inventory and sell everything and then write three checks to the daughters.

"Had the mom left some kind of instructions or indication, all of that would have been prevented. But it happens a lot."

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Besides easing the transition after death, leaving specific instructions about your medical care while alive -- specifically, in the form of a medical directive -- also comes in handy.

"We definitely recommend a health-care power of attorney if you are temporarily disabled, a financial power of attorney for someone to pay the electric bill and the gardener and the mortgage if you are disabled," Berkley says. "There's also a very important document known as a living will, which directs a physician. And that really came into prominence in the Terri Schiavo case. Had she had such a document, her family and her husband would not have been at odds fighting for what her wishes were."

This article was reported and written by Sheyna Steiner for Bankrate.com.

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