WealthInsights

Estate Planning

TOP 5 MISTAKES TO AVOID

ROEHL & YI
INVESTMENT ADVISORS, LLC

For A Personal Wealth of Reasons

Protect Your Wealth & Family with an Estate Plan

Estate planning puts you in control of important decisions surrounding what happens to your lifetime of hard-earned possessions and assets, who will care for your children (if you have them), and how your family beneficiaries will share your wealth.

Everyone can benefit from an estate plan, as they are not only a tool for the rich. Almost all individuals throughout their lifespan will accumulate some type of valuables, capital, and belongings. An estate plan can reduce tax burdens on your heirs and ease the process of transferring assets to loved ones or the next generation.

It is important that you engage the support of a knowledgeable estate planning professional so you do not make costly and long-lasting mistakes that can hurt your family.

This guide summarizes five common estate planning mistakes to avoid so you can sidestep hidden landmines that can hold heavy consequences for your heirs.

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Mistake #1

Having More than One Trustee for a Trust

Having multiple trustees is akin to having too many cooks in the kitchen. It may sound like a good idea at the outset, but it can lead to issues if the trustees do not agree on processes and decisions – which can cause tensions and challenges for administering the trust. If you do choose to have multiple trustees, it is important to have a mechanism in place for making decisions if disagreements arise.

Roehl & Yi has experienced situations in which having multiple trustees has worked beautifully. We have also witnessed situations where having multiple trustees has created challenges. For example, a grandmother's husband appointed two trustees to administer a trust for the benefit of the grandmother during her life. Differing approaches to administering the trust and judgements as to how the assets should be used and invested led to strife and ultimately to the appointment of a professional trustee. Unfortunately, the two former trustees were left no longer on speaking terms. The simplest solution is to have a single trustee with successor trustees named in case the designated trustee is unable or unwilling to serve.

QUESTIONS TO ASK

What is the best way for me or my family to choose a trustee?

There is no single best way to select a trustee. Generally, it makes sense to consider proximity (there is a lot of on-the-ground work required, which is easier if the trustee lives nearby), capability, skills, and a desire to serve in the role. It is important to think past traditional family roles. Parents often turn to the eldest child, but sometimes a younger child has matured into a capable individual who may be a better candidate. If you do not have a family member you feel can serve as your trustee, consider a close friend or professional trustee.

How should I determine if I should engage a professional trustee?

Sometimes due to family dynamics, a professional trustee is the best option. Many banks offer professional trustee services, as well as some CPAs and attorneys. You can ask your financial advisor if you need recommendations for a professional trustee.

What if I have a will instead of a trust?

If your estate plan does not include a trust, then you do not need to worry about selecting a trustee. However, much of the criteria for selecting a trustee also applies to selecting a personal representative.

Mistake #2

NOT KNOWING THE DIFFERENCE BETWEEN A WILL AND A TRUST

Two of the most common estate planning questions are:
“What is the difference between a will and a trust?” and “Which one is right for me?”

A will is a document that distributes your assets after you have died. It can be changed and updated as often as you like prior to your death but becomes final after you pass away. Wills are relatively simple and affordable to create. Assets passed by a will go through the probate process, which is essentially a public accounting through the court system. There are costs associated with the process and the assets in your estate cannot be distributed until probate is complete.

A trust is a tool that plays a role in life as well as in death. Creating a trust as part of your estate plan is generally a more involved and expensive process than creating a will. Unlike a will, once a trust is created, additional steps are required. Once you create your trust it is critical to fund it (see page 6). Although they are more complex than wills, there are several advantages to trusts:

- Assets that pass via the trust do not require probate.
- Trusts can be used as a mechanism to plan for incapacity, allowing you to determine how you would like incapacity to be determined and who you would like to manage your personal and financial affairs using successor trustees.
- Trusts can continue to govern your assets after your death.
- For high-net-worth individuals, they can be a valuable tool for limiting exposure to the federal and state estate tax.

QUESTIONS TO ASK

Should I have a will or a trust?

Whether a will or a trust is the best fit for you depends on the complexity of your estate and the goals you hope to accomplish with your estate plan. You should speak with your estate planning attorney to determine whether a will or a trust makes the most sense for you. It is also important to note that it may not be a question of either/or. For example, many wills have provisions to create trusts upon the grantor's passing and trusts are usually paired with a "pour-over will" to make sure that no assets are left undocumented.

