

Common Estate Planning Misconceptions and Mistakes

Mistake No. 3 – Failure to Minimize Estate Taxes at both the Federal and State Level.

For many years, unless your estate was over \$600,000 you didn't have to worry about federal estate taxes. That amount has now increased to two million dollars. However, Kansas has now "de-coupled" from the federal tax program and has its own threshold amount, which is one million dollars. This creates a gap between the Federal exemption and the state exemption.

If your estate plan contains no tax planning, taxes can be imposed at both the federal and state level. If your estate plan is set up to take advantage of the maximum federal exemption but does not take into account the planning needed for Kansas estate tax, your estate could unnecessarily pay \$30,000 to the Kansas Department of Revenue.

With comprehensive tax planning at both the state and federal level, your heirs can avoid having to write out that huge check to the taxing authorities. Instead, that money will go to your family or your charity of preference. Isn't that what good estate planning is all about?

Mistake No. 4 – Failure to Avoid Probate

Probate is the process by which the court supervises the proving of the will, paying the bills and distributing the estate. It can be expensive, time consuming and frustrating. Probate often costs 2-5 percent of the estate and sometimes a higher percentage in the smaller estates. By law, a probate proceeding must be open for six months before it is eligible to be closed. More realistically, probate proceedings are usually open from 7 to 24 months and occasionally a case will remain open for years.

Probate is a matter of public record. Anyone can go to court, look at your file, make a copy of your will and get a list of your family members along with their most current address.

Probate gives disgruntled heirs a forum to challenge your Will. An objection by an unsatisfied heir can tie up distributions for months.

If you own real estate in other states, a separate proceeding will likely have to be opened in each of those states. Usually, a lawyer licensed to practice in that state will have to be retained.

Can a properly drafted will help us avoid probate? Unfortunately the answer is No. A will simply gives instructions to the Judge about the distribution of your property and whom you want in charge. A will virtually guarantees that your estate will be probated.

The best solution in most cases is a Revocable Living Trust. Title to your assets are transferred to the trust during your lifetime. At your death, your successor trustee steps into your shoes and follows the instructions set forth in the Revocable Living Trust. This solution is especially useful when dealing with out of state property since an ancillary probate proceeding will not have to be opened in the state where the property is located.

We hope you find this information helpful. As you know, every situation is unique. Please get advice from a knowledgeable estate-planning attorney to ensure the best outcome for you personally.

Tim J. Larson, JD, PA, has its offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners*, a select group of nationally known and recognized Estate-planning Attorneys.