

Common Estate Planning Misconceptions and Mistakes

Mistake No. 7 – Failing to Plan for the Spendthrift Child

How does your child manage money now? If you can answer that question, you may have an idea of how they will manage their inheritance. Will they use it wisely and constructively or will they squander it foolishly? Will the inheritance they receive be the start of a lifelong nest egg or will they spend it within the first year or two? Will the inheritance be available to spend on the education of your grandchildren or will it be invested poorly?

The spendthrift child can be his own worse enemy. How can we protect that child from creditors and predators and at the same time protect the child from himself? One way this can easily be accomplished by holding a spendthrift child's inheritance in trust until that child reaches an age at which they are more likely to be mature, let's say 30 years old.

Some parents prefer the idea of giving 1/3 of the child's inheritance to them at the time of the parent's death, another 1/3 five years later and the final third 10 years after the parent's death. This takes away the child's ability to blow it all at one time and essentially gives them three chances.

Other parents are so concerned about their child's spending habits that they prefer that a child's inheritance be paid out monthly for a period 20 or more years.

In cases where a child has been involved with alcohol or drugs a parent might want to set requirements before a child receives an inheritance. An example would be for a child to be regularly tested for alcohol or drugs over a period of time before any inheritance is paid out. In this way a child would have to prove him or herself to be drug free for an extended period in order to receive the inheritance.

The important thing to remember is that as long as a child's inheritance is held in trust, the inheritance can be protected from child's creditors and from the child's own spending habits. These "subtrusts" can be made a part of a properly drafted estate plan with minimal additional cost.

Mistake No. 8 – The Disinherited Child

Let's look at our first example. Although Bob's Last Will and Testament left his estate to his two children, the will failed to mention his child by a prior marriage. He had not had any contact with the child in years and assumed it would not be a problem. Because the child was not mentioned, that child can now argue that Bob simply overlooked him. This omission has given the child a potential claim against Bob's estate.

Would it have helped if Bob's will had specifically disinherited the child? It certainly would have made it better but there would still be problems. Probate court requires that all heirs and beneficiaries mentioned in a will be notified when the estate is opened and closed. Therefore the executor of the Last Will and Testament must notify the disinherited child every time the estate makes a move. Not only is salt rubbed in the proverbial wound but the disinherited child now has a forum to contest the Will. Probate can be delayed and the intended beneficiaries may have to enter into a settlement with the disinherited child.

As you might have guessed, there is a much simpler and safer solution. Bob could have used a Revocable Living Trust. The Trustee, unlike the Executor under a Will, does not have to notify heirs. The Trustee only has to notify those who are actual beneficiaries. Furthermore, the disinherited child does not have the built in forum of Probate Court to press his case. A Trust is much harder for a disinherited child to contest.

Our general rule of thumb is simple. If you have a reason to disinherit a child, use a Revocable Living Trust.

We hope you found the information in this series of articles helpful. Every situation is unique. Talk to 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.