Do you need both a will and a trust?

If you have a trust, it should be paired with a "pour-over will." This document makes sure that any assets not moved into the name of the trust prior to your death are moved over subsequently. It should be noted that assets that go through a "pour-over will" are not exempt from probate. As mentioned, in some cases, wills have provisions to create trusts to hold assets until a certain set of circumstances has been met, such as an heir reaching a particular age or other stipulation.

Is there a downside to only having one or the other?

Wills and trusts are both valuable estate planning tools. Generally, wills are simpler and less complex to put in place, but trusts, while more expensive and complex to create, have potential benefits for estate taxes, planning for incapacity, and probate avoidance. Many plans use a combination of both wills and trusts. It comes down to finding the best fit for you.

It is important to note that not all assets are covered by your will or trust. Retirement accounts, such as Individual Retirement Accounts (IRAs) and 401(k) plans, insurance policies, transfer on death accounts, and property that is joint with rights of survivorship are not governed by your will or trust. For example, if you own an IRA, the account will be distributed according to the beneficiaries listed for that account, regardless of what your will or trust states.

It should be noted that this is a general overview, and there is often overlap between these documents as well as specialized types of trusts in estate plans.

Mistake #3

FAILING TO TITLE ASSETS TO A TRUST

Developing a plan in preparation for your passing can include: caring for loved ones, protecting assets, minimizing tax exposure, and contemplating a world of which you are no longer a part. This can be emotionally taxing. Once your estate plan is complete, you will probably want to congratulate yourself for accomplishing the task. However, there are important things that need proper completion.

One major estate planning mistake is creating a plan but not following through with the necessary action steps – with the most common instance being the failure to move assets into the trust.

Trusts can be a wonderful tool for avoiding probate, protecting assets, and planning for your incapacity, but once you have created a trust it is critical to **fund** the trust. This includes not only retitling real estate, but also registering investment accounts, insurance policies, and any other assets you would like to pass through the trust when you die. Far too often, Roehl & Yi sees an investment account or insurance policy that was forgotten and results in heirs having to go through probate, investing unnecessary time, money, and emotional energy for a single asset. We have also seen the scenarios of creating trusts, filing them away, and failing to move assets into the trust and thus neglecting to reap the benefits of a carefully crafted estate plan.

The simplest way to avoid this is to work with a collaborative team of trusted professionals. Ask your attorney what steps you need to take to move assets into your trust and reach out to your financial advisor, CPA, and other members of your team for assistance with executing your plan. Give your advisors permission to communicate so they can keep each other informed of changes to your plan.

QUESTIONS TO ASK

How often should you review your trust?

It is a good idea to review your estate plan every five years or when a major life event occurs. This gives you a chance to update trustees and beneficiaries, and confirm all assets are properly titled to the trust.

Which assets should be added to the trust?

Any assets that you intend to be governed by the trust, both during and after your lifetime, should be registered to the trust. These can include real estate, investments, and bank accounts.

Does my attorney have a checklist for funding a trust?

It is possible your attorney has a prepared list of action items to help you with the proper steps needed to move items into your trust. You may also grant your attorney and financial advisor permission to communicate so they can collaborate on your behalf to move assets into your trust.

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Mistake #4

NOT UNDERSTANDING POWER OF ATTORNEY VS. DURABLE POWER OF ATTORNEY

Power of attorney documents are powerful, flexible, and often misunderstood. A power of attorney is a document that gives someone the power to act on your behalf. This power can be limited, such as the power to draw from an account to pay outstanding bills, or expansive, such as the power over all your finances. Powers of attorney can also be extended to areas outside of finances, such as healthcare. In addition, power of attorney can be revoked at any time by the grantor. It is important to note that when the grantor passes, the power of attorney is extinguished. In short, you cannot use a power of attorney to manage the affairs of a deceased individual.

Powers of attorney are often paired with wills in an estate plan to manage the affairs of the grantor (e.g., an aging parent, etc.) if they were to become incapacitated. In this case, it is crucial to know the difference between a power of attorney and a “durable” power of attorney. Both these documents must be executed when the grantor has capacity to make decisions and manage their affairs.

