

Common Estate Planning Misconceptions and Mistakes

Mistake No. 5 – Inappropriate Use of Joint Tenancy With Right of Survivorship.

Married couples often own their home in joint tenancy under the mistaken belief that probate will be avoided. Unfortunately, probate is not avoided, it is simply put off until the second death. At the second death, the joint tenancy property is subject to the additional inconvenience and expense of a probate proceeding. The assets of both joint tenants can end up being included in the taxable estate of the spouse who died last. Estate taxes can be triggered at both the federal and state level that could have been easily avoided with a properly drafted estate plan. Furthermore, use of joint tenancy does not provide for payment of final expenses at death. Although Joint Tenancy can still be a valuable tool if properly used within the context of an overall estate plan, a Revocable Living Trust provides additional benefits. Probate can be avoided at both deaths and estate taxes can be reduced or eliminated completely.

Adding children as joint tenants is even more problematic. By adding a child as a joint tenant, that child becomes a co-owner with you. You are subjecting your property to that child's creditors. Even if the child has no current creditors, what if that child is involved in an accident and causes someone to be injured? By being a joint tenant, suddenly, your assets are at risk. What if your child is sued for some other reason. As we know from newspapers and TV, you don't have to be a bad person to be sued. For example, if a child is sued for divorce, you may not be deciding who owns the joint tenancy property, a divorce court judge might be making that decision.

If you have added your children as joint tenants and you decide you want to sell the property, you have to get your children's permission. In Kansas you will also need to obtain their spouse's permission and signature. You, the original owner, have lost control over your own asset. Do you really want your children and their spouses to have "veto" control over the sale or disposition of your property?

Under IRS regulations, when you add children as joint tenants, you are limiting their ability to obtain a complete step-up in basis for capital gains purposes.

Our general rule of thumb is very simple. Don't add children as joint tenants.

Mistake No. 6 – Failure to Plan for a Disabled Beneficiary

If you have a handicapped child or a beneficiary with some kind of disability, you have special planning needs. If you leave the disabled child's inheritance to a sibling with the understanding that the sibling will provide for the disabled child, you cannot predict or control the outcome. The child to whom you have entrusted the disabled child's funds may die, get divorced, get sued or simply refuse to act. The disabled child might never see any inheritance.

You should consider leaving their inheritance in a specially drafted trust. Such a trust, sometimes called a Supplemental Needs Trust, is designed to protect the handicapped child and prevent the child's disqualification for public assistance.

The share for the disabled child can be left in trust and managed by a selected family member. Funds can be made available for "supplemental" needs, those needs over and above what Medicaid or SSI provide. Examples of supplemental needs would include a specially equipped automobile or van, computer equipment, and vacations.

A modest amount left in this kind of trust can provide significant lifestyle improvements over a long period of years and yet enable the recipient to continue receiving governmental benefits.

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.