

How to avoid mistakes in estate planning

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REGION – If you're considering estate planning, you might be putting it off until you're older. Keep it simple, you also might be thinking. Both could be mistakes.

A complicated issue

Planning for what happens to your estate after you die is one of the most complicated issues of your life. Massachusetts-based attorneys offering their help invariably make that point. They also might mention those two situations when asked about some key elements for people aged 50-and-over considering their own plans.

*Boston-based attorney Marcia Wagner says apart from changing federal estate tax laws, the most important factor in estate planning may be a last will and testament.
Photo/submitted*

"I had a retired friend tell me today that his wife wants to do their planning only when they 'get old.' I warned him that it is impossible to guess when your estate planning will be needed. You could become incapacitated or die at any time," said [Patrick G. Curley](#).

As for that sought-after "simple plan," they only succeed when all goes according to what's expected. "The problem is that life is full of curve balls," said Curley, a Certified Elder Law Attorney. "A great example is that folks often sign simple Power of Attorney (POA) documents, which appoints an agent to pay their bills if they get sick. Yet nine times out of 10, those simple POAs fail to allow the agent to help better shield your income and nest egg against long-term care risks or estate taxes."

Another Boston-based attorney, [Marcia Wagner](#), said apart from the issue of sometimes changing federal estate tax issues involving trusts and others, the most important factor may be a last will and testament.

Most Americans don't have a last will and testament

In that absence—and it's a common one with one study showing more than half of Americans or 56% don't have an up-to-date estate plan—disposition of assets are distributed by state intestacy laws. "And it's unlikely that such disposition would conform to the distribution that you selected," said Wagner, a Harvard Law School graduate, managing partner and founder of the Wagner Law group more than 25 years ago.

That "up-to-date" reference in the study conducted by the National Association of Estate Planners and Councils is another key element. Curley says many clients do sign a simple will at some point in their lives. The timing or signing date may be critical. "But often it fails to keep up with current concerns and goals as they age," he explained. "For example, I am age 49 and my wife and I have a nine-year-old and an 11-year-old. Our plan today is focused on protecting them in case we die while they are young (under 25 for instance). But when my wife and I are in our 60s and 70s, our plan may focus more on protecting assets against estate taxes, shielding assets against long-term care risks. A good estate plan evolves with a person's circumstances and goals," he concluded.

Annuities are long-term investments issued by insurance companies that entitle investors to a series of annual sums and are popular in estate planning. They offer a steady stream of investment, tax and other advantages. In the event of death, annuities offer riders that allow remaining money to be allotted to beneficiaries. But they can have their own complicating issues. "As life expectancies generally increase, plan participants who are receiving annuity or installment payments should prepare financial powers of attorney designating a party who

can take action on their behalf if the individual becomes unable to do so because of mental or physical illness, or the infirmities of old age," Wagner said.

Major advantages of estate planning are that it allows you to choose what you leave behind to relatives and friends by naming your beneficiaries; allowing you to choose your children's guardians in the event of an early death; and reducing taxes on what is left behind. One other objective is the possible minimizing of family strife and ugly legal battles.

Vast wealth not a requirement

Having wealth is not really a deciding factor in whether or not people need estate planning, according to [Daniel Surprenant](#), managing partner of New Bedford-based [Surprenant & Beneski](#). Personal assets can include anything of value owned by an individual such as a house, a car, cash, investments such as bank accounts or personal property or others.

A major reason is to avoid probate. "Even if you just have a house, a car and a little bit of money in the bank, you'll still want to avoid probate. If (individuals) lose mental capacity due to a stroke, a heart attack, a car accident or dementia, they're going to want to name the person who will handle their house...and make their financial decisions...without having to go through probate court for that process," he said.

So what goes into a good estate plan?

Comprehensiveness is important, because of the critical nature of planning for risks such as incapacity, long-term care costs and death, said Curley. "A comprehensive plan includes advance directives for health care and financial decision making plus a last will and testament. Often, our clients will also sign a revocable living trust and/or an irrevocable trust to achieve a variety of other objectives. This may include avoiding probate upon their death, reducing estate taxes owned upon their death, and/or shielding their home or other asset against the risk of nursing home and long-term care costs," he said.

Risks of not having an estate plan include a "costly, stressful guardian process" where the court can appoint an individual with the authority to make decisions not to your liking; "an unnecessary probate that could be avoided with a trust, loss of any 'nest egg' funds, and even a possible 'failure to protect assets of family members with special needs or even disabilities,'" according to Curley.

Those are only a few examples, he said.

The price for legal advice varies, of course. Some attorneys set specific fees while others charge by the hour. For those concerned about the cost, the state's Senior Resource Center offers free legal advice that includes such topics as avoiding taxes, government benefits and how to avoid the probate process.

Another reassuring source is to hire a Certified Elder Law Attorney (CELA). They must be in good standing, have years of elder law practice, attend 15 hours of continuing legal education in elder law each year, and pass a comprehensive written exam. Currently, there are less than 1000 CELAs in the United States, with less than 30 of them in Massachusetts.

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