Differences in Power of Attorney

Standard or regular power of attorney becomes invalid when the grantor becomes incapacitated (unable to make decisions), which is often the very situation the power of attorney was created to solve. However, a **“durable”** power of attorney remains valid even when the grantor becomes incapacitated. A **“durable”** power of attorney can also be created to remain dormant until the grantor is incapacitated, at which point it “springs.”

When considering a power of attorney, it is critical to determine if you want the power of attorney to remain active if you begin to suffer from cognitive decline or if you would prefer it to sunset at that point. Whether you use durable or regular power of attorney, you should be specific in the powers that you grant so you do not accidentally grant the individual holding the power of attorney more or less authority than you intended.

QUESTIONS TO ASK

Do I need a power of attorney?

This all depends on your estate plan and whether there are aspects that you would like to give someone the power to manage. Consult with your attorney to determine if a power of attorney is right for you.

Should I have a regular or durable power of attorney?

That all depends on whether you want someone to be able to make decisions for you once you become incapacitated.

What happens to my power of attorney after I die?

Both regular and durable power of attorney documents end at your passing.

When considering a power of attorney, it is critical to determine if you want the power of attorney to remain active if you begin to suffer from cognitive decline or if you would prefer it to sunset at that point.”

NOT HAVING ADEQUATE LIQUIDITY (INSURANCE)

Most of us think of life insurance to provide for the needs of our loved ones if we were to pass unexpectedly during our working years while in the process of accumulating assets. However, insurance can also play an important role in your estate plan if you have accumulated substantial assets. Namely, if you have illiquid assets, such as real estate or a business, insurance can be an important tool to create liquidity to pay estate taxes and immediate expenses (e.g., expenses of running a business, etc.), or divide wealth.

For many high-net-worth individuals, assets accumulated during a lifetime may not be liquid nor an asset one intends for heirs to sell. It can be a tragedy to see an individual leave behind a valuable piece of property that is rich in family history, only to see their heirs forced to sell it to pay the estate taxes. Additionally, the ideal timing to sell an asset may not coincide with your death. Buy low, sell high is well and good, but if your heirs need funds to pay the estate taxes, they may be forced to sell regardless of whether the market is low.

Another challenge is that not all assets can be evenly divided. If one of your main assets is a business, real estate, or some other indivisible piece of property, this can pose a challenge. Insurance can provide a vehicle for creating liquidity to distribute equal value among your heirs without forcing the sale of an asset. Also, some assets, such as businesses, have ongoing expenses. Insurance can provide the liquidity to keep the business running prior to the distribution of the estate. Keep in mind that insurance is not a necessary component of all estate plans, but in some cases, can be a valuable tool to create the desired funds to ensure that your legacy is passed down to your heirs as you intend.

QUESTIONS TO ASK

How do I know if I need life insurance in my estate plan?

The best place to start would be sharing your intentions with your financial advisor, attorney, and other members of your team. Ask them if life insurance should be a part of your estate plan. They will be able to determine if insurance is needed to create liquidity for the estate.

Who should own the life insurance policy?

If the policy is owned by you or your estate, that could delay the access to funds or result in an unintended increase to the value of your estate. The value of the life insurance policy is generally included in your estate for tax purposes if you are the owner or your estate is the beneficiary. Please ask your attorney for guidance on whether the policy should be owned by you, your spouse, a trust, or directly by your heirs.

Should I discuss life insurance with my heirs?

It is always advisable to share your intentions with your heirs. Sharing your plan, including any life insurance you may have purchased to carry out your plan, and the reasoning behind your decisions, can help the process proceed smoothly. It also equips your heirs to mentally prepare for the distribution of assets. Also, especially in the case of indivisible assets, it helps ensure that your intentions match those of your heirs. Leaving a business that you built or a piece of property that has family memories to one heir over another can be an emotionally charged process.

Insurance can provide a vehicle for creating liquidity to distribute equal value among your heirs without forcing the sale of an asset."

GET HELP WITH YOUR ESTATE PLAN

As you can see, establishing an estate plan comes with many important decisions and considerations that can be overwhelming for you to tackle alone.

If you want your assets and your loved ones protected when you pass, you will need an estate plan. Without one, your family and heirs could face huge tax burdens and other consequences.

It is important that you engage the support of a knowledgeable estate planning professional so you do not make costly and long-lasting mistakes that can hurt your loved ones.

Contact a Roehl & Yi financial advisor today to discuss your estate planning needs.

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FOR A PERSONAL WEALTH OF REASONS

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